



STATE OF NEW YORK
INSURANCE DEPARTMENT
ONE COMMERCE PLAZA
ALBANY, NEW YORK 12257

David A. Paterson
Governor

Eric R. Dinallo
Superintendent

Circular Letter No. 21 (2008)
October 6, 2008

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

RE: Amendments to Insurance Law Sections 3203, 3211 and 4510, Pertaining to the Grace Period and Premium Due Notice Requirements for Flexible Premium Life Insurance Policies

STATUTORY REFERENCE: Insurance Law Sections 3203, 3211 and 4510

This Circular Letter supersedes Circular Letter No. 7 (2008), which is hereby withdrawn, effective October 5, 2008.

Effective October 5, 2008, Chapter 264 of the Laws of 2008 amended Insurance Law §§ 3203(a)(1), 3211(a)(1) and (b)(1), and 4510(a)(1) with respect to the grace period and premium due notice requirements for individual life insurance policies and certificates issued by life insurers (“insurers”) and fraternal benefit societies, in which the amount and frequency of premiums may vary (such policies also are known as “flexible premium policies”).

Chapter 264 amended Insurance Law § 3203(a)(1) to require an individual flexible premium policy issued by an insurer to include a provision that entitles a policyholder to a 61-day grace period within which to pay sufficient premium to keep the policy in force for three months. The 61-day grace period begins on the day that the insurer determines that the policy’s net cash surrender value is insufficient to keep the policy in force for one month from that date. Chapter 264 also amended Insurance Law § 4510(a)(1) to require certificates issued by fraternal benefit societies to include a provision that entitles the certificate holder to a similar 61-day grace period.

Further, Chapter 264 amended Insurance Law § 3211(a)(1) to prohibit an insurer or a fraternal benefit society from terminating an individual flexible premium policy or certificate for default in payment of any premium, installment or interest on a policy loan in less than one year of the default, unless the insurer or fraternal benefit society mails the premium due notice to the policy owner or certificateholder no earlier than, and within 30 days after, the day that the insurer or fraternal benefit society determines that the net cash surrender value under the policy or certificate is insufficient to pay the total charges that are necessary to keep the policy or certificate in force. In addition, Chapter 264 amended Insurance Law § 3211(b)(1) to require an insurer or a fraternal benefit society to mail the premium due notice to the last known address of the policyholder or certificate holder rather than the person insured.

A flexible premium policy or certificate form must provide for a 61-day grace period to satisfy the new law. Also, if a policy or certificate form contains a premium due notice mailing period provision other than as described above, it will not comply with Insurance Law § 3211(a)(1), as amended. For example, a policy or certificate provision that requires an insurer or fraternal benefit society to mail a premium due notice at least 15 and not more than 45 days prior to the day when failure to pay premium would cause the policy or certificate to terminate or lapse does not comply with Insurance Law § 3211(a)(1), as amended.

Every insurer or fraternal benefit society must revise its policy or certificate forms accordingly, and file new policy or certificate forms with, and seek approval from, the Department. An insurer or fraternal benefit society may use the prior approval procedure under Insurance Law § 3201(b)(1), or prior approval with certification procedure set forth in Circular Letter No. 6 (2004), to file its revised policy or certificate forms. The Department is instituting an expedited approval process for all filings made solely to comply with the amendments to Insurance Law §§ 3203(a)(1) and 3211(a)(1). If an insurer or fraternal benefit society makes any other changes to the policy or certificate forms, then the insurer or fraternal benefit society may not utilize the expedited approval process, and the filing will be processed on a non-priority basis. Further, all filings must comply with the following procedural requirements:

1. The “Re” or caption of the submission letter must comply with Circular Letter No. 8 (1999). In addition, the “Re” or caption must identify the filing as a “Grace Period and Notice Revision” filing made pursuant to amendments to the Insurance Law, effective October 5, 2008.
2. The submission letter must identify the previously approved policy or certificate forms by the form number and approval date.
3. The new forms must have a distinguishing form identification number. The use of “Rev” or a date after the form number is acceptable.
4. The insurer or fraternal benefit society must submit a highlighted copy of the new policy or certificate form showing any changes made from the previously approved policy or certificate form, or else the insurer or fraternal benefit society must explain the changes in the submission letter.
5. The filing must include a certification from an authorized officer of the insurer or fraternal benefit society certifying that the insurer or fraternal benefit society has not made any other changes to the previously approved forms, and that the insurer or fraternal benefit society is only making changes to comply with the amendments to the Insurance Law, effective October 5, 2008.

Any questions concerning this circular letter may be directed by mail to Kathleen Ryan, Associate Insurance Attorney, Life Bureau, New York Insurance Department, One Commerce Plaza, Albany, N.Y. 12257 or by e-mail to KRyan@ins.state.ny.us.

Very Truly Yours,

Martin A. Schwartzman
Assistant Deputy Superintendent and Chief
Life Bureau