STATE OF NEW YORK
INSURANCE DEPARTMENT
AGENCY BUILDING ONE
EMPIRE STATE PLAZA
ALBANY, N.Y. 12257

Circular Letter No. 21 (2000)
June 21, 2000

TO: All Licensed Life Insurance Agents, Licensed Life Insurers and Fraternal Benefit Societies

RE: Duties and Obligations in the sale of "Bonus" Interest Rate or Credit Provision Annuity Contracts

The Insurance Department recently announced its decision to approve fixed and variable annuity contracts which offer a bonus interest rate or credit. Circular Letter No. 13 (2000) reported the approval while also expressing the Department's concerns that fees, expenses, and risks related to "bonus or credit" annuities must be disclosed to consumers. The Department also stated that the "bonus or credit" annuity should not cause churning or replacement activity that is detrimental to the consumer. This Circular Letter is intended to set forth the "due diligence" the Department expects of our licensees who solicit and sell these products.

The licensee has an obligation to disclose to the consumer not only the anticipated rewards but also the possible disadvantages and risks of this new "bonus or credit" product. The consumer must be fully informed of contractual expenses and charges applicable in the sale of these contracts. The disadvantages of the "bonus or credit" annuity, which may give the applicant cause for concern and which should be contemplated prior to the purchase, need to be fully and accurately disclosed as part of the sales presentation. In addition, such disadvantages should receive prominent mention in any written or oral sales presentation.

Licensees should take note that Regulation 34A (Rules Governing Advertisement of Life Insurance and Annuity Contracts) states that all advertisements are the responsibility of the insurer whose policies are advertised. The regulation instructs, in part, that advertisements be truthful, not misleading and should not cloud or misdirect the consideration of the purchaser.

The fulfillment of the licensee's "due diligence" obligation will be measured by answers to relevant questions such as:

- Is the applicant aware of how the bonus or credit works? Does the client know what purchase payments are eligible for the bonus? For example, are only first year purchase payments eligible for the bonus? Does the client know the duration of additional interest that will be credited to his contract?

- Did the licensee make the consumer aware, prior to signing the application, that this bonus product may have both a higher surrender charge and/or a longer surrender period than found in a non-bonus annuity?

- Did the seller fully disclose to the buyer the duration and increase in expenses associated with selecting a "bonus or credit" annuity?

- Does the client know at what point in time or at what level rate of return his "bonus or credit" annuity will exceed the value of another annuity that does not include the bonus or credit?

- Will the bonus or credit outweigh any higher fees and charges that the product may impose?

The Department is equally concerned about illegal "churning" and improper replacements. It is well documented that such activity is detrimental to both consumers and insurers and there is concern that "bonus" annuity products will increase that activity. Regulation 60 is applicable to both annuity contracts and life insurance policy replacements. Licensees are expected to comply with the requirements of that Regulation, including the requirement that they complete the required disclosure statements completely and accurately. The Department will remain vigilant in monitoring and investigating replacement activity and churning complaints. Any licensee found to have violated Regulation 60 or found to have engaged in improper sales activities will face disciplinary action by this Department including revocation of licenses.

Please address any questions or comments to :

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Very truly yours,

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