

§ 58-7-16. Funding agreements authorized.

(a) As used in this section, "funding agreement" means an agreement that authorizes a licensed life insurer to accept funds and that provides for an accumulation of funds for the purpose of making one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies. A "funding agreement" is not an "annuity" as defined in G.S. 58-7-15; and is not a "security" as defined in G.S. 78A-2.

(b) Any insurer that is licensed to write life insurance or annuities in this State may deliver, or issue for delivery, funding agreements in this State.

(c) Funding agreements may be issued to persons authorized by a state or foreign country to engage in an insurance business or to their affiliates, including affiliates of the issuer. Issuance to an affiliate of an issuer is not subject to the provisions of Article 19 of this Chapter. Funding agreements may be issued to persons other than those licensed to write life insurance and annuities or their affiliates in order to fund one or more of the following:

- (1) Benefits under any employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., maintained in the United States or in a foreign country.
- (2) The activities of an organization exempt from taxation under section 501(c) of the Internal Revenue Code or of any similar organization in a foreign country.
- (3) A program of the government of the United States, the government of a state, foreign country, or political subdivision, agency, or instrumentality thereof.
- (4) An agreement providing for one or more payments in satisfaction of a claim or liability.
- (5) A program of an institution that has assets in excess of twenty-five million dollars (\$25,000,000).

(d) Amounts shall not be guaranteed or credited under a funding agreement except upon reasonable assumptions as to investment income and expenses and on a basis equitable to all holders of funding agreements of a given class.

(e) Amounts paid to the insurer and proceeds applied under optional modes of settlement under funding agreements may be allocated by the insurer to one or more separate accounts pursuant to G.S. 58-7-95.

(f) The Commissioner has sole authority to regulate the issuance and sale of funding agreements on behalf of insurers. In addition to the authority in G.S. 58-2-40, the Commissioner may adopt rules relating to:

- (1) Standards to be followed in the approval of forms of funding agreements.
- (2) Reserves to be maintained by and valuation rules for insurers issuing funding agreements.
- (3) Accounting and reporting of funds credited under funding agreements.
- (4) Disclosure of information to be given to holders and prospective holders of funding agreements.
- (5) Qualification and compensation of persons selling funding agreements on behalf of insurers.

In determining minimum valuation reserves to be maintained by and valuation rules for insurers issuing funding agreements, the Commissioner may use any relevant actuarial guideline, regulation, interpretation, or paper published by the Society of Actuaries or the American Academy of Actuaries that the Commissioner considers reasonable. (1993 (Reg. Sess., 1994), c. 600, s. 1; 1998-212, s. 26B(e); 2001-334, s. 17.2.)