

October 25, 1993

SUBJECT: INSURANCE

Circular Letter No. 16 (1993)
October 25, 1993

TO: All Licensed Life Insurers and Fraternal Benefit Societies

RE: Individual Life Insurance Policies in the Tax-Qualified Section 403(b) Market

Section 403(b) of the Internal Revenue Code provides that an employee of a Section 501(c)(3) organization or a public school system can exclude from gross income, within limits, the premiums paid on a tax sheltered annuity contract and can, for federal tax purposes, defer income tax recognition on the increased amount of the contract's value until distribution. Section 1.403(b)-1(c)(3) of Title 26 of the Code of Federal Regulations (Federal Income Tax) states that an individual life insurance contract used to provide incidental life insurance protection under a tax sheltered annuity plan, will be treated as an annuity contract under Section 403(b) of the Internal Revenue Code.

It has come to the Department's attention that some insurers licensed to do business in this state have been marketing individual life insurance policies in the Section 403(b) market by the use of outside documents in an effort to bring the policy into compliance with Internal Revenue Code requirements. Under such an arrangement, the policyholder is required to agree to certain amendments to contractual rights set forth in the policy. These amendments, which restrict a policyowner's access to cash values and to policy loans, conflict with Sections 3203(a)(8) and 4221 of the Insurance Law, which require that life insurance policies contain cash value and policy loan provisions.

The Department has been and continues to be involved in discussions with insurance industry representatives concerning legislative proposals to address this issue. Insurers may not, however, issue individual life insurance policies in the Section 403(b) market using outside documents prior to the enactment of appropriate legislation.

Since such outside documents amend the terms of the contract, they are "policy forms" within the meaning of Section 3201(a) of the Insurance Law and are required to be filed and approved prior to use. Forms which do not comply with the Insurance Law will be disapproved and use of unapproved forms constitutes a violation of Section 3201(a) of the Insurance Law.

Please acknowledge receipt of this letter in writing to Fredric L. Bodner, JD, Assistant Deputy Superintendent and Chief, Health & Life Policy Bureau, State of New York Insurance Department, Agency Building One, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12257.

Very truly yours,

[SIGNATURE]

Salvatore R. Curiale

Superintendent of Insurance