

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF SOLVENCY REGULATION

Treatment of Allocated Deposit-Type Deferred Annuity Contract Funds for Purposes of Calculating the Special Purpose Apportionment and the Fraud Assessment

Adopted New Rules: N.J.A.C. 11:2-43

Proposed: June 21, 2004 at 36 N.J.R. 2976(a)

Adopted: October 6, 2004 by Holly C. Bakke, Commissioner, Department of Banking and Insurance

Filed: October 6, 2004 as R. 2004 d. 407, without change.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:1C-19 et seq., 17:33A-1 et seq. and 17B:21-1 et seq.

Effective Date: November 1, 2004

Expiration Date: November 30, 2005

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received timely written comments from the following:

1. Sun Life Assurance Company of Canada (U.S.);
2. The American Council of Life Insurers;
3. Joint comments from MONY Life Insurance Company and MONY Life Insurance Company of America;
4. The Equitable Life Assurance Society of the United States; and
5. The Equitable of Colorado, Inc.

COMMENT: All of the commenters supported the proposed new rules. The commenters stated that it was their understanding that the changes to the National Association of Insurance Commissioners (NAIC) Accounting Practices and Procedures Manual (referred to as statutory

codification), with an effective date of January 1, 2001, were intended to be revenue neutral for both regulators and insurers. One commenter specifically stated that while it supported the Department's efforts to bring annuity issuers back to their pre-2001 assessment situation, it suggested that N.J.A.C. 11:2-43.4, which provides for credits for amounts previously paid in 2002, be revised to provide the credit as a single lump-sum refund payment, rather than a credit being applied over three or more years.

The commenters also contended that the result of statutory codification will not be truly revenue neutral until affected insurers are "made whole" with respect to all apportionments and assessments that were based on reports submitted after statutory codification and prior to the effective date of these new rules. Accordingly, the commenters requested that the Department propose an amendment to bring assessments based on information provided on the 2001 Schedule T of an insurer's annual statement within the scope of the rules.

RESPONSE: The Department appreciates the support of its proposal.

The Department initially notes that the changes suggested by the commenters cannot be made upon adoption as the changes would require notice to interested parties and an opportunity to comment. The Department also provides the following responses to the specific suggestions.

With respect to the comment that credits should be provided as one lump-sum payment rather than as a credit over three or more years, the Department notes that the monies received through the special purpose apportionment and fraud assessment reimburse the State for monies appropriated and expended by the Division of Insurance in the Department and the Office of Insurance Fraud Prosecutor, Division of Criminal Justice, Department of Law and Public Safety, respectively, for the prior fiscal year. Accordingly, there are no "extra" monies available to

provide a refund of sums previously paid, absent a specific appropriation by the Legislature. The Department historically has addressed situations where an insurer may have been improperly assessed, either due to an error in reporting by the insurer, an error in calculation, or upon further analysis of the Department, by providing a credit against future apportionments or assessments. The Department continues to believe that this procedure is fair and equitable. Moreover, as noted in the Summary to the proposal, because there is no current information on the amounts that will not be subject to the apportionment and the assessment under the proposed rules, the rule provides that the credit will be taken over not less than three years. This is intended to avoid any unexpected impact on all other insurers. The Department notes that the rules provide that the credit may be taken by an affiliate of the insurer. In addition, the rules provide that, for good cause shown, the Commissioner of Banking and Insurance (Commissioner) may allow the credit over less time. Pursuant to the rules, good cause shown includes, but is not limited to, where the amount of the credit is de minimis with respect to the insurer involved, where the insurer is in a hazardous financial condition, or where it is necessary to preserve the assets of an insurer in administrative supervision, rehabilitation, or liquidation. Accordingly, the proposed rules provide for a credit over less than three years where circumstances warrant.

As was mentioned above, the potential unexpected impact on all other insurers is not known at this time. Consequently, the Department did not provide in the proposed rules for a credit of the amounts paid for 2001. The Department will consider proposing amendments to the rules to address 2001 apportionments and assessments based on a review of the amount of funds that would no longer be subject to the apportionment or assessment (information that the Department does not currently have), and the resulting impact on other insurers. The Department notes that insurers writing deferred annuity contracts had an opportunity to raise this

issue during the lengthy development and review process of statutory codification, prior to it becoming effective in 2001. The Department further notes that this issue was not brought to its attention until after the apportionments and assessments were issued based on amounts reported in the 2001 annual statement. In addition, the commenters' reference to "being made whole" only through receipt of an additional credit for the 2001 apportionment and assessment paid is not dispositive of the issue. Insurers are continually subject to changes in costs of doing business, including changes in other fixed costs such as utilities, rents, taxes, etc. These costs are considered in determining the cost of their products in the future. The Department understands that, with respect to deposit-type deferred annuity types of products, insurers charge fees for early termination. Thus, there are other mechanisms by which insurers can be "made whole." Nevertheless, as stated above, the Department will consider proposing amendments to address credits for amounts paid as reported for 2001 based on a review of the amount of monies involved and the potential impact on all other insurers.

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rules are not subject to any Federal requirements or standards.

Full text of the adoption follows:

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