

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
SECOND AMENDMENT TO 11 NYCRR 54
(INSURANCE REGULATION 77)**

VARIABLE LIFE INSURANCE

I, Benjamin M. Lawskey, Superintendent of Financial Services, pursuant to the authority granted by sections 202, 301 and 302 of the Financial Services Law and sections 301, 3201, and 4240 of the Insurance Law, do hereby promulgate the following Second Amendment to Part 54 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 77), to take effect upon publication in the State Register, to read as follows:

(NEW MATTER UNDERSCORED, DELETED MATTER IN BRACKETS)

A new subdivision (y) is added to section 54.1 to read as follows:

(y) Private placement variable life insurance policy means any variable life insurance policy that:

(i) is exempt from registration under the Federal Securities Act of 1933;

(ii) includes one or more separate accounts that are exempt from registration as an investment company under the Investment Company Act of 1940; and

(iii) is only available to an accredited investor, as defined in 17 CFR § 230.501(a)(2011),* or to a qualified purchaser, as defined in 15 U.S.C. § 80a-2(a)(51)(2010).** Copies of such documents are available for public inspection at the offices of the Department of Financial Services at One Commerce Plaza, Albany, New York 12257 and 25 Beaver Street, New York, New York 10004.

Subdivision (b) of section 54.3 is amended to read as follows:

(b) [The] Except as set forth in subdivision (g) of this section, the assets of such separate accounts shall be valued at least as often as variable benefits are determined, but in any event at least monthly.

* 17 Code of Federal Regulations § 230.501(a) (revised April 1, 2011), published by U.S. Government Printing Office, Washington, D.C. 20401.

** 15 United States Code Sec. 80a-2(a)(51) (revised February 1, 2010), published by Office of the Law Revision Counsel, U.S. House of Representatives, Washington, DC 20515.

New subdivision (g) is added to section 54.3 to read as follows:

(g) The assets of a separate account established to provide life insurance under private placement variable life insurance policies shall be valued at least as often as variable benefits are determined, but no less frequently than annually. The determination of the value of the assets of a separate account, to the extent necessary, may be based upon reasonable approximations.

Paragraph (6) of subdivision (b) of section 54.6 is amended to read as follows:

(6) A provision designating the separate account to be used and stating that the assets of such separate account shall be valued at least as often as any policy benefits vary, but [at least] no less frequently than annually for a private placement variable life insurance policy and monthly for any other variable life insurance policy.

The opening clause of paragraph (7) of subdivision (b) of section 54.6 is amended to read as follows:

(7) [A] Except in the case of a private placement variable life insurance policy, a provision that at any time during the first 18 policy months, so long as the policy is in force on a premium-paying basis, the owner may exchange the policy without evidence of insurability for a policy of general account life insurance on the life of the insured for the same amount of insurance as the initial face amount of the variable life insurance policy, and on a plan of insurance specified in the policy, subject to the following requirements:

New paragraphs (15) and (16) of subdivision (b) are added to section 54.6 to read as follows:

(15) For a private placement variable life insurance policy, a provision stating that the payment of variable death benefits shall be made no later than 30 days from the date the request for payment and all necessary documentation are received.

(16) For a private placement variable life insurance policy, a provision stating that the payment of cash surrender values, policy loans, partial withdrawals or partial surrenders shall be made as expeditiously as possible but in no event later than 15 months from the date the request for payment is received.

The opening paragraph of section 54.7 is amended to read as follows:

The policy value and cash surrender value [of each variable life insurance policy] shall be determined no less frequently than annually for a private placement variable life insurance policy and at least monthly for any other variable life insurance policy. A summary of the method of computation of cash surrender values and other nonforfeiture benefits shall be described in the policy; a complete statement of the method of computation shall be filed with the superintendent. Such method shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that it complies with subdivision (a) or (b) of this section:

Section 54.7(b)(2)(i)(c) is amended to read as follows:

(c) A deferred acquisition and other charge may be charged against the policy value in any policy year 2 through [15] 20, such that the total of all such charges imposed to date plus the surrender charge for that year does not exceed the maximum initial surrender charge. The deferred acquisition and other charge in any one year may not exceed the maximum allowable surrender charge for that year. Similar deferred acquisition and other charges may be imposed with respect to an increase in face amount.

Paragraph (3) of subdivision (b) of section 54.7 is amended to read as follows:

(3) Any surrender charge in paragraph (2) of this subdivision must be such that [at the end of] during any policy year it does not exceed the maximum initial surrender charge that would be allowed multiplied by the ratio of [$a_{x+t,15-t}$ to $a_{x,15}$] a life annuity due for age $x+t$ for $20-t$ years to a life annuity due for age x for 20 years based on the mortality table and interest rate used in calculating the net level whole life annual premiums. Furthermore, any such surrender charge may not exceed the maximum initial surrender charge less the sum of all deferred acquisition and other charges made to date against the policy value. For these annuity values, x is the age at [which] the effective date of the surrender charge [is created] and t is the [duration] number of years completed since [of] the effective date of the surrender charge.

Section 54.7(b)(5)(iii) is amended to read as follows:

(iii) [At least once each year, the] The [insured] policyholder [has] shall have the option to transfer all separate account funds to the general account and apply [his] the policy's cash surrender value to purchase a guaranteed fixed paid-up benefit at least once every five years for a private placement variable life insurance policy and at least once each year for any other variable life insurance policy.

The opening paragraph of section 54.9 is amended to read as follows:

An insurer delivering or issuing for delivery in this State any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgment of receipt from such applicant coincident with or prior to the execution of the application, a private placement offering memorandum in the case of a private placement variable life insurance policy or a prospectus included in a registration statement relating to the [policies which satisfies] policy in the case of any other variable life insurance policy. The prospectus must satisfy the requirements of the federal securities [Act of 1933 and which was] laws, have been declared effective by the Securities and Exchange Commission, and [which] include[s] the following information:

Subdivision (d) of section 54.10 is re-lettered subdivision (e) and a new subdivision (d) is added to read as follows:

(d) A prominent statement, in the case of a private placement variable life policy, that due to the illiquid nature of the investment options, the payment of the death benefit, the cash surrender value, policy loans, partial withdrawals or partial surrenders, as applicable, may be delayed. The statement shall advise the applicant to refer to the policy for further details on any delay of payments.

(e) A notice that the following are available upon request: Illustrations of benefits, including death benefits, policy values and cash surrender values. Such illustrations shall be in a form and content acceptable to the superintendent.



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

I, Benjamin M. Lawsky, Superintendent of Financial Services, do hereby certify that the foregoing is the Second Amendment to Part 54 of Title 11 (Insurance Regulation 77), signed by me on February 27, 2012 pursuant to the authority granted by sections 202, 301 and 302 of the Financial Services Law and sections 301, 3201, and 4240 of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed regulation was published in the State Register on December 28, 2011. No other publication or prior notice is required by statute.

A handwritten signature in black ink, appearing to read "Benjamin M. Lawsky".

Benjamin M. Lawsky
Superintendent of Financial Services

Date: February 27, 2012