

March 16, 1983

SUBJECT: INSURANCE

WITHDRAWN

CIRCULAR LETTER NO. 4 (1983)

March 16, 1983

TO: ALL INSURERS AND FRATERNAL BENEFIT SOCIETIES AUTHORIZED TO WRITE LIFE INSURANCE
IN NEW YORK STATE

RE: GUIDELINES FOR SUBMISSION AND APPROVAL OF "UNIVERSAL LIFE" AND OTHER LIFE POLICIES
SUBJECT TO SECTIONS 216-b OR 458-b OF THE INSURANCE LAW

Chapter 627 of the Laws of 1982 authorized the sale of so called "Universal Life" type policies and other policies under which the amount of insurance, frequency and amount of premium payment may vary, and the guaranteed cost factors of mortality, interest, and expense may be subject to periodic declaration of more favorable rates resulting in additional amounts being credited to the policy. There may be various forms and plans and combinations of fixed and flexible or variable provisions and cost factors.

The Department is aware that certain tax issues, affecting both insurance companies and individuals, have not been completely resolved. The Department may insist upon additional requirements as the tax situation warrants.

While the Department recognizes that this form of life insurance may be beneficial to policyholders, it is necessary to establish the following guidelines to enable the insurance buying public to understand the operation of all elements of the policy, to have an adequate opportunity to evaluate policy performance and to prevent unfairness among policyholders:

A. Policy Forms

1. It must be stated in the policy that:

(a) adjustments in policy cost factors (interest, mortality deductions, expense charges and loads) will be by class and based upon changes in future expectations for such elements as: investment earnings, mortality, persistency and expenses; and

(b) any change in policy cost factors will be determined in accordance with procedures and standards on file with the Insurance Department. In addition to the requirements of Section 155.1(1), the policy must state which costs are subject to adjustment.

2. The brief description of the policy must indicate any flexibility in premiums, benefits or period of coverage.

3. The policy shall describe the frequency with which policy costs for in-force policies shall be reviewed to determine whether an adjustment in costs should be made.

4. Each policy must state on the specifications page:

- (a) guaranteed maximum expense charges and loads which may be deducted from premiums paid;
- (b) any limitation on the crediting of additional interest on a portion of the policy value or cash surrender value;
- (c) any partial withdrawal or surrender charges; and
- (d) the guaranteed minimum rates of interest.

5. If the policy contains non-guaranteed interest, mortality and expense factors, it must give equal prominence to the guaranteed factors.

6. Where the policyholder may vary the amount and frequency of premiums to be paid to the insurer, the policy must provide for a grace period of at least thirty days or one month when the policy value is no longer adequate to prevent termination or lapse as defined in the policy. The policy must provide for at least 15 days and no more than 45 days written notice to be sent to the policyholder's last known address prior to the date when the policy value is no longer adequate to prevent termination or lapse as defined in the policy.

7. The policy shall state that the insurer will mail to the policyholder at least once each policy year, a statement concerning the current status of the policy and other information as required by the Superintendent.

B. Premium Rates

1. Actuarial Memorandum and Filing Procedures -- At the time the policy form is filed for approval, or when new policy costs (except interest rate changes) are determined for new issues of a previously approved policy form, or when the policy costs (except interest rate changes) are adjusted for in-force policies, an actuarial memorandum describing the calculation of policy costs shall be sent to the Department. The matters to be covered in the actuarial memorandum shall include:

- (a) the formulas for calculation of policy costs;
- (b) the methods and procedures for the allocation of investment income;
- (c) specifications of projected assumptions as to investment earnings, mortality, persistency and expense;
- (d) the tables of mortality rates for all ages and durations, including both the current and the maximum guaranteed rates. Changes in such tables for in-force policies may not include an upward change in the maximum guaranteed rates applicable to such policies; and
- (e) description of the conditions, methods and procedures to be used for the adjustment of policy costs.

2. The company shall file annually the interest rate(s) credited during the prior calendar year and the interest rate(s) projected as of January 1 of the current calendar year for new issues and in-force policies. Such filing shall be made no later than March 1.

C. General Requirements

1. Any changes in policy costs, formulas or pricing assumptions for new and in-force policies must be approved or be in accordance with criteria approved by the company's board of directors or a committee thereof. Any changes other

than for interest must be filed with the Insurance Department at least 60 days prior to use. Any changes as to interest must be filed in accordance with B.2 above.

2. The policy cost factors for in-force policies, unless they are subject to an initial guaranteed period, must be reviewed whenever the policy cost factors for new issues are changed; however, this review need be done no more often than once each policy year. In no event may a review be less often than once every five policy years.

3. Any filing of new plans, change in policy costs (except interest rate changes) on in-force policies and the filing required by B.2 above shall be accompanied by an actuarial opinion stating that the cost factors are reasonable, and based on such factors the policy appears to be self-supporting, and for future years on in-force policies such factors do not discriminate unfairly between new issues and in-force policies.

4. An adjustment in policy cost factors cannot, unless approved by the Superintendent, distribute past gains or recoup past losses but must be based on changes in future expectations for such factors as: investment earnings, mortality, persistency and expenses. The company's profit objective must be fixed at issue and cannot be changed for future policy cost factor adjustments of in-force policies unless approved by the Superintendent.

5. Any participating policy crediting additional amounts under Section 216-b shall be labeled as participating and must provide for a distribution of surplus resulting from past gains. However, if a minimal amount of dividend is expected to be paid, the policy should so state.

6. Additional amounts credited pursuant to Section 216-b may, at the option of the insurer, be applied:

(a) as additional cash value to be used to extend the period of coverage or to allow the policy to become paid-up or to mature the policy as an endowment;

(b) to reduce premiums;

(c) to provide amounts in addition to the guaranteed death benefit either as funds accumulated at interest, or as one year term insurance or as additional permanent insurance; and

(d) in any other appropriate manner approved by the Superintendent.

Any additional amounts must be credited no less frequently than annually and must be nonforfeitable after twelve months from date of crediting. Nonetheless, the amount of premium based on a new projection of current factors at least as favorable to the policyholder as the guaranteed factors may be adjusted periodically so as to maintain the policy on the original target plan of insurance.

7. Additional interest may be credited based upon an acceptable index and subject to the following:

(a) Each policy must state a fixed interest rate minimum for purposes of calculating the minimum guaranteed cash values and benefits and demonstrating that the policy cash values are at least as great as minimum values required by Section 208-a;

(b) The fixed interest rate minimum shall be considered as the guaranteed factor referred to in Section 155.1(1) of the Insurance Law;

(c) The index must be stated in the policy except in the case of an index adopted by the board of directors or a committee thereof. An index adopted by the board or a committee thereof to be used prospectively must be set forth in the annual statement to the policyholders;

(d) The policy shall provide that additional interest over that based on the index may be declared by the board of directors or a committee thereof;

(e) The gross premium may not be increased by the insurer in the event the interest based on the index falls below the fixed interest rate minimum;

(f) That portion of the additional interest based on the index shall be stated as the excess over the fixed interest rate minimum. It is not permissible to express the additional interest as excess over some higher number, such as 8% when 5-1/2% is the fixed interest rate minimum;

(g) If the index is stated in the policy:

(1) The index must be clearly and easily identified;

(2) The policy must clearly state how the interest rate is determined from the index, whether it is based on discount or yield rates, whether it is less than, equal to or greater than such discount or yield rate;

(3) The policy shall clearly state the frequency and timing of determining the interest based on the index and the period for which the interest so determined will then apply, (e.g. based on the index for the period ending two months prior to the policy anniversary, and such interest so determined will be guaranteed for the ensuing policy year, or each calendar month's excess interest will be determined based on the index for the period ending two months earlier);

(4) The index may be effective for the life of the policy or it may be effective for a temporary period, such as 5 years, after which the board of directors or a committee thereof may declare additional interest over the fixed interest rate minimum. The policy must provide for a suitable replacement in the event the index is no longer available during the stated index period. Any such replacement index is subject to the requirements and justifications set forth in (h) below;

(h) The insurer shall present its investment strategy and indicate whether segmentation of assets will be utilized. The insurer shall demonstrate the appropriateness of the index, the likelihood that investments are available to track the index, whether investments are the same assets as those on which the index is based, e.g. 3 months' Treasury Bills, and, if so, whether there is any margin for company profit, e.g. the difference between yield and discount, as a stated deduction, e.g. 3%, or whether the investments are into other higher yielding assets, with and without similar maturities, and if so, a presentation that historically such assets have yielded higher rates than the index. The Department may request the results of simulations using projections of both increasing and decreasing interest rates;

(i) The insurer shall also advise as to any underwriting safeguards, such as the fixed minimum rate of interest and limits on amounts of premium deposits or increases thereof;

(j) An annual certification by an investment officer of the company as to whether the investment strategy most recently filed is still being followed and a statement of opinion that it continues to provide adequate safeguards. If the investment strategy has materially changed, a complete explanation of the reasons for that change must be given; and

(k) Reserves:

(1) At this time, some of the reserving procedures are indefinite and rules may be adopted as experience develops. Generally, additional reserves will be required for any interest determined in accordance with the index and guaranteed for a period beyond the current valuation date and which exceeds the statutory valuation interest rate;

(2) If the company fails to earn investment income over that determined by the index, additional reserves may be required to anticipate such deficiencies in future determinations; and

(3) If it is almost certain that the index will exceed the statutory valuation interest factors, as for example, using the same bond index, namely, Moody's Corporate Bond Yield Average, but higher weighting factors than used in determining the dynamic interest rates for life insurance, then additional reserves may be necessary.

8. The following information is to be submitted to the Health and Life Policy Bureau and the Life Insurance and Companies Bureau for products subject to Section 216-b:

(a) The minimum death benefit which will be issued (by age group or any other characteristic by which it varies);

(b) For "flexible premium" forms (those under which the policyholder can unilaterally vary the amount and timing of premium payments) the minimum premium which will be accepted (by age group or any other characteristic by which it varies); and

(c) To what extent it is expected that the sales of this product will involve replacement - total or partial - of in-force life insurance policies or annuity contracts, separately by issues by your company and other insurers (whether or not the other insurers are authorized in New York). State this separately for qualified and non-qualified business.

9. The application for such a "flexible premium" policy form as is described in 8(b), above, must contain a statement, over the applicant's signature, of the pattern of premiums anticipated to be paid by the policyholder. When the actual premium to be paid at issue has not yet been determined, a statement of the source, e.g., the proceeds of surrender of other policies or contracts, with an estimated amount, should be given. If the insurer has reason to believe that this anticipated pattern poses any potential problem under subsection (f) of Section 101 of the Internal Revenue Code of 1954, as amended, the insurer shall so inform the applicant or policyholder before or with the delivery of the policy. The insurer may use a "face amendment" to amend the application in this respect for this or other good reason, but not merely to achieve projected results preferred by the insurer or agent. The resulting pattern is to be used to implement E.2 (issue reports), E.3 (point-of-sale disclosure), and E.5 (replacement), below. For other than "flexible premium" policy forms, the pattern of premiums to be used for these purposes shall include only the stipulated premiums, plus any additional premium which is scheduled to be paid at or before delivery.

D. Reserves and Nonforfeiture Values

1. For policy forms where cash values are determined retrospectively as an accumulation of gross premiums less expense charges with interest increments and mortality decrements, the insurer must demonstrate compliance with minimum reserve requirements and with minimum cash value requirements under Sections 205 and 208-a respectively, which base values on the prospective method.

2. The reserves may be set equal to the accumulation fund without further justification where:

- (a) not more than 100% of the gross premium is accumulated;
- (b) guaranteed interest rates are not more than maximum valuation interest rates in Section 205;
- (c) the same percentage of gross premium is accumulated for all policy years after the first policy year;
- (d) the guaranteed mortality costs are equal to those in a valuation mortality table permitted by Section 205;
- (e) the first policy year end fund value is not negative;
- (f) the initial pattern of premiums as provided by C9 is level; and
- (g) the plan determined by the guaranteed factors, and continuation of initial premiums in accordance with the method set forth in the policy is a less expensive plan than 20 pay life.

3. If the long term guarantees are as noted in D.2 above but, periodically, higher short-term guarantees more favorable to policyholders are declared for periods extending beyond December 31, reserves in addition to the fund must be held to cover these more favorable guarantees.

4. Where long-term guarantees or conditions are other than noted in D.2 above, the insurer must demonstrate compliance with Section 205 reserves and may be required to hold additional reserves under Section 205 or Section 206 of the Insurance Law.

5. Since the maximum nonforfeiture rate of interest in Section 208-a is greater than the maximum valuation interest rate in Section 205, it is possible that the accumulation fund may satisfy cash value requirements but not reserve requirements.

6. Surrender Charges -- Any surrender charges shall be limited as follows:

(a) Forfeiture of additional amounts credited pursuant to Section 216-b within twelve months from the effective date of crediting -- Any additional amount credited pursuant to Section 216-b shall be nonforfeitable after twelve months from the effective date of crediting;

(b) In addition to the charges in (a) above, the insurer may impose surrender charges but may not recoup such charges from amounts under (a) which have become nonforfeitable. Such charges must be disclosed on the policy specifications pages for each applicable policy year. The period over which the initial surrender charge is amortized may not exceed the lesser of the premium payment period for the policy or ten years. The initial surrender charge may not exceed (1)-(2)+(3), as defined below:

(1) For "flexible premium" policies, the initial expense allowance as defined in Section 208-a of the Insurance Law based on guaranteed cost factors for a fixed-premium policy with a face amount equal to the initial face amount of the policy, with premiums paid annually at the initial premium pattern as provided by C..9 until the highest attained age at which a premium may be paid under the policy, and either maturing on the maturity date of the policy for the initial face amount or expiring without cash value at the end of the period of term insurance coverage. For policies which are not "flexible premium" policies, the initial expense allowance as defined in Section 208-a of the Insurance Law based on guaranteed cost factors and the pattern of premiums, face amounts and period of coverage stipulated in the policy;

(2) The guaranteed sales and administrative charges* for the first policy year; and

(3) The sales and administrative charges* that would have been made in the first policy year based on charge rates equal to the arithmetic average of the corresponding guaranteed charge rates which the policy states will be imposed in policy years two through ten.

(c) If the amount of insurance or premium is subsequently increased, an additional initial expense allowance shall be determined and amortized on a basis consistent with (b) above; and

(d) Surrender charge designs that comply with (b) above will not require further justification. Insurers may submit to the Department different surrender charge designs based on different definitions of the initial expense allowance or different amortization periods or methods. Insurers will be required to demonstrate that such designs are fair and generally consistent with the requirements in (b) above.

*Although these charges may be calculated as flat amounts, e.g., per policy, or as a dollar amount per \$ 1000 of insurance, or as a percentage of premiums, the total of such charges for purposes of this section shall be considered as applicable to premiums.

7. Expense Charges -- After the first policy year, any expense charges shall be assessed against the premiums or as a reduction in the additional interest credited, whether as a lower interest rate against the total policy value or against a specified amount of the policy value, or as a higher current mortality charge. Such limitations are designed to maintain consistency between policies on which no premiums are received during the year and policies which are either contractually paid-up or paid-up on a nonforfeiture basis. Notwithstanding 6(b) and the above, the insurer may impose charges against policy funds as follows, provided such charges are disclosed in the policy:

(a) A charge not to exceed \$ 25 for partial withdrawals of at least \$ 500. For partial withdrawals of less than \$ 500, the charge may not exceed 5% of the amount withdrawn. Partial withdrawal charges shall not reduce the charges described in 6(a) and 6(b) above;

(b) A charge on lapse, non-payment of premium, or reduction in premium not to exceed a proportionate amount of the unamortized initial surrender charge described in 6(b) above. Such charges will reduce the amount of remaining 6(b) surrender charges; and

(c) Other expense charges taken in lieu of the surrender charges described in 6(b) above, provided the insurer can demonstrate that such charges are fair and generally consistent with the above. Such charges will reduce the amount of remaining 6(b) surrender charges.

8. Standard Policies -- For standard policies, the maximum guaranteed mortality charges may not exceed those based on the appropriate Commissioners Standard Ordinary Mortality Table in Section 208-a of the Insurance Law, with the appropriate Commissioners Extended Term Insurance Table for extended term.

9. Substandard Policies -- Under Section 208-a of the Insurance Law, for issues on a substandard basis (including smokers classified by an insurer as substandard), the calculation of nonforfeiture values may be based on a standard ordinary table or appropriate modification thereof, or on any other table approved by the Superintendent. The mortality table underlying the guaranteed mortality charges must be identified. Any substandard table is subject to approval by the Superintendent. If the guaranteed mortality charges approved exceed those for standard policies, the policy shall indicate that extra risk mortality charges apply. If the guaranteed mortality charges do not exceed those for standard policies, but if extra premiums are charged for a substandard mortality risk, then the policy shall indicate that extra risk premiums apply.

10. Select Risk Policies -- For policies for which the insurer considers the mortality risk to be less than for standard policies, the insurer may so describe the policy provided it uses a lower set of current and/or guaranteed mortality charges than would be applicable for standard risks, or if it uses appropriate discounts in the expense charges. If the insurer uses discounts in expense charges, it must be ready to demonstrate that the difference is not a charge for extra mortality for substandard risks. If the insurer uses a set of guaranteed mortality costs less than the appropriate Commissioners Standard Ordinary Mortality Table or less than any table adopted by the Superintendent for select risks, it may be required to set up additional reserves on the assumptions as to continuation of an average amount of premiums and the set of guaranteed factors.

E. Disclosure

1. The following disclosure rules apply generally to life insurance policies subject to Section 216-b of the Insurance Law:

(a) Comparisons of Section 216-b products with similar or different products, whether the comparison is mandatory (as for replacements subject to Regulation 60) or voluntary, should be on an appropriate basis consistent with the requirements and intent of Regulations 34A, 60 and 74. In particular, where the presentation makes a comparison, explicit or implicit, of dollar amounts, the units compared (both premiums and amounts of death benefit, if possible) should be directly comparable. This requires special care in preparing Exhibit A to Regulation 60, particularly where replacement of several policies is proposed, or where additional insurance is proposed;

(b) Premiums to be used for presentations or comparisons -- The pattern of premiums to be used for issue reports, life insurance policy cost disclosure under Section 155-a, and replacement shall be as provided by C.9, above;

(c) Durations -- The applicable durations for the purpose of issue reports, life insurance policy cost disclosure under Section 155-a, and replacement should include each of the first five policy years and representative policy years thereafter, including policy years 10, 20 and that ending at a selected age between 60 and 65, inclusive -- or at maturity, whichever is earlier. These durations should in every case, including replacements, be measured from an assumed date for the proposed coverage; and

(d) Investment rates -- Investment rates may be cited, as effective annual interest rates, in any of the material covered by 2(a), 3, 4 and 5, below. However, if an investment rate on increments to the accumulation fund is cited (on either a guaranteed or a current basis, or both), there must be specified the base to which this rate will be applied (e.g., accumulation fund after mortality charges less first \$ 1,000 and any outstanding policy loan, on a monthly basis). Special requirements apply to the content of advertisements (see 4(a) and (b), below).

2. Issue and Annual Reports

(a) The initial statement required by Section 208-a(1)(g) must be provided when the policy is issued. This initial statement may be the policy summary required by Section 155-a(2)(b) if the criteria specified by 3(c), below, are satisfied. Included in this statement must be a projection, based on the policy premium or, for a "flexible premium" form, the pattern of 1(b), above, of the policy value, cash surrender value and death benefits for the durations specified in 1(c), above, using both guaranteed and initially assumed policy cost factors (interest credits, mortality deductions, expense charges and loads). Such projection of policy values, cash surrender values and death benefits on an initial assumption basis must be qualified with a notice that such initial projections are not guaranteed. If the guaranteed policy cost factors or initial cost factor assumptions results in policy values becoming exhausted at any duration,

such durations, with identification as to guaranteed or initial assumptions, must be set forth in the statement together with a notice that coverage will then terminate unless a higher premium is paid.

(b) An annual statement required by Section 208-a(1)(g), must be sent to the policyowner on either a policy year, calendar year or some other specified basis. The statement must be mailed to the policyowner within 45 days of the close of the reporting basis and within 13 months of the last statement.

(c) The annual statement should provide the following information regarding policy activity since the last statement:

- (1) total premiums paid;
- (2) total mortality charges;
- (3) total interest credits;
- (4) total expenses;
- (5) total charges for riders; and
- (6) partial withdrawals or policy loan activity including the amount of loan interest and withdrawal charge identified separately and any surrender charges imposed.

(d) The annual statement must also include the following information:

- (1) the total amount of outstanding loans;
- (2) the accumulation value and cash surrender value at the beginning and end of the period;
- (3) the amount of the death benefit at the beginning and end of the period; and
- (4) the projected current interest rate(s) as of the statement date including any limitations on the crediting of additional interest on a portion of the policy or cash value.

(e) The annual statement must provide:

- (1) if, based upon the billed premium or another appropriate identified premium, the guaranteed cost factors result in policy values becoming exhausted at any duration within ten years, such duration must be set forth in the statement together with a notice that coverage will then terminate based on guaranteed cost factors;
- (2) disclosure of the duration after which the policy will no longer be in effect on the guaranteed basis and assuming no further premium payments are made, if such duration occurs within ten years;
- (3) the specific date of termination for any durations in (1) or (2) above, which are two years or less; and
- (4) a notice as required in (f) below.

(f) The company must provide a means by which the policyholder may obtain projections of expected future results. Such projections must be based on the billed premium or another appropriate identified premium. This must be accomplished by a notice in the annual statement that the company will provide upon request, at reasonable intervals, a new projection of policy values based on both guaranteed and current assumptions. A reasonable charge may be made for such projections. Any projections of policy values on a current basis must be qualified with a notice that such current projections are not guaranteed.

(g) If the policy is participating, the initial statement should reflect, on the "current assumption", dividends projected at the current scale.

(h) A sample copy of the initial and annual statements, required by Section 208-a (1)(g), must be filed with the policy form when the policy is submitted for approval.

3. Life insurance cost disclosure requirements under Section 155-a, Insurance Law.

(a) Buyer's guide --Regulation 74, promulgated December 30, 1982, includes a buyer's guide effective January 1, 1983, under the provisions of subdivision 155-a(10). Regulation 74 also provides an "ADDENDUM TO BUYER'S GUIDE", effective March 1, 1983, for policies subject to Section 216-b. For applications prior to March 1, 1983, only the buyer's guide effective January 1, 1983, need be furnished.

(b) Preliminary information:

(1) The premium pattern to be used in preparing the preliminary information required by subdivision 155-a(5) should be that required by 1(b), above, less any premiums included in the pattern of 1(b) but not required for the basic policy and permitted to be excluded from index calculations by paragraph 155-a(6)(g); if the premium pattern required by 1(b), above, is not available prior to application, it may be estimated in good faith or furnished as soon as practical prior to delivery of the policy, in accordance with paragraph 155-a(5)(h);

(2) In preparing the information required by subdivision 155-a(5):

(i) the total cash surrender values for the basic policy, as required by paragraph 155-a(5)(d), should be shown for the durations required by 1(c), above, and displayed on the guaranteed basis and also using initially assumed policy cost factors (interest credits, mortality deductions, expense charges and loads), including dividends, if any;

(ii) the life insurance cost indexes required by paragraph 155-a(5)(f) and Regulation 74 should be displayed on the guaranteed basis and also using initially assumed policy cost factors, including projected dividends, if any; and

(iii) the equivalent level dividend required by paragraph 155-a(5)(f) is, for policies subject to Section 216-b, to be calculated, not by the method of Section 53.5 of Regulation 74, but by subtracting the appropriate surrender cost index (as calculated in accordance with Section 53.6 of Regulation 74) using initially assumed policy cost factors, including projected dividends, if any, from the corresponding surrender cost index on the guaranteed basis; this difference is to be titled, not "equivalent level dividend", but "equivalent level non-guaranteed element".

(3) In lieu of a separate statement of preliminary information in accordance with subdivisions 155-a(2)(a) and (5), there may be furnished (with the buyer's guide), either for the policy applied for or for the basic policy, at or prior to the time an application is taken, the initial statement required by 2(a), above, provided there is included the information required by paragraphs (a), (b), (c), (e), and (g) of subdivision 155-a(5).

(c) Policy summary:

(1) The premium pattern to be used in preparing the policy summary as required by subdivision 155-a(6) should be that required by 1(b), above, excluding, if desired, in the calculation of cost indexes those premiums covered by the second sentence of paragraph 155-a(6)(g);

(2) In preparing the information required by subdivision 155-a(6), the calculation and display of the cash surrender values, cost indexes, and equivalent level dividend should be those of (b)(2), above;

(3) In lieu of a separate policy summary in accordance with subdivisions 155-a(2)(b) and (6), there may be furnished, upon delivery of the policy, the initial statement required by 2(a), above, provided there is included the information required by subdivision 155-a(6), modified as indicated in (2), above.

4. Advertising -- All advertising material for these products, for all media, is subject to the provisions of Regulation No. 34A. The following special requirements also apply:

(a) If the material discusses the policy cost factors, there must be:

(1) equal prominence, in juxtaposition, for the current and permanently guaranteed factors of the policy, together with a prominent statement of any limitation on the funds to which additional interest is credited (e.g., fund after deduction of expense charges, limited additional interest on amount of policy loans or first \$ 1000 of cash value), and with equal prominence to the different additional interest rates credited to each portion of the policy value;

(2) a prominent statement of the non-guaranteed nature of the current factors, together with a statement of the dates of expiry of the guarantees of the factors current at the date of the advertisement; and

(3) a statement of the frequency of the insurer's right to change policy cost factors.

(b) If the material discusses current interest rates credited, beyond the mere statement of the matters described in (a), there must be:

(1) a statement whether, under the policies currently offered, the current interest rate credited is determined by declaration of the insurer's board of directors, by an index, or some other way;

(2) if the method of determination can be changed unilaterally by the insurer, a statement of when and how it can be changed from that currently in effect; and

(3) if the interest rate credited is determined from an index, an identification of the index sufficient to allow a reasonably informed reader to verify its use, a statement of the lag

involved (e.g., how long after the date as of which the index is determined the current interest rate based on it becomes effective) and the frequency of change of rate (e.g., monthly, quarterly, annually).

(c) If any cost factor other than the current interest rate is based upon an index, an identification of the index must be given.

(d) Special or favorable tax status should not be claimed for Section 216-b products, unless a citable reference for such a claim is given (an IRS Private Letter Ruling is, by its terms, not citable for any other taxpayer), together with a disclaimer of giving advice on the law.

(e) An apparently unqualified offering disseminated in New York, through any medium, is considered to be a representation that all policies so offered are available in New York. If such is not the case for one or more forms, there should be a suitable qualification.

5. Replacements

(a) Disclosure statement (see Exhibit A to Regulation 60) -- "Tabular Cash Values" may be shown on both a guaranteed basis and a current basis. Alternatively, the tabular cash value must show the guaranteed basis and the non-guaranteed elements may be shown instead of dividends (if the policy is non-participating) of, suitably titled, with "Dividends" (if the policy is participating).

(b) Replacement of policies subject to Section 216-b -- For "flexible premium" policies (see C8(b), above), paragraph 51.2(b)(2) of Regulation 60 should be interpreted as including cessation of premium payments, even without formal conversion into paid-up insurance or continuation as extended term insurance.

F. Schedule NP

1. Schedule NP shows (a) a separation of accounts as between participating and non-participating business and (b) a "Stockholders Surplus Fund Account Exhibit", which shows the development of the fund allocated to shareholders during the year, including transfers between the policyholders' and shareholders' accounts. The separation of accounts extends to both the income statement and the balance sheet. Schedule NP is the basis for the routine monitoring of adherence to the limitations on the transfer of funds from the policyholders' to the shareholders' accounts as defined in paragraph 216.6(b) of the Insurance Law.

2. Policies subject to Section 216-b of the Insurance Law involve the same questions of equity in the transfer of funds to the shareholders' account as arise in the case of traditional participating business written by stock companies. The Insurance Department is extending the separation of accounts in Schedule NP to provide separate reporting of Universal Life policies, and other non-participating policies with non-guaranteed elements, in order to monitor the development of funds held for such policies.

G. Section 213

1. Scale Limits:

(a) First year -- subdivision 213.4: The statute specifically requires approval only for plans other than commissions. However, all first-year commission scales which involve any elements not a percentage of premium shall be filed with the Life Insurance and Companies Bureau.

(b) Renewal -- subdivision 213.8: Usual Department approval procedure will be followed. The pattern of

premiums to be assumed should be consistent with that described in C.9, above. The plan (greater or less than 20-year endowment under 213.8(a)) is to be determined by this premium pattern.

2. Schedule Q: It is possible that substantial proportions of first-year premiums under at least some of these policies may not be continued in later policy years. The Department is concerned that unreasonable acquisition costs for these lapsed premiums be borne by New York policyholders. Definitions and procedures follow:

(a) "Flexible premium policies" means policies issued on forms defined in C.8(b), above;

(b) "Guideline level premium" is to be taken as defined in subparagraph (C) of paragraph (2) of subsection (f) of Section 101 of the Internal Revenue Code of 1954, as amended. For other than a flexible premium policy, "guideline level premium" means the premium stipulated by the policy, even if not level;

(c) "Guideline lifetime level premium", for a flexible premium policy under which benefits extend for the whole of life, means the guideline level premium. For a flexible premium policy under which benefits do not extend for the whole of life, "guideline lifetime level premium" means the guideline level premium for a similar policy under which the ultimate death benefit is extended to the end of life. For other than a flexible premium policy, "guideline lifetime level premium" means the level annual premium, on the actuarial assumptions of subparagraph (C) of paragraph (2) of subsection (f) of Section 101 of the Internal Revenue Code of 1954, as amended, for the death benefits provided by the policy, the ultimate death benefit being extended, if necessary, to the end of life;

(d) "Limiting", when prefixed to any of the "premiums" defined in paragraphs (b) and (c), above, means the application of the "limiting percentage" to the corresponding premium;

(e) "Limiting percentage" is 75%;

(f) "Whole life premium", for a flexible premium policy means the level premium payable until the end of life to provide a level death benefit until the end of life. If the comparison of subparagraph 2(i)(1) below makes the "whole life premium" effective for any policy, there should be filed with Schedule Q an actuarial opinion (which may be combined with that, if any, required by subsection 2(n)) that the whole life premiums employed are those that would have been charged during the year for new guaranteed cost whole life policies or, if no such policy was issued, that the policy cost factors and profit or surplus loading used to determine the whole life premiums employed are those charged during the year (1) for new non-guaranteed cost whole life policies, or (2) if no such policies were issued, for the closest comparable policies; in this case the actuarial opinion should indicate how the closest comparable policies were selected:

(g) "Scheduled premium" means, for a flexible premium policy, the lower of the premiums to be payable during the first and second policy years, as contained in the statement in the application (see C.9, above) of the pattern of premiums anticipated to be paid by the policyholder:

(h) Memorandum lines are to be footnoted to Section (A) (column (1) only) of page 2 of Schedule Q, beginning for statement year 1983:

"6A. Flexible premium policies under Section 216-b, Insurance Law."

"6B. Non-stipulated premiums under other Section 216-b policies."

(i) For the analysis of Section (C) of page 2 of Schedule Q:

(1) Flexible Premium Policies: the lesser of the scheduled premium and the limiting guideline level premium should be included in item 16 of Schedule Q, and the lesser of the whole life premium and the limiting guideline lifetime level premium included in item 17, the classification among lines (a), (b) and (c) of item 16, and (a) and (b) of item 17, being made by interpreting "gross premium rate" to mean the lesser of the scheduled premium and the limiting guideline level premium and "whole life plan with level premiums payable during life" to mean the lesser of the limiting guideline lifetime level premium and the whole life premium.

(2) Other Section 216-b policies: the annual-basis premium stipulated in the policy should be included in item 16 of Schedule Q and the guideline lifetime level premium in item 17, the classification among lines (a), (b), and (c) of item 16, and (a) and (b) of item 17, being made by interpreting "gross premium rate" to mean annual-basis premium stipulated in the policy and "whole life plan with level premiums payable during life" to mean guideline lifetime level premium.

(j) Add, to the title of item 26 of page 2 of Schedule Q,

"less item 6B and the excess of item 6A over the lesser (on an individual policy basis) of the scheduled premium and the limiting guideline level premium."

Add, to the title of item 27 of page 2 of Schedule Q,

"and plus item 6B and the excess of item 6A over the lesser (on an individual policy basis) of the scheduled premium and the limiting guideline level premium."

Any approximations used should be justified in accordance with paragraph 2(n);

(k) The Insurance Department will issue instructions for the submission of premium persistency experience under these policies to permit consideration of revision of these requirements and limits. Companies should maintain records from which policy and premium persistency, (numbers, amounts, and premiums) can be determined. The Department plans to use this data, with consideration of its statistical credibility, to promulgate adjustments, on an individual company basis, to the proportion of first-year premiums incurred (item 6, Part I, Schedule Q) to which companies may apply the annual premium ratio (item 25, Part I, Schedule Q) to determine the annual premium life insurance percentage component (item 26, Part I, Schedule Q) of the First Year Expense Limit.

(l) For premium increases during the statement year in in-force policies, allowances through items 26 and 27 of Part I of Schedule Q should be determined from:

(1) the total additional premiums not arising from a change in scheduled premium (as provided by C.9, above, for flexible premium policies and in the policy itself for other 216-b policies);

(2) the total increase (on an individual policy basis) in scheduled annual-basis premiums over the greatest annual-basis premium scheduled for any preceding year;

(3) the total increase in face amount (primary insured death benefit) concurrent with an

increase in scheduled premium; and

(4) the total limiting guideline level premium at the attained age for the increases of (3), above.

No adjustment in the "ratio percent" of item 25 of Part I of Schedule Q need be made for premium increases.

(4), above, may be included in the base for item 26.

(1), above, and the excess of (2) over (4), above, may be included in the base for item 27.

Any premiums included in column (3), item 6, which are included, as described immediately above, in the base for item 26 or 27, should not be included in the base for item 35;

(m) (1)(3), immediately above, may be included in the base for item 29. The corresponding amount of insurance in-force at the end of the year may be included in the base for item 30. If this latter amount is determined by approximation, see paragraph (n), below.

(n) The requirement, in the "NOTE" at the bottom of page (2) of Schedule Q, for approval by the Department of the use of approximations in completing Section (C), is, with respect to Section 216-b policies, extended to all approximations used in completing Schedule Q. This includes, but is not limited to, the determination of the "guideline" premiums of (b) and (c) above, and of footnotes 6A and 6B. Alternatively, a description and justification, signed by an actuary assuming responsibility, of any approximations used in completing Schedule Q may be filed with Schedule Q. Use of this alternative would be with the understanding that the filing cannot be regarded as final until the Department has indicated its approval of these approximations.

See also paragraphs 2(f) and 2(j); and

(o) Premium accounting and Schedule Q -- The information required to complete Schedule Q, by paragraphs (h), (i), and (j), above, may be obtained by accounting or actuarial methods, or any combination thereof, provided that the requirements of paragraph (n), above, are met. Item 6 of Part I of Schedule Q specifically does not include any premiums accounted for as single premiums in Exhibit 1, and they should therefore not be included in footnotes 6A and 6B (see paragraph (h), above). The adjustments required by (j) above are not to be given effect in the completion of Exhibit I.

See also the last sentence of paragraph 2(1).

3. Expense Allowance Payments under Regulation 49: "First year premiums for ordinary life insurance and annuity contracts" under subsection 11.3(d) of Regulation 49 and "single premium policies or contracts" under subsection 11.3(e) of Regulation 49 should exclude any premiums on policies subject to Section 216-b. However, the Department and the industry are conducting a study to determine appropriate maximum Expense Allowance Payments on policies subject to Section 216-b. The study will be completed as expeditiously as possible. If the study indicates that such maximum payments should be greater than the maxima indicated below, up to the excess of the greater maxima over the payments previously made may be paid on a retroactive basis. The maximum Expense Allowance Payments referred to above (which will apply only until the result of the study is promulgated) will be determined by adding, to the maximum Expense Allowance Payments obtained from subsections 11.3(d) and (e) of Regulation 49, and for each policy subject to Section 216-b, the excess, if any, of 75 percent of the premium included in item 26 of Schedule Q over the first year commission (exclusive of any overriding commission) and the excess, if any, of 6 percent of any single

premium included in item 27 of Schedule Q over the commission paid thereon (exclusive of any overriding commission). Corresponding amounts may be included for each premium increase (on such a policy) for which premiums are included, under the provisions of subparagraph 2(1)(3), in item 26 or item 27 or both.

H. Any reference in this circular letter to sections of the Insurance Law shall also be deemed to refer to the appropriate sections applicable to fraternal benefit societies.

I. Noncompliance. Failure to comply with these guidelines may be a basis for withdrawal of approval of the insurer's previously approved policy form, and/or other Insurance Department disciplinary action.

J. Subsequent Revision. These guidelines will be reviewed for possible amendment as experience develops.

Very truly yours,

[SIGNATURE]

James P. Corcoran

Superintendent of Insurance