



Guaranteed Interest Contracts Product Outline

(Last Updated October 11, 2013)

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Guaranteed Interest Contracts Product Outline

This outline is current as of October 11, 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.

I) Applicability

I.A) Scope

This product outline covers all unallocated guaranteed interest contracts delivered in this state issued through an insurer's general account. This Outline replaces the Guaranteed Interest Contracts Product Outline last updated 05/06/1999.

Unfortunately, there is no commonly accepted definition of a guaranteed interest contract (GIC) in the industry or in the Insurance Law.

A.1) Regulation 139, Regulation 127, Regulation 151, §§4217 and 6901(a)(2)(G) of the Insurance Law define and /or refer to different types of guaranteed interest contracts.

A.2) In addition, federal law, especially the Employee Retirement Income Security Act ("ERISA"), makes provision for guaranteed interest contracts, guaranteed investment contracts and guaranteed benefit policies.

I.B) Definitions

For purposes of this outline, we rely on the definitions in Regulation 139.

B.1) GIC-1 or GIC means a contract which guarantees principal and provides a specified rate of interest on amounts deposited with an unqualified right to withdraw the accumulation fund upon the expiration of the time period for which the amount deposited and the specified rate of interest are guaranteed under the contract, either in lump sum or in installments over a period less than five years with the amount and timing of such installments specified in the contract. § 40.2(j)(1) of Regulation 139.

(a) This definition was taken from §4217(c)(4)(D)(iii)(V)—Plan Type B and Prohibited Transaction Exemption 81-82 "guaranteed investment contract". This product outline applies primarily to GIC-1 contracts.

(i) Plan Type B: The policyholder may not withdraw funds before the expiration of the interest rate guarantee or, if withdrawals are permitted before the expiration of such guarantee, may withdraw funds only (i) with an adjustment to reflect changes in interest rates or asset values since the receipt of the funds by the insurance company, or (ii) without such adjustment but in installments over five years or more. At the end of the interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or in installments over less than five years.

(ii) Prohibited Transaction Exemption 81-82: A "guaranteed investment contract" is defined as a contract issued to an employee pension

benefit plan, or to a fiduciary for the benefit of such a plan, by a life insurance company, under which:

- (I) The life insurance company issuing the contract guarantees the amounts deposited by the plan pursuant to such contract and guarantees a specified rate of interest on such amounts for a stated period of time;
 - (II) The amounts received by, or credited to, a plan under such contract, and any charges made under such contract, are not, in any circumstances, affected by the investment performance of assets held in any separate account or other investment fund;
 - (III) The plan has an unqualified right to withdraw the amounts deposited and the interest accrued thereon upon the expiration of the period for which the amounts deposited, and a specified rate of interest, are guaranteed under such contract; and
 - (IV) The plan's right to recover any amount payable under such contract from the life insurance company issuing the contract, and the plan's claim against the general assets of such life insurance company for any amount payable under such contract, whether on insolvency or liquidation of the life insurance company or otherwise, would not be adversely affected by the allocation by the insurance company to a separate account of amounts received under such contract.
- (b) The primary reason for the definition in Regulation 139 is to limit the applicability of the termination rules in §40.5. Since GIC-1 contracts have a fixed maturity date specified in the contract at which time an unadjusted payment will be made either in lump sum or in installments, the termination rules are not necessary.

With respect to the fixed maturity date specified in the contract, we have approved call provisions during the accumulation phase and payout phase that would shorten the term of the contract.

- (c) *Specified interest rate* means the rate of interest, which, at the time set or established under the contract, is likely to result in the crediting of no more than a minimal rate of additional interest to the accumulation fund on an annual or more frequent basis. §40.2(u) of Regulation 139.
- (i) The guaranteed interest rate on GICs is closely related to current, or "spot" long term interest rates.
 - (ii) Typically, the contract does not provide for any participation if the actual earnings rate on supporting assets exceed the rate guaranteed.
 - (iii) We have permitted the specified interest rate to be derived from an agreed upon index, such as LIBOR. We have permitted the use of interest rate swaps to support floating rate GICs. Domestic insurers

must submit a hedging program for approval pursuant to Regulation 111. Any use of swaps must be covered as part of the hedging program.

B.2) GIC-2 means a contract which guarantees principal and provides an indeterminate rate of interest for an indefinite period with an unqualified right to withdraw the accumulation fund at least once a year in either a lump sum, subject to a surrender charge no greater than seven percent, or in substantially equal periodic, at least annual, installments over a period less than five years which does not reflect investment experience of the underlying assets. §40.2(j)(2) of Regulation 139

(a) This definition was taken from §4217(c)(4)(D)(iii)(V)---Plan Type C

Plan Type C: The policyholder may withdraw funds before the expiration of the interest rate guarantee in a single sum or installments over less than five years either (i) without adjustment to reflect changes in interest rates or asset values since the receipt of funds by the insurance company, or (ii) subject to only a fixed surrender charge stipulated in the contract as a percentage of the fund.

(b) The GIC-2 definition exempted plan type C contracts from the termination rules in §40.5 of Regulation 139.

(c) Except for the installment payout, Plan Type C contracts are traditional allocated annuity contracts, usually subject to the nonforfeiture law for annuities.

(d) These contracts typically only provide for lump sum withdrawals. Prior to promulgating Regulation 139, the five year installment option was not available. We have required the lump sum option in any GIC-2 contract offering an installment option.

B.3) Unallocated Contract means a contract in which deposits are credited to an accumulation fund without reference to any plan participant or beneficiary (i.e., deposits are not allocated to participant accounts under the contract). See §3223(d).

(a) This definition is similar to the definition of “unallocated amounts” in §40.2(z). Unallocated amounts means any funds credited to the accumulation fund which the insurer is not currently irrevocably committed to apply under the terms of the contract to the payment of benefits by it to specific plan participants or beneficiaries or to the purchase of annuities for specific plan participants, adjusted for any accrued experience rating charges or credits, including expenses and administrative, sales and surrender charges provided for under the contract.

Note that in most unallocated GIC contracts, the insurer permits the contractholder to purchase annuities for plan participants upon termination of employment.

(b) This definition also may need to be coordinated with the limitation of liability of The Life Insurance Guaranty Corporation of New York in §7708 of the Insurance Law in the event of an Article 74 proceeding.

- (i) \$500,000 limit for all benefits, including cash values, with respect to any one life under a covered policy
 - (ii) \$1,000,000 limit for all benefits, including cash values, with respect to a group annuity contract (or portion of any such contract) that does not guarantee annuity benefits with respect to any specific individual identified in the contract.
- (c) If the issuing insurer performs all participant-level recordkeeping and the contract is solely funded by employee contributions, the Department must verify that the contract is not being issued on an unallocated basis as a subterfuge to avoid compliance with the provisions of the Insurance Law applicable to individual annuities (i.e., §§3219,4223, Regulation 127)
- (i) We regard all salary reduction contributions as employee contributions, notwithstanding the federal income tax characterization as employer contributions.
 - (ii) If the insurer performs participant level recordkeeping for all of the plan's funding options, including the stable value or fixed income option, an unallocated contract is permissible where the option is funded by two or more investment products of two or more insurers or other financial institutions.
 - (iii) If for each deposit window there is a bidding process for a stable value funding vehicle (i.e., GICs, BICs, Synthetic GICs), an unallocated contract may be appropriate even if it is funded solely by employee salary reduction contributions. For example, we have approved unallocated contracts funding the NYC and NYS Deferred Compensation Plans and have recognized that other local plans have reached a sufficient size to use unallocated contracts.

I.C) Excluded Contracts

C.1) List of Excluded Contracts

- (a) Group Deferred Annuity Contracts
- (b) Deposit Administration Contracts
- (c) Immediate Participation Guarantee Contracts
- (d) Group Annuity Contracts Subject to §4223
- (e) Allocated Group Annuity Contracts
- (f) Terminal Funding And Closeout Contracts
- (g) Group Funding Agreements
- (h) Group Variable Annuity Contracts
- (i) Traditional Separate Account Annuity Contracts
- (j) Regulation 128 Market Value Separate Account Contracts Funding Guaranteed Benefits
- (k) Book Value Separate Account Agreements
- (l) Synthetic Guaranteed Investment Contracts

(m)Group Fixed and Variable Annuity

C.2) Special Note:

The term *guaranteed interest contract* has been broadly defined to include all open-ended participating contracts, including immediate participation guarantee contracts and deposit administration contracts, as well as nonparticipating contracts including funding agreements and fixed rate / fixed maturity GIC contracts. See Regulation 151. **Except as noted herein, this product outline is not intended to apply to open-ended (evergreen contracts) which fall within the definition of Plan Type A contracts.**

Plan Type A : The policyholder may withdraw funds only (i) with an adjustment to reflect changes in interest rates or asset values since the receipt of funds by the insurance company, or (ii) without such adjustment but in installments over five years or more, or (iii) as an immediate annuity.

I.D) Key References

D.1) Insurance Law

§§ 1101, 1113, 3201, 3204, 3223, 4217, 4231, 4238, 4241, 6901.

D.2) Regulations

Regulation 34-A (11 NYCRR 219), Regulation 127 (11 NYCRR 44), Regulation 139 (11NYCRR 40), Regulation 151 (11NYCRR 99).

D.3) Circular Letters

CL 4 (1963), CL 6 (1963), CL 1 (1964), CL 12 (1976), CL 2 (1992), CL 14 (1997), CL 2 (1998), CL 8 (1999), CL 6 (2004).

II) Filing Process

II.A) General Information

A.1) Prior Approval Requirement

§3201(b)(1) provides that no policy form shall be delivered or issued for delivery in this state unless it has been filed with and approved by the superintendent *as conforming to the requirements of the Insurance Law* (standard and generally applicable provisions) and *not inconsistent with law* (federal and state statutory, regulatory and decisional law).

A.2) Discretionary Authority for Disapproval

§3201(c)(1) and (2) permits the Superintendent to disapprove any policy form that contains provisions that are misleading, deceptive, unfair, unjust, or inequitable or if its issuance would be prejudicial to the interests of policyholders or members. See also §§2123, 3209, 4224, 4226, 4238(e), 4231, 4239.

A.3) No Filing Fee

A.4) Self-Support Requirement

Upon its issuance each group annuity contract must appear to be self-supporting based on reasonable assumptions as to interest, mortality, and expense. See §4238(e).

II.B) Types of Filings

B.1) Prior Approval

Policy forms submitted under §3201(b)(1) of the Insurance Law are subject to the submission rules noted herein, especially Circular Letter Nos. 6 (1963) and 14 (1997). Submissions are generally handled on a first-in, first-out basis.

B.2) Alternative Approval Procedure

§3201(b)(6) and Circular Letter No. 2 (1998) provide for an expedited approval procedure designed to prevent delays by deeming forms to be approved or denied if the Department or insurer fail to act in a timely manner.

Circular Letter No. 2 (1998) provides that the certification of compliance should make reference to any law or regulation that specifically applies or is unique to the type of contract form submitted. An alternative would be to submit a certification of compliance with the applicable laws and regulations cited in this product outline. A statement that the filing is in compliance with all applicable laws and regulations is not acceptable.

B.3) Prior Approval with Certification Procedure

Circular Letter No. 6 (2004) provides for an expedited approval procedure based on an appropriate certification of compliance signed by an officer of the company in the format provided by Circular Letter No. 6 (2004). Certifications that have altered or otherwise modified the language of the certification will not be accepted.

The original signed certification must be provided. The form number of each form and the memorandum of variable material for each form must be listed in the body of the certification. For long lists, it would be acceptable to begin the list in the body of the certification and include the rest of the list in an attachment to the certification. However, it would be unacceptable to list all of the forms in a separate attachment.

The submission letters for paper submissions and the Filing Description for submissions made via the System for Electronic Rate and Form Filing (SERFF) will need to comply with applicable circular letter and product outline guidance.

Substitution filings/follow-up correspondence with post-approval form changes requested prior to initial issuance of forms will not be permitted for Circular Letter No. 6 (2004) filings.

Unless the Department has granted permission, the Circular Letter No. 6 (2004) process may not be used for unallocated group annuity products with an initial deposit in excess of \$50 million. See the Department's Filing Guidance dated 08/12/2009.

B.4) Out-of-State Filings

Pursuant to §3201(b)(2), domestic insurers must file with the Superintendent all unallocated group annuity contracts and funding agreements intended for delivery outside of the state.

II.C) Pre-filed Group Insurance Coverage - Circular Letter 1964-1

Circular Letter 64-1 permits insurers to provide or assume risk for group life and group annuity coverage prior to the filing or approval of such forms. The conditions include the following:

- C.1) Immediate coverage requested to meet specific need of contractholder.
- C.2) Insurer has reasonable expectation of approval or acceptance for filing. The reasonable expectation is usually based on the nature and extent of benefits provided and the similarity of the form (or provisions in the form) to other previously approved forms (or provisions) for the insurer or other insurers.
- C.3) Confirmation letter sent to contractholder by insurer stating:
 - (a) The nature and extent of benefits or change in benefits;
 - (b) The forms may be executed and issued for delivery only after filing with or approval by the Department;
 - (c) An understanding that, if such forms are not filed or approved or are disapproved, the parties will be returned to status quo insofar as possible, or the coverage will be modified retroactively to meet all requirements necessary for approval; and
 - (d) The effective date of coverage (Best Practice).
- C.4) Department Notification
 - (a) A statement explaining the circumstances and reasons for the delay in submitting the forms must be submitted within twelve months for group annuities.
 - (b) A follow-up statement must be submitted every six months until the form is submitted. If the reason for the delay is unacceptable, the Department may pursue a violation under §4241 for willful violation of the prior approval requirement.
- C.5) Recommended Practice
 - (a) It is recommended that insurers notify the Department of coverage within 30 days (i.e., copy of the confirmation letter) of coverage and submit forms within six months, notwithstanding the twelve month period noted in Circular Letter 64-1. (Best Practice).
 - (b) Insurers should review pre-filings periodically (monthly) to verify compliance with conditions for pre-filing.
 - (c) Insurers should vigorously pursue approval (or acceptance for out-of-state filings) of pre-filed cases after forms have been submitted to mitigate harm if forms are found not to comply with applicable requirements.

II.D) Preparation of Forms - Circular Letter 1963-6

D.1) Duplicates

Filings, except for SERFF, need to be made in duplicate. §I.E.7 of Circular Letter 63-6.

D.2) Form Numbers

Form numbers need to appear in lower left-hand corner of the cover page of the form. §I.D. of Circular Letter 63-6. The lower left-hand corner of the subsequent pages of the form should either contain the same form number as appears on the cover page or should be left blank. The subsequent pages should not contain form numbers that differ from the form number on the cover page.

D.3) Hypothetical Data

All blank spaces for policy forms need to be filled in with hypothetical data. § I.E.1 of Circular Letter 63-6.

D.4) Application

If an application will be attached to the contract, it must be submitted with the contract form for approval. If previously approved, the submission letter should so indicate. §I.E.4 of Circular Letter 63-6.

D.5) Final Format

Policy forms submitted for formal approval should be submitted in the form intended for actual issue. §I.F.1 of Circular Letter 63-6.

D.6) Submissions Made on Behalf of Company

If the filing is made on behalf of the insurer by another party, a letter authorizing the third party to act on behalf of the insurer must be provided. The letter must be:

- (a) on company letterhead or include the company name in the subject line of the letter;
- (b) specifically addressed to the New York State Department of Financial Services;
- (c) properly executed by an authorized officer of the insurer;
- (d) dated and either:
 - (i) specific to the file submitted for approval by including form number(s); or
 - (ii) generally applicable to all policy forms filed on behalf of the insurer as long as a copy of such authorization is included in each submission.

It is the insurer's responsibility to ensure that their authorizations are accurate and reflect their current relationship with the third party filer.

D.7) Incorporation by Reference

All incorporations by reference should be attached to or accompany the submission. See also §3204.

II.E) Submission Letters/SERFF Requirements

E.1) Caption Requirement

For paper filings, the "re" of the submission letter must identify each form and the memorandum of variable material for each form that is being submitted for

approval or filed for informational purposes and must be in compliance with Circular Letter No. 8 (1999). §3201(b)(6) (“Deemer”) filings must be identified in the “re” or caption. Circular Letter No. 6 (2004) filings must be identified in bold print in the body of the submission letter or in the “re” or caption.

For SERFF filings, please see the guidance available on the Department’s website at <http://www.dfs.ny.gov/insurance/serflife.htm>.

E.2) Submission Letters/SERFF Filing Description

Circular Letter No. 6 (1963) §I.G.

- (a) For paper submissions, the submission letter must be submitted in duplicate and signed by a representative of the company authorized to submit forms for the company.
- (b) For SERFF submissions, the Life Bureau no longer requires that a separate signed cover letter be included with submissions. Instead, any information that would ordinarily be included in the signed Cover Letter must be placed in the SERFF Filing Description. Inclusion of “Please see cover letter” or phrases of similar intent in the filing description section will not be considered as meeting the filing requirements.

Note: References in this outline to submission letter content requirements are also requirements for the SERFF Filing Description unless otherwise noted.

- (c) Advise as to whether or not form is replacing a previously submitted form. If there have not been a substantial number of changes, submit a highlighted copy showing the material differences or changes made to the form. If the changes are too extensive, then a highlighted copy is not required, but the changes must be identified in the submission letter. State whether the previously submitted form was approved, disapproved, withdrawn or otherwise disposed or is still pending approval (under review) with the Department and provide the form number and file number of the such form.
- (d) If a form submitted for approval had previously been submitted for preliminary review, a reference to the previous submission and a statement setting out either (a) that the formal filing agrees precisely with the previous submission or (b) the changes made in the form since the time of preliminary review. Submit a highlighted copy showing the differences or changes made to the form. A redlined copy is helpful.
- (e) If a form is intended to replace a very recently approved form because of an error found in the approved form and the approved form was not issued, the insurer may request to make a substitution of the approved form. The substitution request letter must confirm that the form has not been issued and identify the changes made to the corrected form. The insurer may, under these circumstances, use the same form number on the corrected form being submitted. If the original form was approved in paper format the insurer must also return the stamped original of the approved form to the Department. If, however, the form has been issued, the insurer must place a new form number on the corrected form and need

not return the previously approved form. This option is not available for policy forms approved under Circular Letter 6 (2004) filings.

- (f) If the form being submitted is other than a contract (i.e. rider, endorsement, or insert page), give the form number of the contract with which it will be used, or, if for more general use, describe the type or group of such forms as well as whether the pending form(s) will be used with new and/or previously issued/delivered contracts.
- (g) When the policy form is designed as an insert page form, the insurer must submit a statement of the mandatory pages which must always be included in the policy form, and a list of all optional pages, if any, including application forms, together with an explanation of how the form will be used (previously approved forms should be identified by form number and approval date). We object to a company's use of the matrix approach that identifies benefit provisions within a document with separate form numbers. See Circular Letter No. 6 (1963) §I.G.8. and Circular Letter No. 4 (1963) §I.A.2.
- (h) A statement as to how the form will be used as described in Circular Letter 1976-12.
- (i) A description of the benefits/coverage provided. Circular Letter No. 6 (1963) §I.G.2 and 7.
- (j) A description of the type of group contractholder, identified by the relevant paragraph of §4238(b). The statement that the forms are for use with all eligible groups should be avoided.
- (k) A statement describing the type of pension plan or other program funded by the contract.
- (l) Submission letters should be as detailed as possible explaining any innovative or unique products or features and any special markets intended. (In general, an innovative or unique product or feature would include one that has not been previously approved by the Department for the insurer).
- (m) If the contract does not comply with a specific product outline provision or if the Company has an alternate interpretation of a product outline provision, the submission letter must identify the provision and provide a complete explanation of the Company's position on the issue. Such submissions may not be submitted through the Circular Letter No. 6 (2004) certified process unless the Department has given permission.

E.3) Resubmissions

If the contract has been previously submitted to the Department and the file was closed or withdrawn, any resubmission of the contract to the Department must be complete by itself, reference the file number of the previously closed file and address all outstanding issues in the new submission letter.

E.4) Circular Letter No. 14 (1997)

Filings that are incomplete or do not comply with laws and regulations will be closed. See Circular Letter No. 14 (1997). Note: a product that does not

comply with a specific product outline requirement or which is considered a substantive noncomplying product will be a factor in determining whether a file will be closed, unless a noncompliance explanation is included in the submission letter.

E.5) Informational Filing

An informational filing should be identified in the “Re” of the submission letter. All informational filings will be acknowledged by the Department indicating that the information submitted has been placed on file with the Department for informational purposes only. The company should wait for the acknowledgement from the Department that the information has been filed prior to its use. For the submission of an informational filing through SERFF, the company should use a SERFF TOI of “Life – Informational”, a SERFF Sub-TOI of “Form or Rate Related”, a SERFF Filing Type of “Form”, and a SERFF requested Filing Mode of “Informational”.

II.F) Attachments

F.1) Memorandum of Variable Material

The submission must include a separate detailed Memorandum of Variable Material to explain any variable material in the policy forms other than illustrative material (i.e. names, dates, etc). The Memorandum of Variable Material is subject to approval and must comply with all substantive and procedural filing guidance issued by the Department.

- (a) Variable material must be clearly indicated in the forms (i.e., with bracketing or underlining). How material is designated as variable should be stated in the Memorandum of Variable Material.
- (b) The Memorandum of Variable Material should be drafted in sufficient detail to determine the scope of variation for each variable item. Where text is variable, the memorandum should include alternative text and/or an explanation of when the bracketed text will be omitted from the form. Similarly, variable numerical items should include the range (i.e. minimum and maximum) of variation. An explanation of variable material that the variations "will conform to law" or "as requested by the policyholder" is not acceptable.
- (c) It should be clear which item in the explanation corresponds to which variable item in the form. One option would be to number the items in the explanation of variable material and place the number of the item from the explanation next to the corresponding variable item in the form.
- (d) Open-face riders or endorsements may be filed for general use in amending illustrative or variable material within the scope of the approved memorandum of variable material for the form being amended. The memorandum should include an explanation to that effect.

F.2) No Readability Requirement

§3102(b) excludes any group annuity contract which serves as a funding vehicle for pension, profit sharing or deferred compensation plans. However, group annuity certificates are not exempt.

F.3) Group Annuity Summary Sheet

A completed summary sheet must be included with the submission regardless of the submission method. The summary sheet is available on the Department's website at:

http://www.dfs.ny.gov/insurance/life/product/ga_summary_08032012.pdf

III) Eligible Group Requirements

It is the insurer's responsibility to determine whether the definitional requirements in § 4238(b) for an eligible group are satisfied at the time of issue and thereafter.

III.A) Definitions

A.1) "Group Annuity Contract"

Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable dependent upon the continuance of the lives of more than one person. §4238(a).

(a) We view group contracts that provide for the purchase of annuities or the payment of annuity benefits for plan participants or their beneficiaries to be group annuity contracts.

(i) The terminology used in §§3223 and 4238 was drafted to apply to group deferred annuity contracts which are rarely sold today.

(ii) Plans funded by group annuity contracts include 401(a), 401(k), 457, 414(d), and 403(b), among others.

A.2) "Contractholder"

The party or parties to whom or to which the contract is issued. §4238(a).

A.3) "Annuitant"

Any person upon whose continued life such annuity is dependent. §4238(a).

A.4) "Participant"

Any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

A.5) "Annuities"

All agreements to make periodical payment for a period certain or where the making or continuance of all or some of a series of such payments, or the amount of such payment depends upon the continuance of human life. § 1113(a)(2).

A.6) "Employee"

Include retired employees, employees of affiliates and subsidiaries of the employer, individual proprietors affiliated with the employer, and partners and

employees of individuals affiliated with the employer and of firms controlled by the employer. §4238(c).

III.B) Types of Contractholders

B.1) Employer Group §4238(b)(1).

B.2) Employers' Association Group §4238(b)(2).

B.3) Labor Union Group §4238(b)(3).

B.4) Employer/Labor Union Trust Group §4238(b)(4).

Note: The trust must be established by an eligible entity. It cannot be merely participated in by such entities. Contrast this requirement with §4238(b)(7).

B.5) Association Group (Common interest, calling or profession) §4238(b)(5).

B.6) IRA – §4238(b)(6)

B.7) Other Employer Trust §4238(b)(7).

(a) Contract issued to the trustees of one or more trusts for employees of one or more employers

(b) Not a trust described in §4238(b)(4) (i.e., not “established by” an employer, employers’ association, labor union or Taft-Hartley Trust)

(c) If payments are derived wholly from funds contributed by such employees, the insurer must issue a certificate complying with the requirements of the Insurance Law applicable to individual annuities for delivery to each employee who contributes to the contract. (See §§ 3219, 4223 and Regulation 127).

B.8) Foundation or Endowment Fund Groups §4238(b)(8)

B.9) Affinity Association – §4238(b)(9)

B.10) Financial Institution – §4238(b)(10)

B.11) Plaintiffs or Claimants – §4238(b)(11)

III.C) Non-Recognized Groups

Section 4238 was not modernized to permit Discretionary Groups like those permitted for group life insurance in § 4216(b)(14) and for group accident and health insurance in §4235(c)(1)(M). As such, groups that fail to satisfy the definitional requirements in §4238(b) of the Insurance Law are not recognized groups under the Insurance Law. Such group annuity contracts cannot be delivered in this state. However, certificates covering New York residents under such group annuity contracts delivered out-of-state must be delivered in this State pursuant to §3219(b). Group annuity certificates delivered in this state that are funded solely by individual contributions must comply with the provisions of the Insurance Law applicable to individual annuities. Such certificates should be submitted for review and approval. The group annuity contract should be submitted as well. It will be reviewed to ensure that the contract and certificate are not inconsistent. The contract cannot include provisions that invalidate or impair the terms of the certificate.

III.D) Unauthorized Insurers

- D.1) §1101(b)(1) prohibits unlicensed insurers from doing an insurance business in this state by mail or otherwise.
- D.2) §1101(b)(2)(B) provides an exception (referred to as the “group exception”) to the prohibition in §1101(b)(1) for certain types of group insurance issued outside of New York. The group exception applies to group annuity contracts where the group conforms to the definitions of eligibility in §4238(b), except paragraphs (6) and (7), and the master contracts were lawfully issued without this state in a jurisdiction where the insurer was authorized to do an insurance business.
- D.3) §1101(b)(2)(B) group exception to mail order prohibition does not apply to group annuity contracts funding:
 - (a) IRC § 408 contracts (IRAs);
 - (b) IRC § 403(b) Tax Sheltered Annuities, and
 - (c) Plans under which payments are derived wholly from funds contributed by the persons covered thereunder.

IV) Contract Provisions

IV.A) Cover Page of the Contract and Certificate

A.1) Company’s Name and Address

- (a) The New York licensed insurer’s name must appear on the cover page (front or back).
- (b) Full street address of the company’s Home Office (bracketed or underlined to reflect possible future changes) for disclosure purposes on the front or back cover page of the contract. For changes applicable to new business, an information filing is required. For changes applicable to existing business, an endorsement setting forth the new address must be submitted for approval and sent to all holders of in-force contracts. Please refer to the guidance available on the Department’s website.
- (c) In addition to the home office address, the full street address of the administrative or service office (if different than the home office address) may be set forth on the front or back cover of each contract. The administrative or service office address, if any, should be bracketed or underlined to reflect possible future changes. (An informational filing is required for such changes.)
- (d) The forms must exclude any references to an insurer not licensed to do business in New York. §3201(c)(1).
- (e) If the name of another entity is included on the cover page (insurance group designation, name of the licensed parent company or licensed affiliate, etc.) or if a logo, trademark or other device is included, such name or device shall not be displayed in a manner that would have a tendency to mislead or deceive as to the true identity of the insurer, or create the impression that someone other than the insurer would have any

responsibility for the financial obligations under the contract. See §3201(c)(1). This would apply to applications as well.

A.2) Form Identification Number

A form identification number (consisting of numerical digits, letters or both) must appear in the lower left-hand corner of the cover page pursuant to §I. D. of Circular Letter No. 6 (1963). (Each form number should be sufficiently unique so as to distinguish the form from all others used by the insurer.

A.3) Brief Description of Contract

Participation Status (Applicable only to the Contract)

- (a) A description of the contract, such as “Guaranteed Interest Contract”
- (b) There must be a statement indicating whether the contract is participating or nonparticipating in the divisible surplus of the company. This requirement generally applies to contracts funded through the insurer’s general account. See §II.F.1. of Circular Letter No. 4 (1963).

A.4) Officer’s Signatures

- (a) The signature of at least one officer of the company is needed to execute the contract as a matter of contract law.
- (b) Signatures should be denoted as variable material.

IV.B) Standard Provisions

Pursuant to §3223, every group annuity contract delivered or issued for delivery in this state and every certificate used in connection therewith shall contain in substance the following provisions to the extent that such provisions are applicable or provisions which are more favorable to the annuitants, or not less favorable to annuitants and more favorable to the contractholders:

B.1) Grace Period-§3223(a)

There shall be a 31-day grace period following the due date of any required payment after the first payment within which the payment may be made. During such grace period, the contract shall continue in full force.

- (a) This provision applies to GICs with a deposit window.
- (b) It also applies if a payment is required to pay any fee or expense charges.
- (c) If the contract continues in force without penalty, no grace period provision is necessary.
- (d) See liquidated damages provision below. IV.D.2.

B.2) Entire Contract-§3223(b)

A provision specifying the document or documents, which shall include the contract and, if a copy is attached thereto, the application of the contractholder, constituting the entire contract between the parties. See also §3204.

Many GICs have deposit agreements or deposit riders. These forms must be attached to the contract. If the initial deposit account terms are bracketed and

there is a satisfactory explanation of variables, the deposit agreement and/or rider need not be resubmitted for new deposit windows or deposit cells.

B.3) Misstatement of Age or Sex-§3223(c)

A provision for the equitable adjustment of the benefits payable or of the payments to be made to the insurer if the age or sex of any person, or of any other fact affecting the amount or date of payment by or to the insurer has been misstated.

- (a) The Arizona vs. Norris decision held that Title VII of the Civil Rights Act of 1964 prohibits an employer from offering its employees a retirement benefit option where a woman is paid a lower monthly retirement benefit than a man who has made the same contributions.
- (b) We have permitted misstatement provisions which omit the reference to sex.
- (c) §3219(a)(5) requires that the interest rate to be charged or credited to underpayments and overpayments be specified in the contract and cannot exceed six percent. (Best Practice)--The §3223(c) provision should also state whether and how much interest will be charged against or credited to such underpayments and overpayments. The rate for overpayments may not exceed the rate for underpayments. We may question any rate above six percent.

B.4) Retired Life Certificate-§3223(e)

A provision stating that the insurer shall issue for delivery to each person to whom annuity benefits are being paid thereunder a certificate setting forth a statement in substance of the benefits to which such person is entitled under the contract. See §3223(e).

- (a) The retired life certificate should include the following provisions:
 - (i) Entire contract provision.
 - (ii) Misstatements provision.
 - (iii) A provision identifying the insurer, including the mailing address.
 - (iv) A provision describing the annuity benefit and any limitations, if any, on the insurer's guarantees with respect to such benefit, including the amount and frequency of annuity payments, the minimum number of payments, any refund features and survivorship rights, etc.
 - (v) A facility of payment provision. Note that such provision should not conflict with Article 81 of the New York Mental Hygiene Law and the Americans with Disabilities Act. In New York, until a person is found to be legally incompetent to handle annuity payments and no guardian has been appointed, the insured is entitled to such payments.
 - (vi) A beneficiary provision.

- (b) §3223(e) requires delivery of a certificate to each person to whom annuity benefits are being paid. This requirement is not dependent upon whether or not such annuity payments are guaranteed. For example, certificates would be required where the contract provides for annuity benefits that are not guaranteed by the insurer and are paid by the insurer at the direction of the contractholder. If non-guaranteed annuity benefits are provided, the retired life certificate must clearly disclose any limitations on the insurer's guarantees under the certificate.
- (c) The retired life certificate should be submitted for review, unless a previously approved certificate will be used. In such case, the submission letter should specify the form number, file number and approval date. Please note that retired life certificates are considered policy forms as defined in §3201(a).

Note that no active life certificate is required for unallocated GICs because the contract does not provide for the maintenance by the insurer of one or more accounts for each plan participant/annuitant. See §3223(d).

IV.C) Plan Benefit Rule Provisions In Regulation No. 139

C.1) Plan Benefit Rule -- §40.4(a) of Regulation 139

Any contract issued in connection with a defined contribution plan which provides the contractholder with the right to withdraw from the contract the amounts required to pay lump sum benefits of the participant's individual account balance as they arise in accordance with the provisions of the plan upon bona fide termination of employment must provide for such withdrawals to be made on a basis pursuant to which neither the amount withdrawn from the contract nor the amount of the remaining principal balance of the accumulation fund following such withdrawal is adjusted to reflect changes in interest rates or asset values since the receipt of funds.

- (a) GICs do not need to be benefit responsive. However, if the contract is benefit responsive, it must comply with this rule.
- (b) The lump sum payment cannot be subject to a market value adjustment.
- (c) The interest rate credited cannot be affected by such withdrawals until the next reset.
 - (i) We have approved an interest adjusted withdrawal provision, which permits the insurer to recognize the gain or loss due to the difference between the actual and expected plan withdrawals in calculating the next reset rate. As long as the estimated withdrawal activity is factored into the guarantees, we believe that there is good faith compliance with §40.4(a) because the initial rate guarantee will not be illusory or misleading. For deposit administration contracts, this feature is the norm.
 - (ii) We have also approved "make whole" provisions which require repayment of withdrawals from the contract from the next available cash flow as long as there is no penalty for nonpayment.

- (d) We have permitted graded surrender charges primarily in GIC-2 contracts that are designed solely to recoup acquisition expenses.
 - (i) The insurer should describe all acquisition expenses and explain how such expenses will be amortized (i.e., identify the charge and recoupment period) so that we can verify that the charge is not excessive and does not reflect other factors such as disintermediation, liquidity, cash flow, asset depreciation etc.
 - (ii) Generally, the charge must be premium based, that is, not based on the accumulation value. We will permit accumulation based charges that are capped at a percentage of premium (not to exceed the percentage that reflects acquisition expenses) which gradually reduce as acquisition expenses are recouped.
 - (iii) Please note that no surrender charge is permitted if the participant's account value is applied to purchase an annuity.

C.2) Betterment of Rates -- §40.4(b)

For any group annuity contract funding a defined contribution plan, the contract must provide that any annuity benefit purchased with respect to an amount equal to the plan participant's account value as determined at the time of its commencement shall not be less than that which would be determined by the application of such amount to purchase a single consideration immediate annuity offered by the company to the same class of contracts.

- (a) The betterment of rates provision ensures that annuities will be purchased on a new money basis. As such, GICs funding defined benefit plans should also include this provision to the extent that annuities are provided for under the contract. If the contractholder cannot purchase annuities on a new money basis, it can be argued that the interest rate guarantees are misleading.
- (b) This provision/concept was borrowed from §4223(a)(1)(E) of the Insurance Law , except that the entire accumulation value is applied to provide the annuity.
- (c) §4231(e)(1) and (g)(2) address the issue of whether the annuities must provide for the distribution of dividends.
 - (i) Pursuant to §4231(e)(1), any policies or contracts described in §4231(g)(2) and deferred annuity providing a period of deferment of annuity payments not in excess of one year can be issued on a nonparticipating basis.
 - (ii) §4231(g)(2) provides, in part, that dividends need not be distributed on any deferred annuity contract for the period following the period of deferment of annuity payments nor on any group annuity contract providing deferred annuities for a class or classes of participants in a qualified pension or profit sharing plan who have terminated their participation under such plan, or with respect to which class or classes further contributions have been discontinued under the plan and notice of such discontinuance has been given to the

commissioner of internal revenue (or regulatory authority of such other jurisdiction).

C.3) Allocated Share of Benefit Payments -- §40.4(c)

In the event that there is more than one funding vehicle or cash is available under a defined contribution plan, a contract need not provide for withdrawals (in accordance with the plan benefit rule) in an amount in excess of the contract's allocated share of benefit payments as determined pursuant to the agreement of the insurance company and contractholder.

- (a) This provision operates much like a coordination of benefits provision. If the contract is silent as to its allocable share, benefits will be paid as if it is the only funding vehicle.
- (b) We have approved last-in, first-out provisions; first-in, first-out provisions; pro-rata provisions; buffer fund provisions and combination provisions.

C.4) Participant Directed Investment Option -- §40.4(d)

In the case of a contract which funds a participant directed investment option under which each contribution allocated to such option is credited with a specified rate of interest to a stated maturity date which rate and maturity date are disclosed to the participant prior to the allocation, such contract may provide that any withdrawals (other than withdrawals on account of bona fide termination of employment due to death or disability of the participant on whose behalf the withdrawal is made) be postponed until the stated maturity date for the contribution.

- (a) In such cases, the contract may permit withdrawals prior to maturity for the contribution that are subject to a negative market value adjustment and/or surrender charge. We have not required positive market-value adjustments.
- (b) Such contracts must have at least one option for participants age 55 and over on the date contributions are received where the maturity date will not exceed five years. The "age 55" rule in §40.4(b) is similar to §44.3(t) in Regulation No. 127.
- (c) The exception to the plan benefit rule is intended to recognize contracts that are similar to modified guaranteed annuities authorized by Chapter 864 of the Laws of 1985 and Regulation 127.

Note that in contracts subject to §4223 and Regulation 127 the MVA must be positive as well as negative.

C.5) Plan Amendments or Changes In Plan Administration -- §40.4(e)

If the plan terms or the manner in which plan is administered materially change after issue, withdrawals from the contract to pay plan benefits are not subject to the plan benefit rule.

- (a) Contracts should include this provision to protect against antiselection.
- (b) If the insurer determines that the amendment or change will not adversely affect the insurer's rights and liabilities under the contract, benefit payments will continue to be subject to the plan benefit rule.

C.6) Bona Fide Termination of Employment -- §40.4(f)

- (a) The contract can include procedures or conditions in order to establish that a requested contractual withdrawal is being made in accordance with a bona fide termination of employment and in accordance with the plan provisions. Termination of employment means the cessation of an employment relationship with an employer, multiple employer or membership in an employee organization sponsoring the plan, including cessations due to retirement, death, and disability.
- (b) Termination of employment does not include:
 - (i) Any temporary absence,
 - (ii) A change in position or other occurrence qualifying as a temporary break in service under the plan,
 - (iii) Transfer or other change of position resulting in employment by an entity controlling, controlled by, or under common control with the employer,
 - (iv) Cessation of an employment relationship resulting from a reorganization, merger, or sale or discontinuance of all or any part of the plan sponsor's business. (The risk for these transactions are typically not considered by the insurer in making the guarantees provided in the contract. Such transaction may result in unexpected withdrawal activity that was not priced for when the contract was issued.)
 - (v) Plan termination or partial plan termination.

IV.D) Other Provisions

D.1) Market-Value Adjustment Provision

- (a) §40.2(o) of Regulation 139 defines market-value adjustment as an adjustment for increasing or decreasing the accumulation fund in the event of full or partial surrender or contract termination to reflect changes in interest rates or asset values since the receipt of funds by the insurer according to a formula described in the contract. §3204- Entire Contract of the Insurance Law requires that the MVA formula be incorporated in the contract or attached to the contract.
 - (i) The market-value adjustment formula should be sufficiently clear so that the contractholder can calculate the adjustment at any time.
 - (ii) The factors used in the calculation should be sufficiently definite and not based items solely within the insurer's discretion. For example, the formula can refer to an outside index or to rates guaranteed or credited under the contract. If the formula referred to the insurer's earnings rate on supporting assets, we would require justification because the contractholder cannot verify such rate.
- (b) Note that §40.5(i) of Regulation 139 which gives the insurer in certain contracts the right to change the method for determining the market-value adjustment upon at least 31 days prior written notice to the contractholder,

does not apply to GICs. Since GICs provide for a specified maturity there is no need to make any unilateral change in the formula.

Of course, the insurer can amend the formula for new deposit windows under the same contract. The contractholder can agree to the change by continuing to make deposits under new deposit riders or agreements.

- (c) Liability-Based Formula -- For GICs, insurers should consider only using liability based adjustment formula. In Prohibited Transaction Exemption 81-82, the U.S. Department of Labor granted an exemption from the prohibited transaction rules for separate account GICs. The DOL did not believe that any market-value adjustment requirements were necessary for separate account GICs “so long as the adjustment is not made with reference to the investment performance of a separate account”.
 - (i) This exemption was repealed when the plan asset regulation was promulgated. §2510.3-101(h) carves out an exception for separate accounts that are “maintained solely in connection with fixed contractual obligations of the insurance company under which the amounts payable, or credited, to the plan and to any participant or beneficiary of the plan (including an annuitant) are not affected in any manner by the investment performance of the separate account”.
 - (ii) Asset-based market-value adjustment formulas in general account GICs may raise concerns with the DOL. In any event, the standards applicable to market-value adjustments should be the same for general account and separate account GICs. All of the early separate account GICs were funded through “book value” separate accounts.
 - (iii) We may question an asset-based formula if the assets do not appear to closely match the contractual guarantees, especially with respect to duration.
 - (iv) Regulation 127 provides guidance with respect to liability-based market-value adjustments.
- (d) Two-Way MVA Not Required – Although Regulation 127 requires a two-way market-value adjustment for contracts subject to §4223, we have not made this requirement applicable to GICs.

D.2) Liquidated Damages Provision

§40.2(m) of Regulation 139 defines liquidated damages as the charges or adjustments which may become applicable in the event contributions are not made in the amounts or on the dates specified in the contract and which reasonably reflect the actual losses anticipated by the insurer in making commitments in advance of the receipt of the specified contributions. A liquidated damages provision is an alternative to contract termination in the event that the contractholder fails to make a scheduled contribution.

- (a) We have objected to provisions that provide for a fixed charge or fixed interest rate reduction for any such failure to contribute

- (b) The method for calculating the charge should be set forth in the contract. The contractholder should be able to calculate the adjustment from the terms of the contract. Many insurers use an explicit formula similar to the market-value adjustment formula.

D.3) Dividend Provision

For participating GICs, we have permitted language to the effect that due to the nature of guarantees under the contract no dividends are anticipated.

Insurers typically credit GICs with a current or spot rate, in which no interest in excess of the rate guaranteed is anticipated.

D.4) Non-Benefit Related Withdrawals and Transfers

For withdrawals that are not subject to §40.4(a), an insurer should protect against anti-selection. Such withdrawals are usually subject to a negative market-value adjustment.

We have permitted insurers to make a certain percentage of such withdrawals from 10% to 20% on a book value basis annually. This percentage is often called the free corridor amount.

D.5) Clone Contract Provision

We have approved provisions that provide for the issuance of a substantially similar GIC with the same maturity date and interest rate in the event of a partial termination triggered by a reorganization, merger, or sale or discontinuance of all or part of the plan sponsor's business.

- (a) The clone contract should satisfy the insurer's underwriting requirements.
- (b) The cost of the conversion can be prorated among the two surviving contracts or covered by the plan sponsor. In any event, the actual charges, if any, should be specified in the contract.

D.6) Competing Funds Provision

We have approved provisions which limit deposits and/or transfers to competing fixed income funds offered by the plan to plan participants.

This provision is designed to ensure that all scheduled deposits are made to the contract and to prevent transfers to other fixed income or stable value funds when interest rates increase.

D.7) Liquidity Protection Provision

Solvency concerns for insurers necessitate the inclusion of a contractual liquidity protection provision in all benefit responsive GICs and all other GICs that permit withdrawals prior to maturity. The Department and insurers need to monitor the liquidity exposure in their GIC portfolio and other liquid group annuity contracts. The market-value adjustment formula (even if liability-based) may reflect a close approximation of the market value of supporting assets under normal circumstances; but it may not reflect the liquidation value if assets need to be sold in times of distress.

- (a) A six month deferral provision is most common.

- (b) A contractual provision that gives the insurer the option on the maturity date of paying funds in lump sum or installments over five years or less is approvable.
- (c) An insurer should consider a diversification requirement applicable to contractholders. No single contractholder, such as GIC broker should have a disproportionate share of the insurer's liquid contracts.

V) Department Interpretations

V.A) Maximum Window Period

We have permitted deposit windows for recurring deposits of up to two years, without requiring any actuarial justification.

- A.1) When the deposit window exceeds two years, an actuarial demonstration that the contract can be hedged will be requested.
- A.2) For deposit windows that exceed two years, if the required deposits are not fixed in the contract, the contract should specify the minimum and maximum deposits as well as the ratio of initial deposits to the deposit maximum. If the range between the minimum and maximum deposit is too wide, the contract will be impossible to hedge.

V.B) Maximum Guarantee Period

We have limited the guarantee duration attributable to any deposit cell in GIC contracts to ten years, but we are willing to reconsider this requirement on an exception basis. Any GIC with a guarantee duration longer than ten years may not be filed under the Circular Letter No. 6 (2004) procedure without the Department's permission.

- B.1) No surrender charge should apply at the expiration of the interest rate guarantee. Otherwise, the interest rate guarantee can be viewed as misleading (i.e., the interest rate guarantee should be calculated so as to amortize any charges prior to maturity).
- B.2) We have permitted installment payments to be made over a period in excess of five years as long as the total guarantee period does not exceed ten years.

V.C) Credit Rating Downgrade Provisions

C.1) Circular Letter No. 2 (1992) states that the Department will not approve a credit rating bailout provision which would permit the contractholder to terminate the contract prior to maturity at book value in the event the insurer's credit rating is downgraded. The provision is considered unfair, unjust and inequitable pursuant to §3201(c)(2).

- (a) Waiver of a surrender charge or market value adjustment upon credit rating downgrade would be unfair, unjust and inequitable to persisting contractholders who would be required to subsidize the withdrawal activity of other contractholders. Surrender charges and market-value adjustments are designed to protect against disintermediation.
- (b) A credit rating bailout provision would enhance the probability of a panic run that could impair or threaten the solvency of the insurer and result in regulatory intervention under Article 74.

- C.2) Circular Letter No. 2 (1992) also states that we will disapprove any such provision submitted by a domestic insurer for use outside of New York on the grounds that the issuance would be prejudicial to the interests of policyholders pursuant to §3201(c)(6).
- C.3) We have disapproved any credit rating downgrade provision included in a GIC funding a pension plan that gives the contractholder the right to terminate a contract prior to maturity even if the withdrawals are subject to a negative market-value adjustment because the provision will increase the risk of disintermediation.

V.D) Market Value Make-Up/Advance Interest Credit Provisions

- D.1) The Department has permitted provisions that enable insurers to credit an initial book value amount in excess of the actual contribution to the contract. The amount of the excess credit is equal to the market-value adjustment charged on the transfer of funds from the plan sponsor's terminating contract. The excess credit, also called a book-in, allows the plan sponsor to maintain book value accounting at the plan participant level. In order to recoup the excess credit, the insurer will credit a reduced interest rate designed to amortize the excess credit over the life of the contract.
- D.2) The Department has permitted the use of these provisions under the following conditions and circumstances:
 - (a) The advance interest credit or book-in amount cannot exceed 5% of the market value of the amount deposited. The Department will consider book-ins that exceed this amount on a case-by-case basis taking into account the safeguards in place to address the risk assumed by the company.
 - (b) The book-in provision can only be used with unallocated contracts funding defined contribution plans and the funds cannot derive from equity separate account agreements. This provision should not be used to recover losses on equity investments.
 - (c) The insurer must not be proactive in using book-ins as a marketing strategy. Book-ins should only be used as a business conservation measure or in limited cases at the request of a plan sponsor. Book-ins used in connection with new business should represent a small percentage of new business and only a small number (i.e., less than ten) per year. As an alternative, we would consider an aggregate book-in limit, the amount of which will depend on the circumstances of each insurer.
 - (d) The contract must provide that in the event that the contract is terminated or discontinued prior to the date on which the advance credit is fully amortized, the unrecouped amount will be deducted as a separate charge prior to any final payment to the contractholder.
 - (e) The insurer must notify the Department each year of the circumstances of each book-in, including the credit provided (dollar value and as a percentage of the initial deposit), the amortization period and the source of funds (business conservation or new business). Such notification is not required if the insurer has (1) fewer than 20 book-ins per year or a total

book-in amount of less than \$5 million per year and (2) an aggregate book-in amount of less than \$25 million.

V.E) Purchase Rate Guarantee/Unilateral Change

The mortality and interest basis for guaranteed purchase rates must be stated in the contract. Companies can make unilateral changes in guaranteed annuity purchase rates for new contributions. This is required as it would be if §4223(a)(1)(C) was applicable.

Although we have approved expense loads in the past, we may question and require justification for the use of any expense loading when conservative guaranteed purchase rates are used. It can be argued that such loading does not comply with §40.4(a) of Regulation No. 139.

VI) Advertising and Disclosure

VI.A) Regulation 139 §40.3

A.1) Written statement and/or specimen contract with a statement citing location in contract of disclosures required by paragraphs (1),(3),(4),(5),(6),(9) and (10) of §40.3(b) of Regulation 139. See §40.3(a)

- (a) Statement indicating any restrictions as to amount and timing of contributions, and penalties for non-payment. §40.3(b)(1)
- (b) Description of the right to discontinue contributions to contract, and penalties resulting from such action. §40.3(b)(2)
- (c) Statement of all current fees and charges that are or may be assessed against the contractholder or deducted from the contract, including a description of the extent and frequency to which such fees and charges may be modified and the extent to which they take precedence over other payments. §40.3(b)(3)
- (d) Statement of the interest rates and/or method of determination of rates and a description as to how any withdrawals, transfers or payments will affect the amount of interest credited. §40.3(b)(4)
- (e) Description of expense, interest and benefit guarantees under the contract and any rights to modify or eliminate such guarantees, including the right to apply surrender charges or market-value adjustments to plan benefit payments if there are plan amendments or changes in the manner of plan administration. §40.3(b)(5)
- (f) Description of the contractholder's and participant's right to withdraw funds (or apply to purchase annuities), along with a description of any charges, fees or market-value adjustments applicable to such withdrawals or a statement that no such withdrawals or payment are permissible prior to maturity or the happening of a certain event. §40.3(b)(6)
- (g) Statement indicating any pro rata, percentage or other limitations which may apply to benefit payments to be purchased or provided under the contract when the plan is not funded entirely under the contract. §40.3(b)(7)

- (h) Statement that contractholder or participant withdrawals under the contract are to be made in a FIFO or LIFO basis or other applicable basis. §40.3(b)(8)
- (i) Statement that the contract may be amended, including any right of the insurer to unilaterally amend the contract. §40.3(b)(9)
- (j) Statement, if applicable, that any dividends and experience rate credits are subject to the insurer's discretion. § 40.3(b)(10)
- (k) Statement, if applicable, concerning supporting asset's affect on withdrawal timing. § 40.3(b)(11)
- (l) Statement that the contractholder or plan sponsor is solely responsible for determining whether the contract is a suitable funding vehicle. §40.3(b)(12)
- (m) Statement, if applicable, that the insurer does not have responsibility to reconcile participants' individual account balances with the accumulation fund balance where the insurer does not maintain individual account balances. §40.3(b)(13)

VI.B) Rules Governing Advertisements of Life Insurance and Annuity Contracts

See Regulation 34-A.

VII) Additional Matters

VII.A) IRC § 457 Public Deferred Compensation Plans

A.1) See New York State Deferred Compensation Board Rules 9 NYCRR 9000 et seq.

- (a) No plan shall permit any distribution option that provides for installment payments over a period measured by one or more natural lives. See §9001.4(b).
- (b) Loans are allowed to the extent in compliance with IRC §§457 and 72(p) only if the plan permits and establishes clear procedures for administration of loans. See §9001.4(d).
- (c) Maximum contract term for NY State Deferred Compensation Board is five years unless the contract falls under certain exceptions set forth in the Board Rules. See §9003.5.
- (d) No penalties or surrender charges are permitted at the expiration of the contract or agreement for the transfer of assets. See §9003.5(a)
- (e) Contracts subject to a competitive bidding process on issue and renewal. See §9003.1 and 2.
- (f) Every contract must contain a provision that it is subject to the plan and regulation, and that such plan and regulation are made a part of the contract. See §9006.2.

VII.B) 12 CFR 9 Fiduciary Powers of National Banks

The Office of the Controller of the Currency requires that a federally-chartered bank permit commingled fund investors to withdraw from the fund with twelve months' notice.