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**REPORTS ON THE STATUS OF DEVELOPMENTS
OF PARTICULAR INTEREST TO MEMBERS
OF THE SOCIETY**

**REPORT ON THE STATUS OF VARIABLE ANNUITIES
AND RELATED DEVELOPMENTS**

Variable Annuities

Variable annuities are distinguished from the more familiar fixed amount type of annuities in that the amount of the annuity payments is subject to periodic variation. Generally, the variation reflects the investment results of assets invested primarily, or even exclusively, in common stocks, including market value changes as well as investment income.

CREF

July 1, 1952 is generally considered the date on which variable annuities came into existence, with the establishment of the College Retirement Equities Fund, often referred to as CREF. This organization was established pursuant to a special act of the New York Legislature, to provide variable annuity coverage as a companion to the Teachers Insurance and Annuity Association, under the supervision of the New York Insurance Department. In combination, TIAA-CREF provide retirement income coverage for the staffs of almost 500 colleges and universities, plus almost 400 other nonprofit educational and research institutions. At the end of 1958, over 50,000 individuals were covered by CREF variable annuity contracts. With very few exceptions, the institutions participating in TIAA-CREF have permitted each individual to determine for himself whether he wishes to become covered by a CREF variable annuity contract. Accordingly, the coverage indicates the exercise of this choice by many college professors, including many of the most prominent professors of finance, economics and insurance.

Variable Pension Plans in the United States

In September 1953, the U.S. Treasury Department issued Revenue Ruling 185, which covered the applications of the variable annuity principle to qualified pension plans. Since that time, over 60 U.S. pension plans have incorporated this principle. Including CREF, there are now over 175,000 individuals in the U.S. who are covered by variable annuities, of whom over 2,000 have retired. The total assets of these plans exceed two hundred million dollars. Among these plans are quite diverse

groups of employees, both salaried and hourly paid, including some represented in collective bargaining by several unions. The field of air transportation is particularly well covered, as over 12,000 pilots now have such coverage, including those working for practically all the major airlines. Among the prominent companies that have adopted such plans are Boeing Airplane, Northrop Corporation, General Mills, Chemstrand, Long Island Lighting, Bristol-Myers and Warner-Lambert. There is great variety in the provisions of these plans.

In 1957, the two houses of the Wisconsin Legislature unanimously adopted legislation which provided for variable annuities for state and local government employees, including teachers at all levels of education. At the end of 1958, over 7,500 individuals had exercised their choice for such coverage. Effective January 1, 1959, the Tennessee Valley Authority made variable annuity coverage available under its retirement plan, but only for employee contributions; employer-provided benefits continue to be solely on a fixed dollar basis.

One of the most recent plans adopted, effective March 1, 1959, provides for variable annuities for the staff of the National Association of Manufacturers.

With minor exceptions, all of this variable annuity pension coverage has been provided outside the life insurance industry, in self-administered plans, because the insurance companies, in the past, have not been in a position to offer the facilities required.

Variable Pension Plans in Canada

Until about three years ago, investment restrictions on pension plans in Canada did not permit the establishment of the variable annuity principle in Canadian pension plans. Since these restrictions were removed, a few plans have been adopted, covering in total no more than 2,000 persons. These variable pension plans are all outside the life insurance industry, as no life company has offered the facilities required.

PALIC; VALIC; EALIC

Three insurance companies, established in 1954, 1955 and 1956, have offered variable annuities in the United States, each company specializing in this form of coverage: Participating Annuity Life Insurance Company of Arkansas, and Variable Annuity Life Insurance Company and Equity Annuity Life Insurance Company, both of the District of Columbia. These companies have done primarily an individual annuity business, although the two companies in Washington, D.C., have done some pension trust business and are prepared to do a group annuity business. In

the aggregate, they have been admitted to do business in about seven states. Their operations have undoubtedly been hampered by the litigation initiated by the Securities and Exchange Commission.

1959—A Year of Decision

Variable annuities were considered at several of the highest levels of government in 1959. Early in the year, the United States Supreme Court, in the case of *VALIC vs. SEC*, decided, by a 5-4 vote, that the variable annuities offered by VALIC and EALIC, the parties to the suit, came under the jurisdiction of the Securities Act of 1933, and the companies came under the Investment Company Act of 1940. The decision did not take the operations of these companies out from under the jurisdiction of the State Insurance Departments. The SEC, in subsequent public statements, has made it clear that they do not expect to supplant insurance department regulation, but to have concurrent, dual regulation in these cases. The effect of SEC regulation is not fully known as of this time. Public Hearings were held by the SEC a few weeks ago on the application of these companies for exemption from certain rules of the SEC which the companies did not consider appropriate for their operations. For the time being, under an SEC order, the three variable annuity companies are not issuing any new contracts, but continue to accept payments under the contracts previously issued.

This June, the U.S. Congress, in enacting a new tax bill for the life insurance industry, made specific provision for the taxation of companies doing a variable annuity business. Here, too, there are still many points that need clarification.

On June 18, Governor Meyner, of New Jersey, signed into law the first state statutes specifically authorizing domestic life insurance companies to establish variable contract accounts and offer variable annuity contracts. These statutes also provide for the regulation of any variable annuity contract business done in New Jersey by foreign companies as well as domestic companies.

A Few Key Features of the New Jersey Variable Annuity Law

The New Jersey variable annuity law is much too comprehensive and detailed to be adequately described here, and only a few highlights can be mentioned. The Insurance Commissioner is given very broad authority to regulate the variable annuity business. He has specific authority to deny a company the right to do this kind of a business if he finds its method of operation would be hazardous to the public or its policyholders in New Jersey. The Commissioner must approve all policy forms and ap-

plications before they can be used, and he can disapprove all policy forms and prohibit their use if he finds they are "unjust, unfair, inequitable, ambiguous, misleading, likely to result in misrepresentation or contrary to law." He has the right to supervise all sales promotional material used by the company. He has the authority to set special requirements, including examination, to be met by an agent before he can be authorized to sell variable annuity contracts. Furthermore, the Commissioner is directed to promulgate regulations concerning the balance between fixed and variable coverage to exist at issue of an individual contract on a variable basis. Other provisions of the New Jersey variable annuity law include (1) the requirement that the issuing company guarantee that the dollar amounts payable for a unit of variable benefits will not be adversely affected by actual experience in mortality or expenses and (2) the requirement that individual variable annuity contracts cannot be terminated for a lump sum, except at death or under certain minimum situations; rather, termination may not be effected except in the form of variable monthly payments over a period of at least 36 months.

The first official step to be taken under the New Jersey variable annuity law was the promulgation on October 2 of proposed regulations by the Insurance Commissioner. After a hearing on October 15, final regulations were issued, effective November 2.

Variable Annuities Abroad

There are two well known and established English life insurance companies now offering variable annuities; one is providing variable annuity coverage to the English Institute of Chartered Accountants, under the English version of "Retirement Provisions for the Self-Employed." A Dutch life insurance company and several French life insurance companies are doing business on a variable basis. Correspondence shows that throughout the world, from Australia and Japan to Sweden and South Africa, there is strong interest in this field.

Related Developments

On June 8, 1959, Governor Ribicoff of Connecticut signed into law a statute authorizing domestic life insurance companies to segregate in special accounts certain amounts paid in connection with pension, retirement and profit-sharing plans. It is expected that this new law will enable the Connecticut companies to offer a means of accumulating pension contributions on a basis utilizing equity investments to a greater degree than would otherwise be possible.

Legislation similar to that adopted in Connecticut was discussed last

year in the legislatures of Massachusetts and California. New York held a hearing on a bill to give life insurance companies limited trust powers, in connection with the accumulation of funds under pension plans.

Last year, a mutual fund organization located in Massachusetts established the Keystone Retirement Equities Trust. This is to be an open-end commingled pension trust, under which qualified pension plans may provide variable annuity benefits to their employees. It provides for the pooling of the mortality after retirement of the employees of all participating pension plans, with no limitations as to effect on benefit payments of actual mortality experience. The Massachusetts Insurance Department is understood to be examining this arrangement, in order to determine whether it constitutes doing an insurance business. There are indications that another mutual fund is seriously considering the possibility of providing variable annuities to individuals, apart from any pension plan, on a similar basis, *i.e.*, without any guarantees as to the effect of mortality experience.

The Foreseeable Future

The way is now clear for further progress under the New Jersey law. At least one New Jersey company may be expected to submit to the Commissioner, before long, a statement of its proposed methods of operation, including contract forms. Not until these have been approved by the New Jersey Department will it be possible for that company to consider questions of other jurisdictions, such as the SEC and other insurance departments.

It can be expected that the SEC will, in a reasonable time, clarify the situation of the three specialized variable annuity life insurance companies.

The Connecticut companies have not yet indicated how and when they first intend to use the authority of their new law, and this may be forthcoming soon.

It can be expected that there will be further developments, along the lines of the legislation discussed in 1959 in Massachusetts, California and New York.

It is certain that there will be many interesting and important developments in the general area involving the greater utilization of equity investments by life insurance companies.

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