

**COMPANY-OWNED LIFE INSURANCE PRODUCT OUTLINE
(Last Updated 10/17/2013)**

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Product Outline: Company-Owned Life Insurance (Last Updated October 17, 2013)

This outline is current as of October 17, 2013. Subsequent changes to statutes, regulations, circular letters, etc., may not be reflected in the outline. In case of any doubt, please contact the Life Bureau.

All citations herein are to the New York State Insurance Law unless otherwise stated.

I. Scope

This outline supplements the individual and group life insurance product outlines on the Department's web site and is intended for life insurance products used as company-owned life insurance ("COLI"). This outline replaces the Corporate-Owned Life Insurance Outline (last updated 2/28/02).

Company-owned life insurance (also known as corporate-owned life insurance, employer-owned life insurance, bank-owned life insurance or trust-owned life insurance) is subject to all of the provisions of the New York Insurance Law, regulations and Department circular letters that are applicable to the type of life insurance product submitted, unless otherwise noted herein.

This outline identifies requirements and exceptions that are unique to company-owned life insurance. COLI coverage may be provided pursuant to Sections 3205(a)(1)(B) or 3205(d). For each type of COLI insurance, the outline sets forth the requirements for issuance as individual or group life insurance.

Please note that the unfair, unjust and inequitable standards of Section 3201 apply to every submission.

II. Filing Process**II.A. General Information**

The general requirements for filings are set forth in the product outline relevant to the type of product being submitted; for example, individual universal life, group variable universal life, etc. Please consult the relevant outline when making your submission.

II.B. Submission Letter Requirements/SERFF Submissions

For SERFF submissions, the Life Bureau no longer requires that a separate signed cover letter be included with submissions. Instead, for SERFF filings, any information that would ordinarily be included in the signed cover letter must be in the Filing Description under General Information. Inclusion of "please see cover letter" or phrases of similar intent will not meet this requirement.

References in this outline to submission letter content requirements are also requirements for SERFF General Information unless otherwise noted.

B.1. Caption Requirement

The submission letter must specifically identify the submission as a COLI product in the caption or "Re" of the letter.

B.2. SERFF Submissions

Any information required in the submission letter should appear in the Filing Description when the submission is made via SERFF. Please see the Department's guidance for SERFF filings available on the Department's website at <http://www.dfs.ny.gov/insurance/serflife.htm>.

B.3. Insurable Interest

The submission letter must state the basis under which insurable interest is to be determined--either pursuant to Section 3205(a)(1)(B) or Section 3205(d).

B.4. Compliance Procedures

The submission letter must describe how the insurer will verify that the conditions required for insurable interest will be satisfied.

- a) For COLI coverage pursuant to Section 3205(a)(1)(B), the letter must describe what, if any, steps the company or insurer takes to ensure that the amount of insurance on each proposed insured is not excessive (i.e., exceeds the estimate of the potential loss that the company would incur from the untimely death of the employee).
- b) For COLI coverage pursuant to Section 3205(d), the letter must confirm that the insurer will obtain a statement from the employer identifying the costs of employee and/or retiree benefits already incurred in connection with such employee benefit plan since the earliest date coverage on an employee or retiree was issued and the projected future cost of such benefits as established by the employer so that the insurer can verify that the total amount of insurance coverage does not exceed such costs.

B.5. Notice and Consent Forms

- a) For COLI coverage pursuant to Section 3205(a)(1)(B), the submission letter must indicate (a) whether a separate consent form pursuant to Section 3205(c) is included in the submission filing or (b) whether the insurer has previously filed or approved forms.
- b) For COLI coverage pursuant to Section 3205(d), the submission letter must indicate (a) whether separate notice and consent forms that set forth the employee's consent and termination rights as required by Section 3205(d)(1)(A), (B), and (C) are included in the submission filing or (b) whether the insurer has previously filed or approved forms.
- c) Where the forms have been previously filed or approved, the submission letter must specify the form number(s), the Department file number(s), and the date(s) filed or approved. A courtesy copy

of the relevant form(s) must be submitted for informational purposes if the form was filed or approved prior to 1998.

- d) If the consent is a separate form, then it must be filed for informational purposes. If the consent is part of the application form, then the combined form must be filed for approval. *See also* Section II.C.2.

B.6. Party Responsible for Providing Notices

The submission letter must state whether the insurer or the employer is responsible for providing the required notices under Section 3205(d)(1)(A), (B) and (C) to employees and whether such notices are prepared by the insurer or the employer.

B.7. Additional Requirement for Group Life Insurance

For group life products, the submission letter must explain whether the insurer expects that there would ever be any potential incidents of ownership, either at issue or later, transferred to the insured, with a complete explanation of the circumstances under which this could occur.

NOTE: Incidents of ownership are usually associated with split dollar insurance.

B.8. Additional Requirements for Group COLI coverage pursuant to section 3205(d)

- a) The letter should identify the provisions of Section 4216(b)(1) and (4) with which the forms do not comply, such as the issuance of certificates, classes covered, limited selections, participation requirements, and beneficiary restriction.
- b) The letter should describe the plan and how it meets the ERISA standard. If the forms are being submitted for general COLI use, then the insurer must confirm that it will obtain a description of the plan and how it complies with ERISA from the employer prior to issuing coverage.
- c) The letter should provide an explanation as to why the forms should be exempt from any group life insurance requirements, other than as specified in Sections 3220(d) and 4216(i).

B.9. Dual Use of Forms

If an insurer intends to use the same forms for both individual and group issuance, then two separate submissions are required and the forms must have distinct form numbers to differentiate between the group and individual variants of the forms.

II.C. Supporting Documentation

C.1. Application

The life insurance application shall be included in the submission. If the application has been previously approved, then the submission must reference the approved form and list the Departmental file number and approval date. A courtesy copy of the application must be submitted for informational purposes if the form was approved prior to 1998.

C.2. Notice and Consent Forms

The notice, if applicable, and consent forms to be provided to proposed insureds shall be included in the submission. If the notice and/or consent forms will be generated by someone other than the insurer, then the insurer's template(s) may be submitted instead. If the notice, if applicable, and consent are separate forms, then they must be filed for informational purposes. If the consent is part of the application form, then the combined form must be filed for approval. If they were previously filed with the Department, then the submission must reference the form number, Departmental file number and the date filed or approved. *See also* Section II.B.5(d).

C.3. Plan of Operations

For life insurance policies with a separate account, the submission shall indicate the status of its filing with the Life Bureau in New York City. If the plan of operations has already been approved, then a copy of the Department's approval letter must be submitted.

C.4. Prospectus

A courtesy copy of the prospectus, if any, may be included with the submission. If not provided, the Department may request a copy. The submission letter must indicate the status of its filing with the Securities and Exchange Commission.

C.5. Private Placement Memorandum

A courtesy copy of the private placement memorandum, if there is one, must be included with the submission. The submission letter must indicate the status of any related filing with the Securities and Exchange Commission.

II.D. Key References

D.1. Insurance Law. §§ 3201, 3205, 3220, and 4216.

D.2. Regulations.

NOTE: Regulation 180 (11 NYCRR 48) was adopted on an emergency basis from June 2, 2004, until December 19, 2006. Upon expiration of the emergency adoptions, the regulation was not adopted permanently. It expired and is no longer in effect.

- D.3. Federal Law. Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.

III. Life Insurance Pursuant to N.Y. Insurance Law § 3205(a)(1)(B)

III.A. Individual Life Insurance

A.1. Consent Requirement

The proposed insured must consent in writing to the insurance coverage. Section 3205(c).

NOTE: The Department will accept a consent that is similar to that used for group coverage. For example, it gives notice of the employer's intent to obtain insurance on the employee; the maximum face amount of coverage for the employee that could be insured at the time the contract is issued; and the fact that the employer or policyowner will be the beneficiary under the contract. See Section 4216(i)(2)(A).

A.2. Amount of Coverage

The amount of insurance on a proposed insured must be reasonably related to the company's economic interest in such person. Such economic interest may be based upon one or more of the following factors: the value of the ownership interest in the company, the revenue or profits attributable to such person's efforts, the cost of recruiting, training and compensating a replacement, or any other relevant factor.

A.3. Premiums

Premiums must be non-contributory.

A.4. Use of Individual Forms

Coverage using individual life insurance policy forms should correspond to the traditional use of such forms. The policy should insure an individual and have an attached application for that insured.

III.B. Group Life Insurance

B.1. Eligibility for Coverage

The policy must define the conditions for eligibility for coverage. It must comply with Section 4216(a)(2) regarding who is an "employee".

B.2. Amount of Coverage

The amount of insurance on a proposed insured must be reasonably related to the company's economic interest in such person. Such economic interest may be based upon one or more of the following factors: the value of the ownership interest in the company, the revenue or profits attributable to such person's efforts, the cost of recruiting, training and compensating a replacement, or any other relevant factor.

B.3. Premiums

Premiums must be non-contributory.

B.4. Individual Certificates

The insurer and employer may use certificates or some other means to account for such insurance coverage on employees. Instead of certificates, an exhibit, census or schedule of insured employees is made part of the policy. Since the employer pays all premium and insured employees have no rights under the policy, no certificate is necessary.

B.5. Consent Form

The consent form must be signed by the insured.

B.6. Contract Provisions

Section 3220(d) provides that the standard contract provisions set forth in Section 3220(a)(4), (5), (6), (7), (8), (9) and (10) and Section 3220(c)(1) shall not apply to policies issued under the authority of Section 3205(a)(1)(B) or (d).

B.7. Exception from Certain Group Requirements

Section 4216(i)(2) provides that group insurance policies delivered in New York to an employer or a trustee pursuant to Section 3205(a)(1)(b) or (d) need not comply with the provisions of Section 4216(b)(1) or (4). The notice and consent provisions of Section 4216(i)(2)(A) and (B) must be satisfied prior to or at the time coverage commences.

IV. Life Insurance Pursuant to N.Y. Insurance Law § 3205(d)

IV.A. Requirements Applicable to Individual and Group Life Insurance

A.1. Notice and Consent

In accordance with Section 3205(d)(1), the employer providing for insurance coverage or causing such coverage to be issued shall:

- a) prior to or at the commencement of any such coverage, notify prospective insureds in writing that coverage is being obtained on their lives, require that prospective insureds consent in writing to such coverage, provide each consenting insured the right to have any coverage on his/her life issued under the authority of this subsection discontinued at any time and describe in the notice the method the insured may use to terminate coverage;
- b) at the time any insured employee's employment terminates, notify the employee of his or her right to discontinue such coverage; provided, however, that no such notification shall be required if the insured employee possesses a present or prospective right to receive any of the benefits under an employee benefit plan being financed, in whole or in part, by such life insurance coverage; and

- c) at any time after the termination of an insured employee's employment and upon the termination of an employee benefit plan being financed, in whole or in part, by such life insurance coverage or a reduction of the benefits provided thereunder, notify the employee of his or her right to discontinue such coverage.

A.2. Amount of Coverage

- a) At the time of issuance, the total amount of insurance coverage issued to date (under this or a prior policy) to the employer or trust pursuant to Section 3205(d) shall not exceed the costs of employee and/or retiree benefits already incurred in connection with such employee benefit plan since the earliest date coverage on an employee or retiree was issued, plus the projected future cost of such benefits as established by the employer. Section 3205(d)(2).
- b) The amount of coverage insuring the life of each such employee or retiree and the selection of the employees or retirees to be insured must be based purely on nondiscriminatory factors such as age, premium amount or some other nondiscriminatory factor, and not on conditions or terms of employment other than participation in an employee benefit plan described herein. Section 3205(d)(3).

A.3. Premiums

Premiums must be non-contributory.

A.4. Change of Insurer

If subsequent to issuance of the policy or policies providing life insurance coverage pursuant to Section 3205(d), the insurer providing the coverage is replaced by another insurer, the employer shall notify each insured employee or retiree of such replacement. Section 3205(d)(4).

A.5. Loans

During the first five years subsequent to issuance of the policy or policies providing life insurance pursuant to this subsection, the policyholder shall not undertake a pattern of borrowing likely to require all or a substantial part of the cash values of the policies to be pledged as security against repayment of such loans, unless such borrowing was incurred because of an unforeseen substantial loss of income or unforeseen increase in financial obligations. Section 3205(d)(5).

A.6. Underwriting

The number of lives insured may not exceed the number of employees or retirees participating in the plan or eligible to participate in the plan.

IV.B. Additional Requirements for Group Life Insurance

B.1. Eligibility for Coverage

The policy should define the conditions for eligibility for coverage.

B.2. Notice and Consent

The employer must notify the proposed insured in writing of its intent to insure the employee's life; specify the maximum face amount for the employee could be insured at the time the contract is issued; and indicate that the employer or policyowner will be the beneficiary under the policy. The employee must consent in writing to such coverage. Section 4216(i)(2)(A) and (B).

B.3. Individual Certificate

The insurer and employer may use certificates or some other means to account for such insurance coverage on employees. Instead of certificates, an exhibit, census or schedule of insured employees is made part of the policy. Since the employer pays all premium and insured employees have no rights under the policy, no certificate is necessary.

B.4. Consent Form

The consent form must be signed by the insured.

B.5. Contract Provisions

Section 3220(d) provides that the standard contract provisions set forth in Section 3220(a)(4), (5), (6), (7), (8), (9) and (10) and Section 3220(c)(1) shall not apply to policies issued under the authority of Section 3205(a)(1)(B) or (d).

B.6. Exceptions from Certain Group Requirements

- a) Section 4216(i)(1) provides that Section 4216(d), (f) and (h) shall not apply to policies issued under the authority of Section 3205(d), provided that the policies are issued in compliance with Section 3205(d) and (e). Such benefits are not required because the proceeds from such policies are used solely to fund employee benefit plans.
- b) Section 4216(i)(2) provides that group insurance policies delivered in New York to an employer or a trustee pursuant to Section 3205(a)(1)(b) or (d) need not comply with the provisions of Section 4216(b)(1) or (4). The notice and consent provisions of Section 4216(i)(2)(A) and (B) must be satisfied prior to or at the time coverage commences.

V. Insurer Obligations**V.A. Insurable Interest****A.1. Responsibility**

It is the insurer's responsibility to determine whether the policyholder (the employer) has an insurable interest in the person or persons insured under the policy at the time of issue and, where applicable, thereafter.

A.2. COLI coverage pursuant to Section 3205(a)(1)(B)

The insurer must have procedures in place to ensure that the company/policyholder has a “lawful and substantial economic interest in the continued life, health or bodily safety of the person insured, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the insured” and that the insured consents in writing to the making of such contract.

A.3. COLI coverage pursuant to Section 3205(d)

The insurer must monitor compliance with the conditions in Section 3205(d) and (e) at and after issue of the policy to ensure that insurable interest requirements are (and continue to be) satisfied. The insurer must have procedures in place to ensure that:

- a) the employer receives the required consent from prospective insured employees and notifies the insurer when an employee or retiree rejects the issuance of such insurance;
- b) the employer provides the required notices to insured employees upon termination of employment or termination or reduction in plan benefits or replacement of such insurance coverage; and
- c) insured employees can exercise their statutory right to discontinue and terminate coverage after issue.

V.B. Eligible Group Requirements

- B.1. Section 3205(d) permits COLI coverage to be issued to an employer or irrevocable trust established by an employer or by one or more employers or one or more employers and one or more labor unions.
- B.2. Section 4216(i)(2) provides that any authorized life insurer may deliver group insurance policies (issued under the authority of Section 3205(d)) to an employer or to the trustee of a fund established by one or more employers, or one or more employers and one or more labor unions without complying with the provisions of Section 4216(b)(1) and (4).
 - a) This provision eliminates the certificate requirement, employer beneficiary prohibition, selections by employees and minimum number and participation requirements.

NOTE: It can be argued that only authorized insurers can avail themselves of Section 4216(i)(2) and only with respect to group policies delivered in this state. However, if an authorized insurer can assure the Department of compliance with the conditions in Section 3205(d) and (e), the Department may consider permitting out-of-state COLI coverage that provides insurance coverage on resident employees of this state under groups described in Section 4216(b)(1) and (4).

- b) The Department will not require the delivery of COLI certificates to New York resident employees in out-of-state multiple employer trust cases or prior approval of such certificates (under the deemed to be delivered language in Section 3201(b)(1)) as long as the requirements of Section 3205(d) and (e) are satisfied and the insured employee has no incidents of ownership.
 - c) An unlicensed insurer cannot provide COLI coverage in New York. In the COLI context, direct contact between the insurer and insured employee is required to terminate coverage pursuant to Section 3205(e). Such contact would appear to constitute doing an insurance business in the state.
- B.3. It is the insurer's responsibility to determine whether the definitional requirements in Section 4216(b) for eligible groups are satisfied. Only employer groups (or trusts established by such employers) described in Section 4216(b)(1) and (4) qualify for exceptional treatment.
- B.4. The insurer must obtain a statement from the policyholder (the employer) confirming that the employer or other authorized person actually provides required notices and obtains the requisite consent of the insured person.