§ 7435. Distribution for life insurers. (a) The priority of distribution of claims from the estate of a life insurance company in any proceeding subject to this article shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall, subject to such limitations as may be prescribed by law and do not directly conflict with the express provisions of this section, be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

(1) Class one. Claims with respect to the actual and necessary costs and expenses of administration, incurred by the liquidator, rehabilitator, conservator or ancillary rehabilitator under this article, or by The Life Insurance Guaranty Corporation or The Life and Health Insurance Company Guaranty Corporation of New York, and claims described in subsection (d) of section seven thousand seven hundred thirteen of this chapter.

(2) Class two. Debts due to employees for services performed to the extent that they do not exceed one thousand two hundred dollars and represent payment for services performed within one year before the commencement of a proceeding under this article. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

(3) Class three. All claims for payment for goods furnished or services rendered to the impaired or insolvent insurer in the ordinary course of business within ninety days prior to the date on which the insurer was determined to be impaired or insolvent, whichever is applicable.

(4) Class four. All claims under insurance policies, annuity contracts and funding agreements, and all claims of The Life and Health Insurance Company Guaranty Corporation of New York or any other guaranty corporation or association of this state or another jurisdiction, other than claims provided for in paragraph one of this subsection and claims for interest.

(5) Class five. Claims of the federal or any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed to this class only to the extent

of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under paragraph eight of this subsection.

(6) Class six. Claims of general creditors and any other claims other than claims under paragraphs seven and eight of this subsection.

(7) Class seven. Surplus, capital or contribution notes, or similar obligations.

(8) Class eight. The claims of (i) policyholders, other than claims under paragraph four of this subsection, and (ii) shareholders or other owners.

(b) Every claim under a separate account agreement providing, in effect, that the assets in the separate account shall not be chargeable with liabilities arising out of any other business of the insurer shall be satisfied out of the assets in the separate account equal to the reserves maintained in such account for such agreement and, to the extent, if any, not fully discharged thereby, shall be treated as a class four claim against the estate of the life insurance company.

(c) For purposes of this section:

(1) "The estate of the life insurance company" shall mean the general assets of such company less any assets held in separate accounts that, pursuant to section four thousand two hundred forty of this chapter, are not chargeable with liabilities arising out of any other business of the insurer.

(2) "Insurance policies, annuity contracts and funding agreements" shall mean all policies and contracts of any of the kinds of insurance specified in paragraph one, two or three of subsection (a) of section one thousand one hundred thirteen of this chapter and all funding agreements described in section three thousand two hundred twenty-two of this chapter, including all separate account agreements, except that separate account agreements referred to in subsection (b) of this section shall be included only to the extent referred to therein.

(3) "Separate account agreement or agreements" shall mean any agreement or agreements for separate accounts referred to in section four thousand two hundred forty of this chapter.