§ 4228. Life insurance and annuity business; limitations of expenses. (a) The provisions of this section shall apply to all domestic life insurance companies and to all foreign and alien life insurance companies doing business in this state, but not the alien branches of such companies or such companies' subsidiaries not licensed in this state to do an insurance business, except as provided in subsection (h) of this section, engaged in the direct sale of individual life insurance policies or individual annuity contracts, hereinafter referred to as "companies". Except as provided in subsection (h) of this section, the provisions hereof shall apply only to individual life insurance policies and riders and individual annuity contracts and riders and shall not apply to fraternal benefit societies nor to the following categories of insurance: (1) accident and health insurance having the meaning ascribed in section one thousand one hundred thirteen of this chapter, group life insurance having the meaning ascribed in section four thousand two hundred sixteen of this article, group annuity contracts having the meaning ascribed in section four thousand two hundred thirty-eight of this article, and credit insurance having the meaning ascribed in section four thousand two hundred sixteen and four thousand two hundred thirty-five of this article; (2) debit life insurance, except as otherwise expressly provided herein; or (3) policies and contracts issued for delivery outside the United States and its possessions. Neither these categories of insurance nor reinsurance either assumed or ceded will be included in any calculations or tests conducted for any purpose in connection with this section or any regulations or schedules promulgated hereunder.

(b) For purposes of this section:

(1) "Advance" and "loan" shall have the following meanings: "advance" means any amount paid to an agent, up to an amount not exceeding the value of three months' expected compensation payments, that is expected to be repaid within the next twelve months through reductions in future compensation. "Loan" means any payment to an agent, other than an advance, that is expected to be repaid from future compensation. An amount paid to an agent in an annualization as defined in this subsection is not an advance or loan.

(2) "Agent" shall have the meaning ascribed in section two thousand one hundred one of this chapter and "broker" shall have the meaning

ascribed in section two thousand one hundred four of this chapter.

(3) "Annualization" means: with respect to any amounts paid to an agent or broker, the paying or crediting to an agent or broker at the beginning of a policy year compensation or other payments based on all or a portion of the amount of premiums scheduled to be received by the company with respect to such policy year; with respect to the calculation of any limits of payment or expense prescribed in this section, the calculation of such limit is based on the assumption that a company receives, at the beginning of a policy year, all or a portion of the amount of premiums scheduled to be received by the company with respect to such policy year.

(4) "Benchmark gross level premium", is calculated as of the issue date of a policy, or as of any subsequent date on which the face amount of the policy, or the types or amounts of supplemental benefits provided under the policy, are increased, whether by addition of a rider or otherwise, at the request of the policy owner. The benchmark gross level premium is calculated as one hundred twenty-five percent of the net level premium for a whole life insurance policy with level premiums payable during the life of the insured, with payments starting on the same date and for the same face amount as the policy for which the benchmark gross level premium is being computed, based on three and one-half percent interest and male aggregate (smoker and non-smoker combined), Commissioners 1980 Standard Ordinary Mortality Table, ultimate mortality, age last birthday and immediate payment of death claims, further adjusted as follows:

(A) An amount of one hundred dollars shall be added to the benchmark gross level premium for a policy; however, this amount shall not be added to the benchmark gross level premium for a rider.

(B) The benchmark gross level premium for a policy providing supplemental insurance benefits, whether by rider or otherwise, shall be increased (i) if the company makes an additional premium charge for such benefits, by the amount of such premium charge, and (ii) if the company does not make an additional premium charge for such benefits, by one hundred twenty-five percent of the amount of the levelized annual cost of insurance charge for such benefits; such levelized charge is to be based on the actual schedule of charges applicable to the policy at the time with respect to which the calculation is made, levelized using the

mortality table and interest rate defined in this section.

(C) The benchmark gross level premium for a policy in which the guaranteed table of mortality charges exceeds the Commissioners 1980 Standard Ordinary Mortality Table for male smokers for age last birthday may be appropriately adjusted to reflect any excess of the amount of the benchmark gross level premium computed based on the actual mortality guarantees of the policy over the benchmark gross level premium computed based on the Commissioners 1980 Standard Ordinary Mortality Table for male smokers for age last birthday; however, if the company makes an additional premium charge because the insured is a substandard risk, the company may, instead, increase the amount of the benchmark gross level premium by the amount of such charge.

(D) The benchmark gross level premium for a policy providing life insurance benefits, other than supplemental benefits, for more than one person shall be adjusted to reflect the joint mortality status of the insured lives, consistent with the nature of the life insurance coverage provided by the policy, using the mortality table and interest rates defined in this section.

(E) The benchmark gross level premium for a policy, including all of its riders and benefits, is the sum of the benchmark gross level premium for the policy and the benchmark gross level premium for each rider, each adjusted as provided in subparagraphs (A), (B), (C) and (D) of this paragraph.

(F) The benchmark gross level premium for a policy with premiums payable more frequently than annually shall be the benchmark gross level premium based on annual premium payments, adjusted by the company's actual adjustment factors for the actual mode of premium payment.

(5) "Commission" means a payment to an agent or broker, as compensation for the sale or service of a specific policy or contract, based upon a percentage of the premium or consideration for that policy or contract.

(6) A "compensation arrangement" means any arrangement by a company for compensating its agents or brokers on business that includes any of the following:

(A) A commission that, for any policy or contract in policy or contract years two through four, exceeds the limit set forth in paragraph two, three or four, whichever is applicable, of subsection (d)

of this section for that year or, with respect to any year after the fourth policy or contract year that exceeds the limit set forth in paragraph two, three or four of subsection (d) of this section for the fourth policy or contract year;

(B) A fund-based compensation arrangement that, for any policy or contract year, exceeds two percent of the fund annually in any of the policy's or contract's first four years;

(C) Any plan providing for a training allowance subsidy pursuant to the provisions of subparagraphs (A) through (F) of paragraph three of subsection (e) of this section;

(D) Any plan of agent or broker compensation other than commission-based and fund-based compensation pursuant to paragraph two of subsection (e) of this section; and

(E) Any plan involving the payment of an expense allowance, other than plans under which the company provides no goods and services to the recipient of the expense allowance payments and the expense allowance payments are described as percentages of qualifying first year premium, excess premium, single consideration, or periodic consideration, or any of them, and none of the percentages exceeds the corresponding percentages set forth in paragraph five of subsection (d) of this section.

(7) "Contract" means an individual annuity contract. A rider to a contract will be treated as a separate policy or contract for all purposes hereunder, unless otherwise specified. The determination of a policy or contract type is done separately for each policy, contract and rider.

(8) "Debit life insurance" means all life insurance with premiums payable monthly or more frequently, normally collectible by an agency force organized to make systematic house to house collections of premiums.

(9) "Effective date" means the first day of January next succeeding the date on which this section shall have become a law.

(10) "Excess premiums" are premiums in the first policy year that exceed the benchmark gross level premium.

(11) "Expense allowance" is a payment to an agent or broker in lieu of reimbursement for expenses incurred in connection with the sale or servicing of the company's policies or contracts.

(12) "Filing" shall mean the delivery of information by a company to the superintendent or his designee concerning plans under which a company makes payments to its agents and to brokers.

(13) "Fund" is a policy or contract accumulation account or any other similar policy or contract value at a particular time, before application of any surrender charges and market value adjustments, if any, whether or not it is immediately available to the owner of a policy or contract. At the option of the company "fund" may mean the company's statutory reserve for the policy or contract.

(14) "General agent" is an agent who is appointed directly by a company, other than a local salaried representative of such company, who recruits, trains or supervises other agents or who has the right to appoint agents.

(15) "Goods and services" as used in this section shall refer to (A) reimbursements to an agent or broker for vouchered expenses made or incurred in connection with the production or servicing of policies or contracts on behalf of the company and (B) similar expenses assumed directly by the company. These expenses do not include those that the company incurs for the recruitment, training, supervision or management of such agent, nor the cost of security benefits provided to such agent, nor those expenses described in item (iv) of subparagraph (D) of paragraph two of subsection (c) of this section.

(16) A "periodic premium policy" or "periodic consideration contract" is any policy or contract, respectively, other than a single premium policy or single consideration contract. The determination of a policy or contract type is done separately for each policy or contract.

(17) "Periodic premiums" and "periodic considerations" are premiums and considerations, respectively, recorded by a company for a policy or contract other than single premiums and single considerations.

(18) "Policy" means an individual life insurance policy. A rider to a policy will be treated as a separate policy or contract for all purposes hereunder, unless otherwise specified. The determination of a policy or contract type is done separately for each policy, contract and rider.

(19) "Premiums" and "considerations" include all amounts (including amounts for supplementary benefits) recorded for a policy or contract, except dividends applied to purchase additional insurance under the same policy, as well as amounts meeting the requirements of subparagraphs (B)

and (C) of paragraph twenty-five of this subsection. Premiums and considerations include all amounts so recorded that arise from the application of values inherent in a policy or contract, such as dividend deposits, any excess of actual policy or contract cash values over guaranteed cash values, dividend additions, premiums paid in advance, and policy loans.

(20) A "qualified annuity contract" is an annuity defined by the Internal Revenue Code sections 401, 403 or 457, and any other similar annuities defined by the superintendent.

(21) "Qualifying first year premiums" are premiums under each policy, including all of its riders and benefits, which are:

(A) in the first policy year, premiums recorded, including the entire amount of a premium recorded in the first policy year of a conversion of a term policy or rider to a permanent policy up to the benchmark gross level premium for the policy, including all of its riders and benefits; or

(B) in any year after the first, premiums recorded up to the benchmark gross level premium for the current face amount of the policy, including all of its riders and benefits, less the total previous qualifying first year premiums, but not less than zero; or

(C) all premiums recorded up to the benchmark gross level premium to renew a policy on more favorable terms than those guaranteed in the policy when such renewal is subject to new underwriting and a new contestable period.

(22) "Recorded" shall mean the crediting of an amount to the company's premium or consideration accounts for purposes of the company's statutory annual statement.

(23) "Renewal premiums" are all periodic premiums other than qualifying first year premiums or excess premiums.

(24) A "security benefit" is any benefit provided to an agent that is both (A) provided under an employee benefit plan, as defined in the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, et seq. and (B) either (i) a benefit under an employee benefit plan that qualifies as such under the relevant sections of the Internal Revenue Code and regulations thereunder that require compliance with standards of non-discrimination in benefit coverage and eligibility, or (ii) a benefit that does not permit an agent to obtain a cash payment other

than at the time of death, permanent and total disability, or retirement. "Permanent and total disability" as used herein shall mean any condition caused by injury or disease that prevents the agent from performing substantially all of the work normally performed by the agent. If the definition of "employee benefit plan" under the Employee Retirement Income Security Act of 1974 is repealed, replaced or significantly amended, the superintendent shall promulgate a regulation establishing a definition for the purposes of this section. Benefits that would meet the requirements of subparagraph (A) or (B) of this paragraph but for the fact that the agent covered under such benefits is an independent contractor rather than an employee are security benefits.

(25) "Single considerations" are:

(A) all amounts (including amounts for supplementary benefits) recorded as single considerations or single deposits for contracts; or

(B) contract values that are applied under the same contract at the later of (i) the end of a surrender charge period or (ii) five years after issuance of the contract or, if a previous such application of contract values has occurred, five years after such application, when such application results in new sales loads or surrender charges; or

(C) settlement option proceeds generated from the death of an individual or maturity of a policy or contract that are applied to purchase a new contract or that are applied to the purchase of annuity benefits under the existing contract.

(26) "Single premiums" are:

(A) all amounts (including amounts for supplementary benefits) recorded as single premiums for policies, except dividends applied to purchase additional insurance under the same policy; or

(B) policy values that are applied under the same policy at the later of (i) the end of a surrender charge period or (ii) five years after issuance of the policy or, if a previous such application of policy values has occurred, five years after such application, when such application results in new sales loads or surrender charges.

(27) A "single premium policy" or "single consideration contract" is a policy or contract that, according to its terms, provides for the payment of a single premium or consideration at time of purchase and no subsequent premiums or considerations during the life of the policy or contract. The determination of a policy or contract type is done

separately for each policy, contract and rider.

(28) "Supplemental benefits" are any benefits provided as part of a policy or contract, whether by rider or otherwise, excluding life insurance coverage on named insureds under the policy.

(29) "Training allowance subsidy" is the excess of the amount that is paid to an agent under a training allowance plan over the amount that would be paid in commissions and expense allowance to an experienced agent, in the same sales force, producing the same sales of policies and contracts.

(c)(1) No company shall pay or incur in any calendar year total selling expenses as calculated hereunder in excess of its total selling expense limit referred to in paragraph four of this subsection, except that the total selling expense limit shall not apply to a company in any calendar year in which the company does not sell any policies or contracts subject to this section.

(2) Total selling expenses shall include the following expenses incurred directly or indirectly by the company, without regard to whether they are incurred in the company's home office or in a field or regional office:

(A) commissions;

(B) the increase during the year in the amount of outstanding advances and loans to agents, including any accrued and unpaid interest thereon, and including amounts charged off by the company, however, if such amount is negative, it shall be treated as a reduction of the amount of total selling expenses;

(C) the expense of direct solicitation advertising that either includes an application or solicits a response to obtain an application for a policy or contract regulated under this section;

(D) distribution, marketing and sales support expenses directly related to the procurement of new business, which includes but is not limited to:

(i) recruiting and training of agents, including related recordkeeping;

(ii) sales management and supervision; and

(iii) clerical functions in sales offices;

(E) any expense allowance paid to the agent or broker by the company or any expenses of the agent, agency or broker, assumed or reimbursed by

the company;

(F) the travel expenses, meals and entertainment paid for by the company; and

(G) all other compensation paid to or expense incurred on behalf of active and retired agents and brokers, including the cost of any security benefits.

(3) Total selling expenses shall not include expenses related to the following activities and the compensation of individuals working full-time on the following activities and other activities not included within paragraph two of this subsection, even if they are working in a sales office:

(A) development and maintenance of products, systems and software;

(B) medical examinations and inspections of proposed risks;

(C) underwriting;

(D) policy issue;

(E) policy conservation;

(F) premium billing and collection;

(G) policy administration;

(H) claim administration and management;

(I) investment management;

(J) statutory and regulatory filing and compliance;

(K) overall company management and direction;

(L) taxes, licenses and fees; and

(M) all other activities not related to selling.

(4) The total selling expense limit shall be the sum of the amounts determined pursuant to subparagraphs (A), (B), (C), (D), (E), (F), (G), (H), (I) and (J) of this paragraph, except as any of those subparagraphs may be adjusted pursuant to the provisions of subparagraph (K) of this paragraph.

(A) For each life insurance policy, fifty-five percent of the qualifying first year premium.

(B) Five percent of excess premiums, single premiums and all considerations.

(C) One hundred ten percent of the sum of the amount determined pursuant to subparagraphs (A) and (B) of this paragraph.

(D) For all new life insurance paid for during the year, other than term insurance for less than one year, for which any premium is paid

during the year, one dollar for each one thousand dollars of such insurance. New life insurance paid for shall include:

(i) life insurance on new policies paid for during the calendar year;

(ii) life insurance on term conversions during the calendar year to permanent life insurance;

(iii) life insurance on policies which were renewed under more favorable terms than those guaranteed in the policy, subject to new underwriting requirements and new contestable period; and

(iv) increases in the death benefit of life insurance during the calendar year, other than those provided for in the policy, on policies in force.

(E) Seventy dollars for each new policy, other than policies for term insurance for less than one year, and for each new contract paid for during such year. For purposes of this subparagraph, riders will not be considered as separate policies or contracts. New policies paid for during the year shall include policies referred to in items (i), (ii) and (iii) of subparagraph (D) of this paragraph.

(F) Twelve percent of renewal premiums.

(G) Fifteen cents for each one thousand dollars of face amount of policies in force at the end of such year.

(H) The sum of the amounts below:

(i) one dollar for each one thousand dollars of the first one billion dollars of life insurance in force;

(ii) fifty cents for each one thousand dollars of the next one billion dollars of life insurance in force;

(iii) five one-hundredths of one percent of the first one billion dollars of annuity reserves; and

(iv) two and one-half of one hundredths of one percent of the next one billion dollars of annuity reserves.

(I) For each agent who qualifies under paragraph three of subsection (e) of this section, thirty thousand dollars for each such agent appointed to represent the company during the year, twenty thousand dollars for each such agent who was initially appointed during the immediately preceding year and is still contracted with the company on January first of the current year, and ten thousand dollars for each such agent who was initially appointed during the second preceding year and is still contracted with the company on January first of the current

year.

(J) The excess, if any, of the total selling expense limit over the total selling expenses for the immediately preceding calendar year; however, such excess shall not exceed five percent of the total selling expense limit for such preceding calendar year, calculated without regard to the effect of this subparagraph.

(K) For a company that makes commitments to pay compensation to agents or brokers or to incur other agent-related or broker-related expense with respect to policies or contracts in their renewal years:

(i) with respect to policies, if such commitment includes compensation or other agent-related or broker-related expense expressed as a percentage of premium and if it exceeds twelve percent of premium with respect to any policy year after the first, the company may, at its option reduce the amount of the limit calculated pursuant to subparagraph (A) of this paragraph in the calendar year in which such policies are sold and increase the amount of the limit calculated pursuant to subparagraph (F) of this paragraph in subsequent calendar years;

(ii) with respect to policies, if such commitment includes compensation or other agent-related or broker-related expense expressed as a percentage of the policy fund with respect to the second or any later policy year, the company may, at its option reduce the amount of the limit calculated pursuant to subparagraph (F) of this paragraph in subsequent calendar years and add, in such subsequent calendar years, an amount based on the reserves of such policies;

(iii) with respect to contracts, if such commitment includes compensation or other agent-related or broker-related expense expressed as a percentage of the contract fund with respect to any contract year, the company may, at its option, reduce the amount of the limit calculated pursuant to subparagraph (B) of this paragraph in the calendar year in which such contracts are sold and add, in such calendar year and subsequent calendar years, an amount based on the reserves of such contracts.

(L) Such adjustment shall:

(i) in the case of item (i) of subparagraph (K) of this paragraph, be based on the relationship that a reduction of three percent of premiums in the amount of the limit calculated pursuant to subparagraph (A) of

this paragraph in the year of sale is equivalent to an increase of one percent of premiums in the amount of the limit calculated pursuant to subparagraph (F) of this paragraph if the commitment applies to all later policy years;

(ii) in the case of item (ii) of subparagraph (K) of this paragraph, be based on the relationship that a reduction of one percent of premiums in the amount of the limit calculated pursuant to subparagraph (F) of this paragraph in all later policy years is equivalent to an increase in the limit of fifteen one-hundredths of one percent of policy reserves if the commitment applies to all later policy years;

(iii) in the case of item (iii) of subparagraph (K) of this paragraph, be based on the relationship that a reduction of one-half of one percent of considerations in the amount of the limit calculated pursuant to subparagraph (B) of this paragraph in the year of sale is equivalent to an increase in the limit of fifteen one-hundredths of one percent of contract reserves if the commitment applies to all contract years.

The superintendent shall by regulation describe the bases for adjustments in other situations, consistent with these relationships. Reasonable use of averaging methods shall be allowed. In particular, the regulation shall provide that a company shall approximate the percentage of its policies, contracts, premiums, and reserves with respect to which it has opted to make such adjustments, and shall derive adjustment factors such that, when such factors are applied to all of its business issued or in force, they will approximate the results that would be obtained if more precise calculations were made.

(5) A company may make arrangements, such as entering into agent contracts, incurring expenses, and generally organizing its activities, in such a manner that some or all of its expenses are applicable partially to policies and contracts subject to this section and partially to other business or to other companies with which it has business arrangements and, in such cases, the company shall determine the portion of such expenses subject to this subsection by using an equitable basis of allocation, consistent with the company's allocation methodology for annual statement reporting.

(d) A company may pay agents and brokers as it sees fit for the sale and service of policies and contracts. However:

(1) No company shall pay or permit to be paid to an agent or broker a commission in excess of the sum of (A) fifty-five percent of any qualifying first year premium and (B) seven percent of any excess premium; or to a general agent with respect to business not personally produced by such general agent, a commission in excess of the sum of (C) sixty-three percent of any qualifying first year premium and (D) eight percent of any excess premium.

(2) Except as provided in paragraph four of this subsection, no company shall pay or permit to be paid to an agent or broker commission in excess of seven percent of any single consideration or any periodic consideration received in the first four contract years; or to a general agent, on business not personally produced by such general agent, a commission in excess of eight percent of any single consideration or any periodic consideration.

(3) No company shall pay or permit to be paid to an agent or broker a commission in excess of twenty-two percent of renewal premiums for the second policy year, twenty percent of renewal premiums for the third policy year, or eighteen percent of renewal premiums for the fourth policy year; or to a general agent on business not personally produced by such general agent, a commission in excess of twenty-seven percent of renewal premiums in the second policy year, twenty-three percent of renewal premiums in the third policy and twenty percent of renewal premiums in the fourth policy year.

(4) Notwithstanding the limitations set forth in paragraph two of this subsection, with respect to a qualified annuity contract, no company shall pay or permit to be paid to an agent or broker a commission in excess of fourteen and one-half percent of periodic considerations incurred in the first contract year and four and one-half percent of periodic considerations incurred respectively in each of three contract years following the first, or to a general agent on business not personally produced by the general agent, a commission in excess of sixteen percent of periodic considerations incurred in the first contract year and six percent of periodic considerations incurred respectively in each of the three contract years following the first.

(5) With respect to premiums and considerations recorded within a period of twelve consecutive months on business written by any agent or broker, no company shall pay or permit to be paid to an agent or broker

expense allowance greater than the excess, if any, of the sum of:

(A) ninety-one percent of all qualifying first year premiums; and

(B) with respect to qualified annuity contracts, fourteen and one-half percent of periodic considerations incurred in the first contract year; and

(C) seven percent of any excess premiums, single considerations and periodic considerations, other than those addressed in subparagraph (B) of this paragraph, incurred in the first four contract years,

over the sum of commissions paid pursuant to paragraphs one, two and four of this subsection, and the value of any goods and services provided to such agent or broker by the company. With respect to premiums and considerations recorded within a period of twelve consecutive months on business written under the supervision of any general agent, no company shall pay or permit to be paid to a general agent, on business not personally produced by such general agent, expense allowances greater than the excess, if any of the sum of

(D) ninety-nine percent of all qualifying first year premiums; and

(E) with respect to qualified annuity contracts, sixteen percent of periodic considerations incurred in the first contract year; and

(F) eight and one-half percent of any excess premiums, single considerations and periodic considerations, other than those addressed in subparagraph (E) of this paragraph, incurred in the first four contract years,

over the sum of commissions paid pursuant to paragraphs one, two and four of this subsection, and any goods and services provided to such general agent by the company. The company may, in implementing this subsection, use reasonable estimation techniques in arriving at the amount of goods and services, including but not limited to the estimation of the average value of goods and services provided to a group of agents or brokers to whom similar goods and services are provided.

(e) Notwithstanding any limitations set forth in subsection (d) of this section:

(1) (A) A company may compensate an agent or broker wholly or in part upon a plan that bases compensation on the fund underlying the policy or contract. For policies other than single premium policies, a company may pay up to three-tenths of one percent of the fund in each of policy

years two through four for each one percent of premium by which the commission paid to the agent or broker in such policy years is less than the percentages set forth in paragraph three of subsection (d) of this section. For single premium policies and all contracts, a company may pay up to three-tenths of one percent of the fund in each of policy or contract years one through four for each one percent by which the sum of commissions and expense allowance paid to the agent or broker in policy or contract years one through four is less than the percentages set forth in subparagraph (C) or (D) of paragraph five of subsection (d) of this section, whichever is applicable.

(B) Any company may compensate an agent or broker on a plan of fund-based compensation using translations other than those set forth in subparagraph (A) of this paragraph, provided that the translation factors are equivalent to those set forth therein, based on reasonable and consistent assumptions as to mortality, policy or contract persistency and interest.

(2) (A) A company may compensate an agent or broker pursuant to a plan of agent compensation that consists wholly or partly of elements other than commission-based compensation and fund-based compensation.

(B) When a company implements such a plan, it must be able to demonstrate, after the plan has been in operation for two years, that an agent or broker being compensated under the plan and meeting its requirements for continuation in the plan will receive no more compensation under the plan, over the period of a projected career, than could have been earned under a plan consisting entirely of commissions and expense allowance, each limited as described in subsection (d) of this section. In making this demonstration, the company may take into account commission compensation that would have been paid, under its renewal commission plans, with respect to policies and contracts in their fifth and later policy and contract years.

(C) To the extent that an agent being compensated under such plan is eligible to receive a training allowance under the provisions of paragraph three of this subsection, the comparison in subparagraph (B) of this paragraph shall take into account, as well, the amount of training allowance subsidy that could have been paid to such agent.

(D) To the extent that an agent or broker being compensated under such plan is assigned servicing responsibilities for policies or contracts

that have been in force for more than four years, the comparison in subparagraph (B) of this paragraph shall take into account, as well, the renewal commissions that the company pays with respect to such policies and contracts.

(E) The comparison in subparagraph (B) of this paragraph shall be based on reasonable assumptions as to mortality, policy or contract persistency, and interest and agent or broker sales.

(F) If a company employs one or more salaried employees whose principal function is not the sale of new policies or contracts and not the supervision of agents or agencies, and if no more than twenty-five percent of the total compensation of such employees is related to business personally produced by such employees, the provisions of this subsection or subsection (d) of this section shall not apply to such employees' total compensation, notwithstanding that they may be licensed as life insurance agents.

(G) If a company compensates an agent or broker within the limits in subsection (d) of this section, and that agent or broker retains as assistants other agents or brokers who are compensated by the agent or broker on the basis of a plan of compensation other than commissions, such arrangement between such agent or broker and that agent's or broker's assistant is not subject to the provisions of this subsection and subsection (d) of this section.

(3)(A) A company may pay reasonable training allowance subsidies to agents pursuant to a plan of agent compensation, provided that such agents are full-time agents of the company and the principal business activity of such agents is the solicitation of policies and contracts primarily but not necessarily exclusively for the company, and its affiliates, and such agents are not simultaneously receiving training allowance from any other life insurance company.

(B) Agents receiving training allowance subsidies may also receive expense allowance payments.

(C) An agent is eligible to receive such a training allowance subsidy, provided (i) such agent has earned less than forty thousand dollars from the sale of policies and contracts cumulatively during the three years prior to such agent's appointment, (ii) less than twenty-five percent of such agent's earned income has been received from the sale of policies and contracts during each of the three years prior to appointment, or

(iii) less than twenty-five percent of such agent's worktime during each of the three years prior to appointment was allocated to individual life and annuity sales. The company may establish that an agent is eligible to receive a training allowance subsidy by requiring the agent to attest that such agent meets one of the criteria set forth in this subparagraph prior to appointment. Such attestation shall be sufficient to establish eligibility, provided the company does not have actual knowledge to reject the attestation based on the agent's credentials and background.

(D) An agent receiving such training allowance subsidies may not receive, on a cumulative basis, for an agent in the first year of such subsidies, the greater of fifty-four thousand dollars and sixty percent of the first year commission limit, and for an agent in the second year of such subsidies, the greater of eighty-five thousand dollars and sixty percent of the first year commission limit in the first year and forty percent of the first year commission limit in the second year, and for an agent in the third year of such subsidies, the greater of one hundred five thousand dollars and sixty percent of the first year commission limit in the first year and forty percent of the first year commission limit in the second year, and twenty percent of the first year commission limit for the third year, and for an agent in the fourth year of such subsidies, the greater of one hundred sixteen thousand dollars and sixty percent of the first year commission limit in the first year and forty percent of the first year commission limit in the second year, twenty percent of the first year commission limit in the third year, and ten percent of the first year commission limit in the fourth year.

(E) With respect to any agent eligible to receive training allowance subsidy who has earned at least one hundred twenty-seven thousand dollars of income during either of the two calendar years immediately preceding commencement of receipt of training allowance subsidies, a company may pay additional training allowance subsidies of two thousand dollars to such agent during each of the first two years of his receipt of training allowance subsidies for every four thousand dollars of such earned income in excess of one hundred twenty-seven thousand dollars, provided that the cumulative training allowance subsidy does not exceed eighty-seven thousand dollars in such agent's first year of receipt of training allowance subsidy and provided further that the agent receives not greater than one hundred sixteen thousand dollars in total training

allowance subsidies.

(F) For purposes of this paragraph, the period of time that a person worked for a company under a company-sponsored training program and was not acting as an agent for that company shall not be counted as time spent receiving training allowance subsidies, and any salary paid by the company to that person during that time shall not count toward the cumulative maximum training allowance subsidy.

(G) The superintendent shall periodically adjust the cumulative maximum training allowance subsidy limits set forth in this paragraph. The superintendent may also, at any time, approve training allowance subsidies with cumulative maximum amounts that exceed the limits set forth in this paragraph.

(H) A company may, upon approval of the superintendent, establish a plan for training allowance subsidies for which the conditions of eligibility or the amounts or periods of subsidy, of any of these, differ from those set forth in this subsection. The superintendent shall approve such a plan, subject to such conditions as he may prescribe, if he finds that it is likely to meet the objective of developing new agents for the sale of policies or contracts or both in a cost-effective manner.

(4) A company may pay additional compensation to a general agent pursuant to a plan of agent compensation for a period not exceeding ten years; provided, however, that if such general agent has had prior service as a general agent or agency manager, with any life insurance company or companies, whether as an individual, partner or officer of a corporation, and such prior service was for a period of less than five years, additional compensation may be paid only during the balance of such five years, but if such prior service was of five years duration or more, then no additional compensation may be paid; provided, further, that the company shall not permit to be paid expense allowances to agents under his supervision on business written while such additional compensation is paid in excess of those permitted to agents pursuant to paragraph five of subsection (d) of this section. For the purposes of this paragraph only, service as a general agent or agency manager shall not include service as an assistant general manager, assistant agency manager, agency supervisor, or service in a similar position regardless of its title. The additional compensation in the sixth year of the

period shall not be in excess of twenty percent of the first year commission limit of the business of the agency, sixteen percent in the seventh year of the period, twelve percent in the eighth year of the period, eight percent in the ninth year of the period and four percent in the tenth year of the period, and shall not be payable pursuant to a plan of agent compensation on any business personally obtained by such general agent.

(5) The cost of all security benefits provided to agents shall not be included in applying the limits established in subsection (d) of this section.

(6) A company, including any person, firm or corporation on its behalf or under any agreement with it, may pay or award, or permit to be paid or awarded, prizes and awards to agents and brokers pursuant to a plan of agent or broker compensation, provided that no single prize or award may exceed a value of five hundred dollars, and that the total value of such prizes and awards paid or awarded to any agent or broker within a calendar year may not exceed two thousand dollars. Notwithstanding the foregoing, a company may also pay or award not more frequently than monthly a prize or award valued at not more than fifty dollars. The costs of all such prizes and awards shall not be included in applying the limits established in subsection (d) of this section. The superintendent may authorize higher limits on the value of prizes and awards than those set forth herein.

(7) A company may conduct agent conventions, conferences and business meetings, and no portion of the expenses associated with agent conventions, conferences or business meetings, nor the value thereof, will be considered to be a prize or award, or additional commissions or compensation, or a payment pursuant to an expense allowance plan, a direct payment of an expense or an assumption of any expense for purposes of paragraph five of subsection (d) of this section, or any other type of compensation or payment described in this subsection or subsection (d) of this section, if, for conventions, conferences or business meetings held in the United States, a company's expenses for same meet the Internal Revenue Code's current standard for ordinary and necessary business expenses and

(A) are not includable in the recipient's gross income for federal income tax purposes, and

(B) represent reasonable allowances for agents' incidental ordinary and necessary business expenses associated with the convention, conference or business meeting, such as meals, local transportation and similar items, and for conventions, conferences and business meetings held outside the United States, a company's expenses for same would have met those current standards if the convention, conference or business meeting was held within the United States. The expenses paid by a company shall be included in the limit established in subsection (c) of this section. Any portion of such expenses paid by a company that do not comply with this paragraph must be considered to be compensation hereunder and, if not recovered from the recipient, charged against the limits of subsection (d) of this section in the year the expense is incurred.

(8) A company that, with respect to any policy or contract year, pays an agent or broker with respect to the business of that agent or broker a commission based on a percentage lower than the percentage set forth in paragraph one, two, three or four of subsection (d) of this section, whichever is appropriate, for such policy or contract year may, with respect to any later policy or contract year of the same policy or contract, pay the agent or broker (or a successor agent or broker to whom the policy or contract has been assigned) a commission based on a higher percentage than the percentage set forth in paragraph two, three or four of subsection (d) of this section, whichever is appropriate, for such later policy or contract year, to the extent that the total of the percentages on which actual commissions were calculated in the preceding policy or contract years was lower than the total of the percentages set forth in paragraph one, two, three or four of subsection (d) of this section, whichever is appropriate, for such preceding policy or contract years.

(9) (A) A company may make an advance to any of its agents pursuant to a plan of agent compensation. A company may, but is not required to, charge interest on outstanding advances.

(B) A company may make a loan to any of its agents pursuant to a plan of agent compensation. The maximum amount of any loan shall not exceed the expected compensation of the agent over the next twelve months. A company shall charge interest on loans at a rate not less than a rate consistent with current short-term borrowing rates. If the interest rate

charged on a loan is less than a rate consistent with current short-term borrowing rates, the amount by which the interest actually charged is lower than the interest that would have been charged based on a rate consistent with current short-term borrowing rates, the difference will be subject to the limits of either paragraph one, two, four or five of subsection (d) of this section.

(C) A company shall secure adequate collateral for any advance or loan to an agent; such collateral shall, as a minimum, consist of any compensation earned by the agent from sales of new policies or contracts.

(10) (A) If a broker or an agent who is not a general agent performs services for a company other than those related to the sale or servicing of a policy or contract, or if a general agent performs services for a company other than those related to the sale or servicing of a policy or contract, or the recruiting, training or supervision of agents, the company may compensate the broker or agent for the performance of such services. Such payments are not subject to the limits in subsection (d) of this section. No company shall pay or cause to be paid to any broker or agent for the services described herein, any amounts that exceed the reasonable value of the services performed.

(B) If an agent of a company also performs the duties of a local salaried representative of such company, the company may compensate the agent within the limits of this section with respect to policies or contracts sold or serviced by such agent for which agent compensation is subject to the limits of this section, and may also compensate such agent for services performed as a local salaried representative of the company; however, such compensation as a local salaried representative shall not include any compensation with respect to policies or contracts sold or serviced by such agent.

(11) If a company pays an agent or a general agent for the production of policies or contracts issued by the company, the company shall not be required to monitor for compliance with this section the payments and allowances paid by such agent or general agent to any agent or general agent with respect to such policies or contracts if the agent or general agent receiving such payments:

(A) receives no company-provided security benefits;

(B) does not receive additional compensation as permitted by paragraph

four of this subsection, compensation or expense allowance from a paying entity that itself is receiving additional compensation from the company as permitted by paragraph four of this subsection;

(C) receives no prizes or awards from the company; and

(D) is not eligible to qualify for attendance at company-sponsored agent conventions, conferences, or business meetings based on the amount of business produced by such agent or general agent.

(12) A company that, with respect to premiums and considerations recorded within a period of twelve consecutive months on policies or contracts written by any agent or broker pursuant to a plan of agent or broker compensation, pays an agent, general agent or broker an amount of expense allowance smaller than the limiting amount defined in paragraph five of subsection (d) of this section, may pay the agent, general agent or broker, in any later twelve month period or periods, the amount by which the amount of expense allowance paid in the prior period was less than the limiting amount, provided such agent, general agent or broker still is engaged in selling or servicing the company's policies or contracts pursuant to one of the company's compensation or expense allowance plans. Such subsequent payments may be made in addition to any expense allowance payments for which the agent, general agent or broker is otherwise eligible within the limits of paragraph five of subsection (d) of this section for such subsequent period.

(13) Notwithstanding any limitation or restriction imposed by this section, the superintendent may approve compensation arrangements for any company to permit it to compensate its agents or brokers, or any of them, in whole or in part, upon any plan other than those described in this section, provided that the aggregate limits imposed in subsection (c) of this section are not exceeded and that the limits in subsection (d) of this section are generally observed over policy years and agent careers.

(14) A company may, but is not required to, use annualization in calculating any of the limits set forth in this section.

(f) (1) Filing requirements for agent and broker compensation plans are as follows:

(A) A company shall make annual information filings with respect to any newly-introduced plans or changes under which the company makes payments to agents or brokers if such plans are commission plans for

which the commission percentages are, in all policy or contract years, no greater than the commission percentages set forth in paragraphs one, two, three and four of subsection (d) of this section, expense allowance plans other than those meeting the definition of a compensation arrangement, plans subject to the provisions of paragraph one of subsection (e) of this section under which compensation is not in excess of two percent of the fund annually in any of the first four policy or contract years, or plans subject to the provisions of paragraph four of subsection (e) of this section. These filings shall consist of a summary of information in enough detail to generally describe the filing content, and shall be made not later than the last day of February next following the year in which such plans were placed in use or changed. The first such filing shall be due not later than the last day of February following the end of the year which includes the effective date of this section.

(B) Filings are required on or before the effective date of any changes to compensation arrangements as defined in this section, or to plans described in paragraphs one and two of subsection (g) of this section. These filings shall consist of a summary of information in enough detail to generally describe the filing's contents. A company may implement such compensation arrangements immediately upon filing same. If the superintendent notifies the company within ninety days of the receipt of the filing, that in his opinion the compensation arrangement described in such filing is not permitted under the law, and if the company within sixty days of the superintendent's notice, is not able to satisfy the superintendent's concern, with or without modifying the plan, the superintendent may order the company to cease using the plan. The company may request a formal hearing, but the plan that is the subject of the hearing may not be used unless and until permitted as a result of the hearing.

(C) Filings for prior approval of the superintendent are required before plans described in subparagraph (B) of paragraph one, subparagraph (H) of paragraph three and paragraphs twelve and thirteen of subsection (e) of this section can be used. The filings will consist of descriptive information, including assumptions and techniques when applicable, in enough detail for the superintendent's review. Plans not approved or disapproved by the superintendent within ninety days

following their filing will be deemed approved.

(D) For plans described under subparagraphs (A), (B), (C) and (D) of paragraph two of subsection (e) of this section, if the plan is still to be used six months after the end of the two year period described in subparagraph (B) of paragraph two of subsection (e) of this section, the company must, within six months after the end of the two year period, make a filing with the superintendent and obtain his approval for the continued use of the plan.

(E) All filings and related correspondence shall be proprietary and confidential, and not disclosed by the superintendent.

Changes whose effect is to reduce or not increase the compensation payable to every individual covered by the arrangement in each and every year, need not be filed with the superintendent, but must be maintained in the company's records for at least six years.

(2) The annual statement schedule for reporting compliance on an aggregate basis with subsection (c) of this section shall be signed by a knowledgeable officer of the company. The signing of the schedule shall be deemed confirmation by the officer that the officer has performed a personal review of the information included and responses provided to the interrogatories. The signature is to be preceded by the following statement: "I have reviewed the sources of total selling expenses and, to the best of my knowledge and belief, on the basis of the projected experience over the next three years based on reasonable assumptions, including changes currently being contemplated, the company's expenses will not exceed the limit imposed thereon by New York Insurance Law Section 4228." If the officer cannot attest to the final clause of this statement, the officer must disclose the year or years in which expenses are expected to exceed the limit and the amount by which the limit is expected to be exceeded.

(3) Any company that exceeds the limit in subsection (c) of this section in any year shall:

(A) File a plan of action with the superintendent by June thirtieth of the following year, which shall:

(i) describe actions the company will take promptly to bring expenses into compliance; and

(ii) demonstrate how the company will meet the limit in the second year following the year the company first exceeded the limit and will

remain under the limit in the next subsequent year;

(B) Monitor the company's progress under such plan of action and immediately notify the superintendent if at any time it appears that compliance will not be accomplished as planned; and

(C) Report the company's interim progress during the period described in item (ii) of subparagraph (A) of this paragraph as frequently as the superintendent may request.

(4) (A) If the superintendent finds that any plan of action filed pursuant to paragraph three of this subsection will not cause the company to comply with the limit in subsection (c) of this section, or that the company is not itself complying with the provisions of such a plan of action, the superintendent may impose controls on the company's activities, such as limitations on recruiting or production incentives, or a requirement that projections of experience anticipated for compensation arrangements be submitted to the superintendent prior to the introduction of new, or changes to existing, compensation arrangements, until such company meets that limit.

(B) In addition to the actions set forth in subparagraph (A) of this paragraph, and upon finding that a company's actions constitute a willful violation of the provisions of subsection (c) of this section, the superintendent is authorized to impose a fine on the company in an amount not to exceed the lesser of one million dollars or one-half of one percent of the company's total selling expense limit for the most recent calendar year, and the superintendent may impose controls as described in subparagraph (A) of this paragraph until the completion of a year in which the company meets the limit in subsection (c) of this section. For purposes of determining the amount of the fine in any one proceeding, each day or each act of a continuing willful violation shall not be deemed a separate and distinct violation.

(C) Any action under subparagraph (A) of this paragraph or any fine or penalty under subparagraph (B) of this paragraph shall be ordered by the superintendent only after notice and hearing.

(5) Any company making one or more payments that exceed any limit in subsection (d) of this section that is unable to recover such excess payments shall notify the superintendent within ninety days of the date that it learns or realizes that it exceeded the limit; however, if the company recovers such excess payments prior to the required notification

date, or, for agents or brokers who are no longer appointed with the company, the company has made reasonable efforts to recover such excess payments, it need not make such notification. At that time, the company shall report the reason the company exceeded the limit, the number of agents and brokers to whom payments in excess of the limit were made, and the amount of money paid in excess of the limit, and shall describe the actions the company will take promptly to prevent any further instances of it exceeding this limit.

(A) If the superintendent finds that the company is not taking the actions it described to prevent any further instances of exceeding a limit in subsection (d) of this section, the superintendent may require that the company file for prior approval future changes to compensation arrangements and plans, for a period not to exceed one year.

(B) In addition to the actions set forth in the preceding subparagraph, and upon finding that a company's actions constitute a willful violation of the provisions of subsection (d) of this section, the superintendent is authorized to impose a fine on the company in an amount not to exceed the lesser of one thousand dollars per violation or three times the amount of any overpayments that are found to constitute a willful violation.

(C) Any action under subparagraph (A) of this paragraph or any fine or penalty under subparagraph (B) of this paragraph shall be ordered by the superintendent only after notice and hearing.

(g) The following rules shall apply, beginning on the effective date of this section, for the periods of time indicated in this subsection:

(1) With respect to commissions paid by the company to an agent subsequent to the fourth policy or contract year on business in force on the effective date of this subsection, any increase in such commission within four years of the effective date of this subsection, provided the increase is contingent upon the volume of new business written by such agent, in excess of one percent of periodic premiums and considerations incurred in each such year with respect to such business in force on the effective date of this subsection, shall be treated as expense allowance payments in determining the maximum amount of expense allowance that can be paid to such an agent in that year.

(2) With respect to fund-based compensation paid by the company to an agent subsequent to the fourth policy or contract year on business in

force on the effective date of this subsection, any increase in such fund-based compensation within four years of the effective date of this subsection, provided the increase is contingent upon the volume of new business written by such agent, in excess of three-tenths of one percent annually of the funds of such policies or contracts, shall be treated as expense allowance payments in determining the maximum amount of expense allowance that can be paid to such agent in that year.

(3) Any company that, as of any part of the year before the effective date of this subsection, was using a plan approved by the superintendent for any plan of renewal commissions, including such plan that, in whole or in part, conditions the payment of such commissions upon the efficiency of service of the agent receiving the commissions or upon the amount and quality of the business renewed under his supervision, may, notwithstanding the limits of paragraph three of subsection (d) of this section, continue to employ such plan, consistent with the terms of its approval, for a period of four years after the effective date of this subsection.

(4) A company may, for a period of one year after the effective date of this subsection, continue to employ any plan of compensation, including any expense allowance plan, that it was using as of the effective date, unless the superintendent shall determine that such plan was not approvable at the time it was placed in effect.

(5) For the first year after the effective date, the total selling expense limit described in subsection (c) of this section shall be increased by five percent of the sum of the amounts determined pursuant to subparagraphs (A), (B), (C), (D), (E), (F), (G), (H), and (I) of paragraph four of subsection (c) of this section.

(h) No company shall offer for sale any life insurance policy form or annuity contract form covered by this section or any debit life insurance policy form which shall not appear to be self-supporting on reasonable assumptions as to interest, mortality, persistency, taxes, agents' and brokers' survival and expenses resulting from the sale of the policy or contract form. For all such forms offered for sale in this state, and for all forms filed for use outside this state by domestic life insurance companies, a statement that the requirements of this subsection have been met, signed by an actuary who is a member in good standing of the American Academy of Actuaries and meets the requirements

prescribed by the superintendent by regulation shall be submitted with each such life insurance policy or annuity contract form filed pursuant to paragraph one or six of subsection (b) of section three thousand two hundred one of this chapter. A demonstration supporting each such statement, signed by an actuary meeting such qualifications, shall be retained in the company's home office, while such form is being offered in this state and for a period of six years thereafter and be available for inspection. The superintendent shall promulgate a regulation establishing the guidelines applicable to such demonstration.