§ 4240. Separate accounts; fixed and variable life insurance and annuities and funding agreements. (a) In accordance with paragraphs one, two and three of subsection (a) of section one thousand one hundred thirteen and section three thousand two hundred twenty-two of this chapter, a domestic life insurance company may establish one or more separate accounts and allocate thereto, pursuant to agreements for separate accounts, amounts paid to it (i) to provide for annuities which are payable in fixed amounts guaranteed by it, or variable amounts, or both, including any amounts paid to it which are subject to annuity options; or (ii) to provide life insurance with benefits, premiums or both payable on a variable basis and the reserves for which vary according to the investment experience of such separate account; or (iii) to accumulate in such separate account funds to be applied to provide life insurance, whether fixed or variable, or both; or (iv) to accumulate or hold in such separate account funds to be applied to provide health insurance; or (v) to accumulate or hold in such separate account proceeds applied under settlement or dividend options; or (vi) to accumulate or hold in such separate account funds credited under funding agreements delivered pursuant to section three thousand two hundred twenty-two of this chapter; provided that any such separate account shall be maintained in accordance with the following:

(1) Income, gains and losses, whether or not realized, from assets allocated to a separate account shall, in accordance with the applicable agreement or agreements, be credited to or charged against such account without regard to other income, gains or losses of the insurer.

(2) With respect to investments allocated to a separate account:

(A) except as provided in paragraphs three and five of this subsection, the insurer may invest in any investments contractually permitted for such separate account, the restrictions, limitations and other provisions relating to investments specified in this chapter shall not apply to such investments, and such investments shall be disregarded, and shall be excluded from admitted assets, in applying the quantitative investment limitations contained in this chapter to other investments;

(B) no stock, bond, note or other security of a subsidiary or affiliate of the insurer, or of any company controlling or under common control with the insurer, shall be allocated to any separate account if,

after giving effect to such allocation, any security of a different class issued by such subsidiary or affiliate would be held in any other account of the insurer, or by any company controlling or under common control with the insurer or by any other subsidiary or affiliate of the insurer; and

(C) The insurer shall invest and reinvest for such separate account in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances.

(3) The insurer may allocate amounts to a separate account to facilitate its initial operations and amounts so allocated shall be deemed to be invested under section one thousand four hundred four (in the case of insurers making investments under the authority of section one thousand four hundred four) of this chapter or under section one thousand four hundred five (in the case of insurers making investments under the authority of section one thousand four hundred five) of this chapter and shall be subject to the qualitative standards and quantitative limitations provided in section one thousand four hundred four or one thousand four hundred five of this chapter, as the case may be.

(4) Amounts received by the insurer pursuant to one or more such agreements may be maintained in one or more separate accounts.

(5) No guarantee of the value of the assets allocated to a separate account, or any interest therein, or the investment results thereof, or the income thereon, shall be made to a contractholder by the insurer, without limitation of liability under all such guarantees to the extent of the interest of the contractholder in assets allocated to said separate account (i) unless the investments allocated to such separate account are deemed part of the general assets of the insurer and are subject to the qualitative standards and quantitative limitations contained in section one thousand four hundred four or section one thousand four hundred five of this chapter or (ii) if the applicable agreements provide that the assets in such separate account shall not be chargeable with liabilities arising out of any other business of the insurer, unless such investments are subject to the requirements and limitations on investments imposed by articles thirteen and fourteen (except section one thousand four hundred two) of this chapter applied as though the aggregate assets allocated to such separate account were

the insurer's total admitted assets or (iii) unless the insurer shall submit annually to the superintendent an opinion, in form and substance satisfactory to the superintendent, of a qualified actuary (as defined in item (vi) of subparagraph (B) of paragraph four of subsection (c) of section four thousand two hundred seventeen of this article) that, after taking into account any risk charge payable from the assets of such separate account with respect to such guarantee, the assets in such separate account make good and sufficient provision for the liabilities of the insurer with respect thereto, such opinion to be accompanied by a memorandum, also in form and substance satisfactory to the superintendent, of the qualified actuary describing the calculations made in support of such opinion and the assumptions used in the calculations, provided that, notwithstanding any other provision of this paragraph, reserve liabilities for guaranteed minimum death benefits and fixed incidental insurance benefits with respect to variable life insurance policies shall be maintained in the general account of the insurer.

(6) The insurer shall not, in connection with the allocation of investments or expenses, or in any other respect, discriminate unfairly between separate accounts or between separate and other accounts, but this provision shall not require the insurer to follow uniform investment policies for its accounts.

(7) Except as otherwise provided in paragraph ten hereof, assets allocated to separate accounts shall, for the purpose of any valuation required by this chapter, be valued at their market value at the date as of which valued in accordance with the terms of the applicable agreements, or if there is no readily available market, then in accordance with the terms of such agreements, and no special reserve under subsection (b) of section one thousand four hundred fourteen of this chapter shall be required in respect thereof.

(8) Unless otherwise provided in approvals given by the superintendent and under such conditions as he may prescribe, the insurer shall maintain in each separate account assets with a value at least equal to the amounts accumulated in accordance with the terms of the applicable agreements with respect to such separate account and the reserves for annuities in the course of payment that vary with the investment experience of such separate account.

(9) Except as may be required by subsection (b) hereof, the insurer shall not transfer any investment, or asset held for investment, between separate accounts or between separate and other accounts, provided that the superintendent may authorize transfers in circumstances where such transfers would not be inequitable.

(10) Except with respect to separate accounts qualifying under item (iii) of paragraph five of this subsection, assets supporting reserves which do not vary with the investment experience of the separate account shall be maintained in the separate account at their value determined in accordance with section one thousand four hundred fourteen of this chapter.

(11) Any contract providing for benefits, premiums or both, payable on a variable basis, delivered or issued for delivery in this state, and any certificate or other writing furnished by the insurer to the employee under such a group contract in evidence of either benefits or contributions, or both, payable on a variable basis, shall

(A) contain a statement of the essential features of the procedure to be followed by the insurer in determining the dollar amount of such variable elements thereunder,

(B) state in clear terms that such amount may decrease or increase according to such procedure, and

(C) contain on its first page a statement that such elements thereunder are on a variable basis.

(12) Amounts allocated by the insurer to separate accounts shall be owned by the insurer, the assets therein shall be the property of the insurer, and no insurer by reason of such accounts shall be or hold itself out to be a trustee. If and to the extent so provided in the applicable agreements, the assets in a separate account shall not be chargeable with liabilities arising out of any other business of the insurer.

(13) Every individual variable annuity contract and every certificate subject to this section and subsection (a) of section three thousand two hundred nineteen of this chapter shall contain a provision, or a notice attached to the contract or certificate, to the effect that during a period, specified in such provision or notice, it may be surrendered to the insurer together with a written request for cancellation of the contract or certificate, and in such event, the insurer will pay an

amount equal to the sum of (i) and (ii), where (i) is the difference between the premiums paid, including any fees or other charges, and the amounts, if any, allocated to any separate accounts under the contract or certificate, and (ii) is the cash value of the contract or certificate, or, if the contract or certificate does not have a cash value, the reserve for the contract or certificate, on the date of surrender attributable to the amounts so allocated. The period specified in such provision or notice for a contract or certificate sold other than by mail order shall not be less than ten nor more than thirty days, and for a contract or certificate sold by mail order shall be thirty days, from the date the contract or certificate is received by the owner.

(14) The superintendent may, from time to time, promulgate reasonable regulations setting forth:

(A) standards to be followed in the approval of forms for use in connection with separate accounts; such standards may relate to, but need not be limited to, any one or more of the following: guaranteed face amounts, termination of contract, withdrawal of funds by the contract holder, commitments with respect to future price of guaranteed annuities, valuation of assets, and other elements required to effect compliance with section three thousand two hundred one of this chapter;

(B) rules with respect to accounting and reporting of funds allocated to separate accounts, identification of assets allocated to any separate accounts, and the application of expenses to agreements relating to separate accounts;

(C) rules with respect to adequate disclosure of information relating to separate accounts; and

(D) rules with respect to required and prohibited contract provisions for variable life insurance and variable annuity contracts delivered or issued for delivery in this state by an authorized fraternal benefit society.

(c) This section shall have no application to a charitable annuity society.

(d) Except as otherwise provided in this section, all pertinent provisions of this chapter shall apply to separate accounts and agreements relating thereto.

(1) The following provisions of this chapter shall not apply to

annuity contracts or to certificates subject to this section and subsection (a) of section three thousand two hundred nineteen of this chapter: paragraphs one, seven, eight, and nine of subsection (a) of section three thousand two hundred nineteen of this chapter, subsections (a) and (d) of section three thousand two hundred twenty-three of this chapter, sections four thousand two hundred seventeen, four thousand two hundred twenty-one and four thousand two hundred twenty-three and subsection (e) of section four thousand two hundred thirty-one of this article, provided, however, that this paragraph shall not apply to any contract or certificate providing benefits with respect to amounts allocated to a separate account, if such benefits are guaranteed at any time to be not less than an amount equal to or greater than such allocated amounts accumulated to such time at three percent per annum.

(2) Individual variable annuity contracts and group variable annuity certificates delivered or issued for delivery in this state shall contain grace, reinstatement, and nonforfeiture provisions appropriate to such variable contracts and certificates. Payment of death benefits under such contracts and certificates shall be made within seven calendar days following receipt of the beneficiary's completed election form with all information required by such form for the payment of proceeds. If such death benefits are not paid within seven calendar days following receipt of such completed election form, interest shall be computed daily from the end of such seven day period at the rate of interest currently paid by the insurer on proceeds left under the interest settlement option and such contracts or certificates shall not be subject to the payment of interest under subsection (c) of section three thousand two hundred fourteen of this chapter. For amounts received under actions commenced to recover proceeds pursuant to subsections (a) and (b) of section three thousand two hundred fourteen of this chapter, interest shall be computed daily at the rate of interest currently paid by the insurer on proceeds left under the interest settlement option from the earlier of the date the action is commenced or the insurer's receipt of the beneficiary's completed election form to: (A) the date the verdict is rendered or the report or decision is made and thereafter in accordance with the provisions of sections five thousand two and five thousand three of the civil practice law and rules, for amounts received under subsection (a) of section

three thousand two hundred fourteen of this chapter; or (B) the date the settlement is reached, for amounts received under subsection (b) of such section.

(3) The following provisions of this chapter shall not apply to life insurance policies to the extent that they provide for allocation of amounts to separate accounts: paragraphs one, seven, eight, nine and ten of subsection (a) of section three thousand two hundred three of this chapter, section four thousand two hundred twenty-one and subsection (b) of section four thousand two hundred thirty-two of this article, provided, however, that this paragraph shall not apply to any policy providing benefits with respect to the amounts so allocated, if such benefits are guaranteed at any time to be not less than an amount equal to or greater than such allocated amounts accumulated to such time at three percent per annum.

(4) Contracts delivered or issued for delivery in this state for individual variable life insurance policies shall contain loan, grace, reinstatement and nonforfeiture provisions, and may provide for settlement options, under conditions acceptable to the superintendent.

(5) Individual variable contracts shall be included in determining the aggregate limits prescribed in section four thousand two hundred twenty-eight of this article, with appropriate modification of expense limits for such contracts, as required by the superintendent, to recognize the variable nature of the contracts.

(6) The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees provided in the contract.

(7) Notwithstanding any other provision of law, the superintendent shall have the sole authority to regulate the issuance and sale of such agreements; and, in addition to the powers expressly given by this section, the superintendent shall have the power to promulgate, from time to time, such regulations, not inconsistent with the provisions of this chapter, as may be appropriate to carry out the provisions of this section and, insofar as applicable to this section, other provisions of this chapter.

(e) No authorized insurer shall make any such agreement in this state providing for the allocation of amounts to a separate account until such

insurer has filed with the superintendent a statement as to its methods of operation of such separate account and the superintendent has approved such statement. Subject to the approval of the superintendent, any such statement may apply to one or more groups of separate accounts classified by investment policy, number or kinds of separate account participants, methods of distribution of such agreements or otherwise. In determining whether or not to approve any such statement, the superintendent shall consider, among other things, the history, reputation and financial stability of the insurer and the character, experience, responsibility, competence and general fitness of the officers and directors of the insurer. If the insurer files an amendment of any such statement with the superintendent that does not change the investment policy of a separate account and the superintendent does not approve or disapprove such amendment within a period of thirty days after such filing, such amendment shall be deemed to be approved as of the end of such thirty day period, except that if the superintendent requests further information on the statement during such period from the insurer, such period shall be extended until thirty days after the day on which the superintendent receives such information. An amendment of any such statement that changes the investment policy of a separate account shall be treated as an original filing.

(f) Notwithstanding the restrictions and limitations herein or otherwise imposed by law, the insurer may with respect to any separate account, (i) exercise any voting rights of any securities allocated thereto in accordance with instructions from persons having interests in such account ratably as determined by the insurer, or (ii) establish a committee for such account, the members of which may be directors or officers or other employees of the insurer or persons having no such relationship to the insurer, or any combination thereof, who may be elected to such membership by vote of the persons having interests in such account ratably as determined by the insurer. Such committee may have the power, which may be exercisable alone or in conjunction with others, or which may be delegated to the insurer or any other person, as investment manager or investment adviser, to authorize, approve or review the acquisition and disposition of investments for such account. In addition, the insurer may make such other provisions in respect to the separate account, including but not limited to voting, investments,

audits and otherwise regarding management and administration, as the insurer may deem appropriate to facilitate compliance with any requirements of or pursuant to any federal or state law now or hereafter in effect; provided that the superintendent approve such provisions as not hazardous to the public or its policyholders in this state.