



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

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**Individual Variable Life Insurance Product Outline
(Last Updated March 8, 2013)**

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Product Outline: Individual Variable Life Insurance (Last Updated March 8, 2013)

This outline is current as of March 8, 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 product outline applies to all individual variable life insurance policies delivered or issued for delivery in New York. In this outline, “variable life insurance” includes variable universal life insurance. This outline replaces the Individual Variable Life Product Outline last updated 7/28/2010. The requirements and guidance in the Individual Universal Life Product Outline apply to the general account of a variable universal life insurance policy.

II. Filing Process**II.A) General Information****A.1) Prior Approval Requirement**

Section 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

Sections 3201(c)(1) and (2) permit the Superintendent to disapprove any policy form that contains provisions that are misleading, unfair, unjust, or inequitable or if its issuance would be prejudicial to the interests of policyholders or members.

A.3) No filing fee required.**A.4) An insurer must be qualified to issue variable life insurance policies in accordance with the requirements of Section 54.2 of Regulation 77. A plan of operations must be filed with the Life Bureau’s New York City office. Section 4240(e); Section 54.2 of Regulation 77.****A.5) Except as otherwise provided by the Superintendent, the filing and approval requirements applicable to individual general account life insurance policies shall, to the extent appropriate, be applicable to individual variable life insurance policies. Section 54.5 of Regulation 77.****A.6) Policies with cost or benefit elements at the discretion of the insurer are not required to be participating policies because of the exemption provided by Section 4231(g)(1)(C) for policies that comply with 4232(b). See Section 54.5 of Regulation 77. If a policy does**

not have elements at the discretion of the insurer, requirements related to discretionary elements are not applicable.

II.B) Types of Filings

B.1) Prior Approval

Policy forms submitted under Section 3201(b)(1) are subject to the submission rules noted herein, especially Circular Letter Nos. 6 (1963) and 14 (1997).

B.2) Alternative Approval Procedure

- (a) Section 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 fails to act in a timely manner.
- (b) 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

- (a) Circular Letter No. 6 (2004) provides for an expedited approval procedure based on an appropriate certification of compliance signed by an officer of the insurer 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.
- (b) 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, rather than in an attached list. For a certification pertaining to a large number of forms, the list may begin in the body of the certification and continue in list form on the second page.
- (c) The submission letters for paper submissions and the Filing Descriptions for submissions made via the State Electronic Rate and Forms Filing system (SERFF) must comply with applicable circular letter and product outline guidance.
- (d) Substitution filings and 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.
- (e) Policies with secondary guarantees may be submitted under the Circular Letter No. 6 (2004) certified process if the submission includes a certification pursuant to Section 98.9(c)(2)(x)(j) of Regulation 147. *See* "Important Notice Regarding

Universal Life Insurance with Secondary Guarantees” dated 03/08/2013, available on the Department's website.

B.4) Filing of Non-English Versions of Forms

- (a) The English version of the form must be approved before the non-English version will be approved. The submission letter must identify, by form number, date of approval and Department file number, the previously approved form that is being translated into a non-English version.
- (b) The non-English version must have a different form number to distinguish it from the English version. For example, the Spanish version of form UL-123 could be UL-123-S.
- (c) An original certification by a translator must be provided indicating that the text of the form is an accurate and complete translation of the English version of the form. The certification must reference the specific form numbers of both the English and non-English forms and must reference the memorandum of variable material. The certification should not use qualifying language such as “to the best of my knowledge and belief.”
- (d) An original certification by an officer of the insurer must be provided indicating that the officer has exercised due diligence in choosing a competent translator or translation service. The certification must reference the specific form numbers of both the English and non-English forms.
- (e) If the approval of the English version of the form was subject to any conditions or limitations, then the non-English language version of the form will be subject to the same conditions or limitations.
- (f) If the non-English version of the form contains variable material, a memorandum of variable material must be provided. The exact language of any non-English alternate text must be set forth.

B.5) Filings for Out-of-State Delivery

The Department no longer requires the filing of policy forms to be delivered out of state by domestic insurers (except unallocated group annuity contracts, funding agreements, or any other policy form specified by the Superintendent pursuant to regulation). Section 3201(b)(2). Domestic insurers are required to annually file a list of policy forms issued by the insurer for delivery out of state. Section 3201(c)(6)(b).

II.C) Preparation of Forms

C.1) Duplicates

Filings, except for SERFF, must be made in duplicate. Section I.E.7 of Circular Letter No. 6 (1963).

C.2) Form numbers

Form numbers must appear in the lower left corner of the cover page of the form. Section I.D. of Circular Letter No. 6 (1963). The lower left corner of the subsequent pages of the form must either contain the same form number as the cover page or be left blank. The subsequent pages may not contain form numbers that differ from the form number on the cover page. However, the data page of the policy may be separately approved as a different form with a different form number.

C.3) Hypothetical Data

All blank spaces for policy forms, except applications, must be filled in with hypothetical data. Section I.E.1 of Circular Letter No. 6 (1963).

C.4) Application

- (a) The application to be used with the policy form must be an approved form. When submitting a policy form to which a copy of the application will be attached when issued, the form number and Department file number of the previously approved application must be supplied. If the application has not been approved, the application form must be submitted with the policy forms for approval. If the application is already pending approval, please provide the Department file number. Section I.E.4 of Circular Letter No. 6 (1963).
- (b) Both the initial premium amount and the planned premium amount must be set forth in the application. Section 3204.
- (c) The insurer must retain information in its records concerning which approved application is being used or has been used with the policy and the type of underwriting utilized. Such information must be available upon Department request. *See* Regulation 152.
- (d) If either the amount or duration of the death benefit may vary under specified conditions, the application shall contain a prominent statement to that effect. Section 54.10(a) of Regulation 77.
- (e) The application shall contain a prominent statement that policy values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees). Section 54.10(b) of Regulation 77.
- (f) In the case of a variable endowment policy, the application shall contain a prominent statement that the amount of the endowment payable at maturity is not guaranteed but is dependent upon the then cash surrender value (subject to any specified minimum guarantees). Section 54.10(c) of Regulation 77.
- (g) The application shall contain a prominent statement, in the case of a private placement variable life policy, that due to the illiquid nature of the investment options, the payment of the death benefit, the cash surrender value, policy loans,

partial withdrawals or partial surrenders, as applicable, may be delayed. The statement shall advise the applicant to refer to the policy for further details on any delay of payments. Section 54.10(d) of Regulation 77.

- (h) The application shall contain a notice that the following are available upon request: Illustrations of benefits, including death benefits, policy values and cash surrender values. Such illustrations shall be in a form and content acceptable to the Superintendent. Section 54.10(e) of Regulation 77.

NOTE: An insurer must obtain a written acknowledgement of receipt of a private placement offering memorandum or a prospectus from the applicant coincident with or prior to the execution of the application in accordance with Section 54.9 of Regulation 77. The prospectus must also comply with the requirements of Section 54.9 of Regulation 77.

C.5) Final Format

Policy forms submitted for formal approval must be submitted in the form intended for actual issue. Section I.F.1 of Circular Letter No. 6 (1963).

C.6) Submissions Made on Behalf of the Insurer

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
- (e) 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.

C.7) Circular Letter No. 14 (1997)

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

with a specific product outline requirement or is considered substantively non-compliant with applicable law, then the file may be closed.

II.D) 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.

D.1) Caption Requirement

For paper submissions, the “re” or caption of the submission letter must identify each of the forms that is being submitted for approval or filed for informational purposes and must be in compliance with Circular Letter No. 8 (1999). Section 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 “re” of the submission letter.

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

D.2) Compliance with Section I.G. of Circular Letter No. 6 (1963)

- (a) Submit in duplicate, except for SERFF filings.
- (b) The submission letter must be signed by a representative of the insurer authorized to submit forms for filing or approval for the insurer.
- (c) Identify form number of each form submitted.
- (d) State the type of coverage provided.
- (e) Indicate whether (1) the form is replacing a previously approved form (provide the form number and date of approval); (2) the form will be issued in addition to other similar forms and/or benefits (provide form numbers and approval dates); or (3) the form is a new form unlike any previously approved 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 form.
- (f) If the form is other than a policy (i.e. rider, endorsement, or insert page), give the form number of the policy form or forms 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 forms will be used with new and/or previously issued/delivered policies.

- (g) If there are similar forms (i.e., other individual variable life insurance policy forms similar to the submitted form) not being replaced, identify those forms and indicate why they are not being replaced.
- (h) 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 has not been issued, the insurer may request to make a substitution of the approved form using the regular prior approval process. 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 the Circular Letter No. 6 (2004) procedure.

D.3) Explanation of Unique Features and Markets

- (a) Submission letters must identify any special market intended (e.g., Section 3205(d) COLI market, mail-order, Internal Revenue Code (IRC) Section 403(b), pre-need, etc.).
- (b) Submission letters must fully explain any product or feature that has not been previously approved by the Department for the insurer or is new to the marketplace in New York.

D.4) COLI Market

If the policy will be issued in the COLI market, please refer to Section 3205 and the COLI Product Outline on the Department's website.

D.5) Sex-Distinct/Unisex

Submission letters must advise whether the policy is sex-distinct or unisex (a policy may not be both sex-distinct and unisex). If sex-distinct, the letter must confirm that the policy will not be issued in any employer-employee situation subject to the Norris decision and/or Title VII of the Civil Rights Act of 1964. For employer-employee groups subject to the Norris decision, the insurer must submit either a unisex endorsement or a separate unisex policy to be used in such cases. If a previously approved unisex endorsement will be used with the policy for Norris or Title VII situations, the submission letter should so state (provide the form number and date of approval).

D.6) Noncompliance Explanation

If the policy form does not comply with a specific product outline provision or the company has an alternate interpretation of an outline provision, the submission letter must identify the provision and provide a complete explanation of the insurer's position on the issue. Such submissions may not be submitted through the Circular Letter 6 (2004) certified process unless the Department has given permission.

D.7) Informational Filings

- (a) 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 insurer should wait for the acknowledgement from the Department that the information has been filed prior to its use.
- (b) 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".
- (c) Informational filings about changes in the List of Funds should follow the instructions in "Filing Guidance on Changes in the Investment Options Of a Separate Account for Group and Individual Variable Products". It is available on the Department's website.

D.8) Resubmissions

If the policy has been previously submitted to the Department and the file was closed, any resubmission of the policy to the Department must reference the Department file number of the previously closed file and address all outstanding issues in the new submission letter. The submission must be complete and may not incorporate previously submitted material by reference.

D.9) Policy Illustration

The submission letter must state whether the policy form is to be marketed with or without an illustration. Section 3209(l).

NOTE: Section 3209 requires an insurer to furnish preliminary information and a policy summary for variable life policies. However, if an insurer chooses to use a sales illustration in lieu of providing preliminary information and a policy summary as permitted by Section 3209(l), then the insurer must comply with all the applicable provisions of Regulation 74 (11 NYCRR 53). Section 3209(k).

NOTE: Pursuant to Sections 4231 and 4232, no sales illustration, preliminary information or policy summary shall depict a persistency bonus, a specified additional amount or specified reduction in mortality costs or expense costs in a specific policy

year, after the first policy year, unless such bonus, additional amount or reduction is guaranteed in the contract or policy. Section 53-3.2 (d) or Regulation 74.

NOTE: If an illustration is used in lieu of the preliminary information or policy summary, then a future reduction in loan spread illustrated or otherwise disclosed must be guaranteed in the policy. *See* Section 54.10(e) of Regulation 77 and Section 53-3.2(d) of Regulation 74. However, if the illustration is not used in lieu of the preliminary information or policy summary, then, if the reduction is not guaranteed in the policy, the illustration must clearly address the non-guaranteed nature of the reduction in a manner acceptable to the Superintendent. Section 54.10(e) of Regulation 77. In the latter case, the portion of the illustration which relates to a future reduction in loan spread must be included with the policy form submission.

NOTE: Any reductions in current expense, mortality or risk charges and any additional credits scheduled to take effect after the first policy year may be illustrated. If such reductions are not guaranteed in the policy, the illustration must clearly address the non-guaranteed nature of the reduction or credits in a manner acceptable to the Superintendent. Section 54.10(e) of Regulation 77. The portion of the illustration which relates to the reductions and the non-guaranteed nature of the reductions must be included in the submission.

II.E) Attachments

E.1) Readability Certification

Flesch score certification is not required for variable life products. Such forms are regulated by the SEC and are exempt from readability requirements. Section 3102(b)(1)(A).

E.2) Policy Illustration Certification

If the policy will be marketed with an illustration intended to comply with Regulation 74, in lieu of complying with preliminary information and policy summary requirements of Section 3209, the certification required by Section 53-3.7(d) of Regulation 74 must be submitted.

E.3) Self-Support Statement

Provide a statement of self-support in compliance with Section 4228(h) for each form in the submission except application forms and forms accompanied by a statement signed by the actuary that the form provides supplementary benefits which in the opinion of the actuary are de minimis. The self-support statement should state that it is valid for any possible combination of variable material submitted for approval. In making this determination, the actuary may take into consideration the company's documented procedures for the determination of non-guaranteed elements.

E.4) Actuarial Nonforfeiture Certification

Provide a certification signed and dated by an actuary who is a member in good standing of the American Academy of Actuaries or the Society of Actuaries that the policy form is in compliance with the nonforfeiture requirements of the New York Insurance Law and regulations applicable to individual variable life insurance. The certification must also indicate that the actuary has read the forms, statements of variable material and all supporting actuarial material submitted with the file that is related to nonforfeiture.

NOTE: The nonforfeiture certification is not required for submissions made pursuant to Circular Letter 6 (2004). The general certification required by Circular Letter 6 (2004) eliminates the need for this separate certification.

E.5) Variable Material

The submission must include a separate detailed statement of variability for any variable material other than hypothetical data. The statement of variability is subject to approval and must comply with the filing guidance on the Department's website.

E.6) Statement on the Method of Computation of Values

If a detailed statement of the method of computation of the cash surrender values and other nonforfeiture benefits shown in the policy is not stated therein, such detailed statement must be filed with the submission. Section 54.7 of Regulation 77 (introductory paragraph). *See also* Section III.E.5 of this Outline.

II.F) Key References

F.1) Insurance Law. §§ 336, 2123, 3102, 3105, 3201, 3203, 3204, 3205, 3206, 3207, 3209, 3210, 3211, 3212, 3214, 3215, 3227, 4222, 4228(h), 4231, 4232, and 4240.

F.2) Regulations. Regulation 34-A, Regulation 60, Regulation 74, Regulation 77, Regulation 113, Regulation 136, Regulation 147, Regulation 149, and Regulation 152.

F.3) Circular Letters. CL4 (1963), CL6 (1963), CL16 (1993), CL14 (1997), CL2 (1998), CL8 (1999), CL6 (2004), CL21(2008), and CL27(2008).

F.4) Federal Law. Internal Revenue Code Section 403(b) and Internal Revenue Code Section 7702.

III. Individual Variable LifeIII.A) Cover PageA.1) Insurer's Name and Address

(a) The licensed New York insurer's name must appear on the cover page (front or back) as well as the cover page of each rider.

- (b) The full street address of the insurer's Home Office must appear on the cover page, front or back, and should be bracketed or underlined to reflect possible future changes. For changes applicable to new business, an informational 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 policies. Please refer to 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 cover page (front or back). 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) 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 policy. Section 3201(c)(1). The name of the issuing insurer must be clearly disclosed, and must be at least as prominent as any other entity mentioned. This paragraph applies to applications as well.
- (e) No unlicensed insurer name can appear anywhere on the form. Section 3201(c)(1).
- (f) Marketing names may not appear in the policy form. Section 3201(c)(1).

A.2) Free Look Provision

A Free Look Period of not less than 10 nor more than 30 days from policy delivery whereby the policyholder may receive a full refund is required in accordance with Section 3203(a)(11). *See also* Section 54.6(b)(1)(v) of Regulation 77. A 30-day Free Look Period is required for mail order situations. A 60-day Free Look Period is required in replacement situations. Section 51.6(d) of Regulation 60.

A.3) Form Identification Number

A form identification number (consisting of numerical digits, letters, or both) must appear in the lower left corner in accordance with Section I.D of Circular Letter No. 6 (1963).

A.4) Brief Description of Policy

- (a) A description of the policy must appear in accordance with Section I.A of Circular Letter No. 4 (1963). The word "Individual" must appear as part of the policy description, or for joint life forms, include either Death Benefit payable at First Death or Death Benefit payable at Second Death.

- (b) The description must include whether policy is participating or non-participating in accordance with Section II.F.1 of Circular Letter No. 4 (1963).
- (c) The description must address the flexibility of premiums, benefits or period of coverage, if applicable. Based on Section 3203(a)(4) and 3204(a)(1).

A.5) Officers' Signatures

- (a) The signature of at least one officer of the insurer in order to execute the contract is required as a matter of contract law.
- (b) Signatures should be underlined or bracketed to denote variable material.

A.6) Disclosures

- (a) If the policy provides that the death benefit is not available in a lump sum, the cover page must disclose this information.
- (b) The cover page or pages corresponding to the cover page of each such policy shall contain:
 - (i) a prominent statement that the amount or duration of death benefit may be variable or fixed under specified conditions and may increase or decrease;
 - (ii) a prominent statement that policy values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;
 - (iii) a statement describing any minimum death benefit; and
 - (iv) the method, or a reference to the policy provision, which describes the method for determining the amount of insurance payable at death.

Section 54.6(b)(1) of Regulation 77.

III.B) Specification Page

- B.1) All hypothetical data must appear on the specifications page. Section I.E.1 of Circular Letter No. 6 (1963).
- B.2) The policy specifications page for participating policies must state that dividends are not guaranteed and the insurer has the right to change the amount of dividend to be credited to the policy which may result in lower dividend cash values than were illustrated, or, if applicable, require more premiums to be paid than were illustrated. Section 3203(a)(15).
- B.3) The guaranteed maximum expense charges and loads that may be deducted from the premiums paid or the account value must be set forth. Section 54.6(a)(1) of Regulation 77. Based on Section 3203(a)(12).

- B.4) The specification page must state, to the extent applicable, that additional amounts are not guaranteed and the insurer has the right to change the amount of interest credited to the policy and the amount of cost of insurance or other expense charges deducted under the policy which may require more premium to be paid than was illustrated or the cash values may be less than those illustrated. Section 3203(a)(16).
- B.5) The minimum guaranteed interest rate used to determine the guaranteed policy values must be specified. Section 3203(a)(17). This rate may not be variable.
- B.6) Any limitation on the crediting of additional interest on a portion of the policy value or cash surrender value must be set forth (i.e., crediting excess interest on a portion of the cash value over and above a certain amount). Section 3203(a)(12).
- B.7) Any surrender charges and partial withdrawal fees must be described or set forth in a table. Section 3204(a)(1). For scheduled premium policies, any surrender charges shall be shown in a table in the policy or otherwise described in the policy. Section 54.6(b)(9) of Regulation 77.
- B.8) If the policy contains non-guaranteed interest, mortality and expense factors, it must give at least equal prominence to the guaranteed factors. Based on Section 3201(c)(1).
- B.9) The planned premium amount, if any, must be disclosed and “planned premium” must be defined in the policy. Based on Section 3203(a)(4) and Section 3204(a)(1).
- B.10) Any no-lapse premium and the period for which it is payable must be disclosed. If the policy provides for a secondary guarantee other than a no lapse guarantee then the premium payable (if any) and the period (if any) for the secondary guarantee must be set forth.
- B.11) The specification page must contain a disclosure, to the extent applicable, that the policy might not mature, even if planned premiums are paid, due to the fact that current cost of insurance and interest rates are not guaranteed, policy values may increase or decrease in accordance with the investment performance of the funds in the Separate Account, the current expense loads of the funds in the Separate Account may change, policy loans and partial withdrawals may be taken, there may be changes in the choice of death benefit options and there may be requested changes to the specified face amount. Based on Section 3201(c)(1) and 3203(a)(16).
- B.12) If a listing of the investment options is included, it should be bracketed or otherwise denoted as variable material. A separate memorandum of variable material identified as List of Funds that lists only the current investment options (and related material) must also be provided. See the guidance documents available on the Department’s website.

III.C) Table of Contents

A table of contents or index is required for policies that are over 3,000 words or more than 3 pages regardless of the number of words. *See* Section 3102(c)(1)(G).

III.D) Standard ProvisionsD.1) Entire Contract

- (a) The policy shall state that the policy, together with the application if a copy of such application is attached to the policy when issued, shall constitute the entire contract between the parties. Policy language must be in compliance with Section 3203(a)(4) and Section 3204.
- (b) The application must be attached to the policy if it is to be part of the entire contract. Section 3203(a)(4).
- (c) Nothing can be incorporated by reference unless a copy is endorsed upon or attached to the contract. Section 3204(a)(1).
- (d) All statements made by, or by the authority of, the applicant for the issuance, reinstatement or renewal of any such policy shall be deemed representations and not warranties. Sections 3105 and 3204(c).
- (e) The entire contract provision may not include the words “in the absence of fraud.” Section II.H.7 of Circular Letter No. 4 (1963).
- (f) The contract may not be modified, nor may any rights or requirements be waived, except in a writing signed by a person specified by the insurer in the policy. Section 3204(a)(3).
- (g) The policy form must not include a unilateral amendment provision that grants the insurer the right to change the terms and conditions of the policy, except where such change or amendment is required to conform the policy to applicable New York and federal law. Any such change or amendment cannot be effective without prior approval of the Department. Prior written consent of the policyholder is required if such change diminishes the rights and/or benefits under a previously issued policy in any manner. Section 3204.

D.2) Grace Period

- (a) For flexible premium policies, the policy must include a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed, unless otherwise provided in the policy, the net cash surrender value under the policy to pay such charges in accordance with the terms of the policy. Such grace period shall end on a date not less than 61 days after the policy processing day on which the insurer determined that an insufficiency had occurred. The policy must provide that the insurer shall send the Report to Policyholders required by Section 54.11(c) of Regulation 77 within 30 days of such policy processing day. Section 54.6(b)(3)(i) of Regulation 77. The policy must also provide that the death benefit payable during the grace period will equal the death benefit in effect immediately prior to such period less any overdue

charges. If the policy processing days occur monthly, the insurer may require the payment of a premium sufficient to keep the policy in force for three months beginning with the policy processing day on which, unless otherwise provided in the policy, the net cash surrender value under the policy was insufficient to pay all charges authorized by the policy that are necessary to keep such policy in force until the next policy processing day. Section 54.6(b)(3)(ii) of Regulation 77.

- (b) For scheduled premium policies, the policy must include a provision for a grace period either of 30 days or one month from the premium due date, which shall provide that where the premium is paid within the grace period, policy values will be the same as if the premium had been paid on or before the due date. The policy must also provide that where the insured dies during the grace period without having paid the premium, the policy values will be the same as if the premium had been paid on or before the due date, except for the deduction of the overdue premium. Section 54.6(b)(2) of Regulation 77.
- (c) The policy must contain language indicating that:
 - (i) if the death of the insured occurs within the grace period, the insurer may deduct the amount needed to continue the policy to the end of the policy month in which such death occurred; and
 - (ii) if death occurs during a period for which the amount needed to continue the policy has been applied, the insurer must add to the policy proceeds a refund of such amount applied for any period beyond the policy month in which the death occurred.

Section 3203(a)(2); Sections 54.6(b)(2) and 54.6(b)(3) of Regulation 77.

NOTE: Interest may not be added to any overdue premium.

D.3) Incontestability

- (a) Policy language must be in compliance with Section 3203(a)(3) and Section 54.6(b)(13) of Regulation 77, which provides that a policy is incontestable after it has been in force during the lifetime of the insured for a period of no greater than two years from the date of issue. Any increase in the policy death benefit after issue, if requested by the owner and subject to evidence of insurability, shall be contestable during the lifetime of the insured for two years from date of increase.
.
- (b) Contests must be based on material misrepresentations in accordance with Section 3105(b).
- (c) Regarding a policy that may be issued as a result of a conversion option from term insurance, either provide in the policy that the incontestable period for the converted amount does not start anew but is effective as of the date the original term policy was issued, or provide the form number, approval date and

Department file number of the endorsement to be attached to the conversion policy stating that the incontestability period will run from the date the original term policy was issued. Section II.H.6 of Circular Letter No. 4 (1963).

- (d) Any policy issued as a result of a conversion from a group policy must indicate, either in the policy or by an endorsement, that the two-year contestable period does not start anew, but is effective as of the date of the original group coverage. Circular Letter No. 4 (1963) § II.H.6. See Section 3220(a)(6) for conversion from group to individual insurance.
- (e) Exceptions to the incontestability provision are permitted for non-payment of premium, violation of policy conditions as relating to service in the armed forces and, at the option of the insurer, provisions relating to benefits for total and permanent disability and additional benefits for accidental death. Section 3203(a)(3). An exception to the incontestability provision for fraud is not authorized under Section 3203(a).

D.4) Reinstatement

- (a) For scheduled premium policies, the policy must include a provision that the policy will be reinstated at any time within three years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and the payment of an amount not exceeding the greater of subparagraphs (i) or (ii), plus (iii):
 - (i) all overdue premiums (other than for incidental insurance benefits) and any other indebtedness in effect at the end of the grace period following the date of default, with interest at a rate not exceeding six percent per annum for overdue premiums and at a rate not exceeding the applicable policy loan rate or rates for indebtedness compounded annually; or
 - (ii) 110 percent of the increase in cash surrender value resulting from reinstatement; and
 - (iii) all overdue premiums for incidental insurance benefits, with interest at a rate not exceeding six percent per annum compounded annually.

Section 54.6(b)(4) of Regulation 77.

- (b) For policies in which the amount and frequency of premium payments may vary, a reinstatement provision may be provided. If a reinstatement provision is provided, it must comply with the following:
 - (i) Written application by the insured must be required.

- (ii) Evidence of insurability, including good health, satisfactory to the insurer must be required.
- (iii) The amount of payment required for reinstatement cannot exceed the payment of an amount sufficient to keep the policy in force for no more than three months after charging for any coverage provided during the grace period.

Based on Section 3201(c)(2).

- (c) For all reinstatement provisions:
 - (i) The policy must explain how the account value, loan balance and surrender charge will be determined upon reinstatement.
 - (ii) Upon reinstatement, the account value and surrender charges are determined so that no part of the surrender charge is assessed more than once.

D.5) Incontestability After Reinstatement

Upon reinstatement, a policy shall be incontestable after the same period following reinstatement with the conditions and exceptions provided in the policy with respect to incontestability. Section 3210. Any contest may only be based on material misrepresentations in the application for reinstatement.

D.6) Exclusions

(a) Resident of a Specified Foreign Country

- (i) An insurer may exclude or restrict liability in the event of death occurring while the insured is a resident of a specified foreign country or countries in accordance with Section 3203(b)(1).
- (ii) If death occurs while the insured is a resident of a specified foreign country or countries, the insurer must pay the reserve on the face amount in accordance with Section 3203(b)(3) or, if the policy has been in force for less than two years, the insurer shall pay the amount of the gross premiums charged on the policy less dividends paid and less any indebtedness, including interest due or accrued.

(b) Suicide

- (i) An insurer may exclude or restrict liability in the event of death caused by suicide within two years from the issue date of the policy in accordance with Section 3203(b)(1)(B). Section 54.6(c)(4) of Regulation 77.
- (ii) The insurer shall pay the amount of the gross premiums charged on the policy less dividends paid in cash or used in the payment of premiums

thereon and less any indebtedness, including interest due and accrued.
Section 3203(b)(3).

- (iii) Any suicide exclusion provision shall not include the words “while sane or insane.” Section II.I.1 of Circular Letter No. 4 (1963).
- (iv) The suicide exclusion may not begin again upon reinstatement. Section 3210 applies only to the incontestability provision.
- (v) Regarding a policy issued as a result of a conversion option from term insurance, either provide in the policy that the suicide period does not start anew but is effective as of the date the original term policy was issued, or provide the form number, approval date and Department file number of the endorsement to be attached to the conversion policy stating that the suicide period will run from the date the original term policy was issued. Section II.H.6 of Circular Letter No. 4 (1963).
- (vi) The policy may provide an exclusion for suicide within two years of the effective date of any increase in death benefits which results from an application of the owner subsequent to the policy issue date. Section 54.6(c)(4) of Regulation 77. It must be clearly stated that the suicide provision will only apply to the applied for amount.
- (vii) Any policy issued as a result of a conversion from a group policy must indicate, either in the policy or by an endorsement, that the two-year suicide exclusion period does not start anew, but is effective as of the date of the original group coverage. Circular Letter No. 4 (1963) § II.H.6. See Section 3220(a)(6) for conversion from group to individual insurance.

(c) Aviation

- (i) An insurer may exclude or restrict liability in the event of death caused by aviation under conditions specified in the policy in accordance with Section 3203(b)(1)(C).
- (ii) If a death occurs that is subject to an aviation exclusion or restriction, the insurer must pay the reserve on the face amount in accordance with Section 3203(b)(3) or, if the policy has been in force for less than two years, the insurer shall pay the amount of the gross premiums charged on the policy less dividends and less any indebtedness, including interest due or accrued.

(d) Hazardous Occupations

- (i) An insurer may exclude or restrict liability in the event of death caused by hazardous occupations specified in the policy, provided death occurs within two years from the issue date of the policy. Section 3203(b)(1)(D).

(ii) The insurer shall pay the amount of the gross premiums charged on the policy less dividends paid and less any indebtedness, including interest due or accrued. Section 3203(b)(3).

(e) War

(i) An insurer may exclude or restrict liability in the event of death as a result of:

(I) War or an act of war, if the cause of death occurs while the insured is serving in any armed forces or attached civilian unit and death occurs no later than six months after the termination of such service (Section 3203(c)(1)(A));

(II) The special hazards incident to service in any armed forces or attached civilian unit, if the cause of death occurs during the period of such service while the insured is outside the home area, and if death occurs outside the home area or within six months after the insured's return to the home area while in such service or within six months after the termination of such service, whichever is earlier (Section 3203(c)(1)(B));

(III) War or act of war, within two years from the date of issue of the policy, if the cause of death occurs while the insured is outside the home area but is not serving in any armed forces or attached civilian unit, and death occurs outside the home area or within six months after the insured's return to the home area (Section 3203(c)(1)(C)).

(ii) Any war exclusions must be drafted in accordance with the definitions listed in Section 3203(c)(3).

(iii) Such exclusions are not to be construed as exclusions because of status as a member of any armed forces or attached civilian units, or because of the presence of the insured as a civilian in a combat area. Such permissible exclusions shall not exclude deaths due to diseases or accidents which are common to the civilian population and are not attributable to special hazards to which a person serving in such forces is exposed in the line of duty. Section 3203(c)(4).

(iv) Any such war exclusion shall terminate six months after the end of the war in which the insured was engaged or the war in which the insured was likely to engage in at the time of application for the policy, after the discharge, release or separation of the insured from active military service, after the demobilization of the insured, or after the insured permanently leaves the war area, whichever occurs first. Section 3203(c)(5). This termination requirement does not apply to war exclusions for disability

benefits under Section 3215 or accidental death benefits provided either in the life insurance policy itself or by rider to the policy.

- (v) If a death occurs that is subject to an exclusion or restriction pursuant to Section 3203(c)(1)(A) or (B), the insurer must pay the reserve on the face amount in accordance with Section 3203(b)(3) or, if the policy has been in force for less than two years, the insurer shall pay the amount of the gross premiums charged on the policy less dividends and less any indebtedness, including interest due or accrued. If a death occurs that is subject to an exclusion or restriction pursuant to Section 3203(c)(1)(C), the insurer shall pay the amount of the gross premiums charged on the policy less dividends paid and less any indebtedness, including interest due or accrued. Section 3203(b)(3).
- (vi) Any life insurance policy form containing a war or travel exclusion or restriction must have printed or stamped across the face page in red and in capital letters not smaller than twelve point type the following:

“Read your policy carefully.
Certain (war, travel) risks are not assumed.

(state which or both)

In case of any doubt write your company for further explanation.”

Section 3201(c)(4).

This notice requirement does not apply to war exclusions for disability benefits under Section 3215 or accidental death benefits provided either in the life insurance policy itself or by rider to the policy.

NOTE: In accordance with Section 336, the insurer must notify the Superintendent prior to issuing life insurance policies which contain a war restriction or exclusion.

NOTE: An application to be used with a policy containing a war restriction must have a notice that a war restriction is included in the policy. Section 45.1 of Regulation 19.

- (f) Sections 3203(b) and (c) provide for the only permissible exclusions. Exclusions from paying the death benefit due to medical conditions or terrorism are not permitted.

D.7) Policy Loans

- (a) A provision for policy loans after the policy has been in force for three full years is required. Section 54.6(b)(10) of Regulation 77.

- (b) Loan value must be at least equal to 75 percent of the policy's cash surrender value. Section 54.6(b)(10)(i) of Regulation 77.
- (c) The loan interest rate must be:
 - (i) a fixed interest rate not to exceed either 7.4% (payable in advance) or 8% (payable in arrears),
 - (ii) an adjustable interest rate up to a maximum cap of 8%, or
 - (iii) an adjustable interest rate with no cap but subject to the maximum limits of Section 3206.

Section 54.6(b)(10)(ii) of Regulation 77 requires rate compliance with Sections 3203(a)(8)(F) and 3206.
- (d) For adjustable rate loans (whether subject to the maximum 8% cap or the maximum limits of Section 3206) the policy must specify the frequency of adjustment which must be at least once every 12 months, but not more frequently than once in any three month period. *See* Section 54.5 of Regulation 77; Section 3203(a)(8)(F).
- (e) The adjustable interest rate with no cap or a cap greater than 8% but subject to the maximum limits of Section 3206 must comply with the following requirements:
 - (i) Adjustable maximum loan rate shall not exceed the greater of:
 - I. Published Monthly Average for the calendar month ending two months previous; or
 - II. Cash Surrender Value rate plus 1%
 - (ii) Adjustments made on regular intervals
 - I. may be increased when rate increases by ½% or more; and
 - II. must be decreased when rate declines by ½% or more.
 - (iii) The published monthly average is the Moody's Corporate Bond Yield Averages – Monthly Average Corporates.
 - (iv) The loan provision for policies providing for an adjustable rate must indicate that the policy cannot lapse as a result of a change in the policy loan interest rate during the policy year of such change. Section 3206(e).

Note: The insurer must comply with the notice requirements for adjustable rate loans in Section 3206(d); Section 54.5 of Regulation 77.
- (f) Based on Section 3203(a)(8)(G), the policy may provide:

- (i) that if the interest on the loan is not paid when due, it shall be added to the existing loan, and bear interest at the applicable rate or rates payable on the loan in accordance with the terms of the policy; and
- (ii) subject to the Section 3206(e) requirement as described in (e)(iv) above, when the total indebtedness on the policy including interest due or accrued, equals or exceeds the amount of the policy's loan value, and if at least thirty day's prior notice shall have been given in the manner provided in Section 3211, then the policy shall terminate and become void.
- (g) The sole security for the loan shall be assignment or pledge of the policy. Based on Section 3203(a)(8)(B).
- (h) For amounts to be paid from the general account, the policy shall state that the insurer reserves the right to defer payment of loan value, except to pay premiums, for six (6) months after receipt of the loan application. *See* Section 54.6(b)(8)(ii) of Regulation 77 and Section 4222. For amounts to be paid from the separate account, see Section III.E.7 of this Outline.
- (i) The policy may specify a reasonable minimum amount which may be borrowed at any time, but such minimum shall not apply to any automatic premium loan provision. Section 54.6(b)(10)(vii) of Regulation 77.
- (j) An insurer may not restrict the number of loans taken out by the policyholder except that the total indebtedness cannot exceed the policy's loan value. Based on Section 3203(a)(8)(A). The insurer may require repayment of the previous loan with the new loan proceeds so that only one outstanding loan exists at a time.
- (k) Any indebtedness shall be deducted from the proceeds payable on death. Section 54.6(b)(10)(iii) of Regulation 77. Any indebtedness shall be deducted from the cash surrender value upon surrender or in determining any extended term nonforfeiture benefit. Section 54.6(b)(10)(iv) of Regulation 77. Reduced paid-up nonforfeiture benefits may be determined with or without indebtedness.
- (l) Any automatic premium loan provision shall indicate that it is effective only if affirmatively elected and that such election is subject to revocation. The policy shall clearly indicate how the provision will apply if the loan value is insufficient to pay the stated premium due and the disposition of any sums not used to pay premiums. The provision must be separately captioned and not included under or with the nonforfeiture provisions. Section II.E.2 of Circular Letter No. 4 (1963). Section 54.6(c)(3) of Regulation 77.
- (m) An insurer must credit on the loaned amount a rate at least equal to the loan interest rate less 2%, unless the Superintendent allows crediting of a lower rate of interest upon an insurer demonstrating a justification for such lower rate. *See* Section 54.6(b)(10)(xii) of Regulation 77. The Superintendent has permitted certain exceptions to the requirements of Section 54.6(b)(10)(xii) of Regulation 77. These exceptions are discussed in the Note at the end of Section III.D.7(s) of this Outline.

- (n) The policy must state how a deposit not designated as a premium or loan repayment will be treated if a loan is outstanding.
- (o) If the policy is in force under a paid up nonforfeiture option (other than paid up term or extended term), the policy loan provision must still be in effect. No policy loan provision is required if the policy is under the extended insurance nonforfeiture option. *See* Section 54.6(b)(10)(viii) of Regulation 77.
- (p) For scheduled premium policies, whenever the indebtedness exceeds the cash surrender value, the policy shall provide that the insurer shall give notice of any intent to cancel the policy if the excess indebtedness is not repaid within 31 days after the date of mailing of such notice. For flexible premium policies, whenever the total charges authorized by the policy that are necessary to keep the policy in force until the next following policy processing day exceed, unless otherwise provided in the policy, the net cash surrender value under the policy to pay such charges, a report must be sent to the policyholder containing the information specified by Section 54.11(c) (i.e., the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of such amount). *See* Section 54.6(b)(10)(v) of Regulation 77.
- (q) The policy may include a provision that if at any time, so long as the policy is in force on a premium paying basis, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there has been no loan or withdrawal by paying an amount not exceeding 110 percent of the corresponding increase in policy value and by furnishing such evidence of insurability as the insurer may request. *See* Section 54.6(b)(10)(vi) of Regulation 77.
- (r) The policy loan provision shall be so constructed that variable life insurance policyholders who have not exercised such provision are not disadvantaged by the exercise thereof. Section 54.6(b)(10)(ix) of Regulation 77.
- (s) Amounts paid to the policyholders upon the exercise of any policy loan provision may be withdrawn from the separate account and may be returned to the separate account upon repayment, except that a stock insurer may provide the amounts for policy loans from the general account. Section 54.6(b)(10)(x) of Regulation 77. The policy shall describe how loans are charged against separate accounts and the effect on such accounts when a loan is made or repaid. Section 54.6(b)(10)(xi) of Regulation 77.

NOTE: The Superintendent has permitted exceptions to the requirements of Section 54.6(b)(10)(xii) of Regulation 77 in the following situations:

1. A stock insurer may provide for loans secured by the separate account, but where the amounts paid to the policyholder are not withdrawn from the separate account. In this instance, the funds securing the loan would be credited with the results of the separate account.

2. An insurer may provide for loans secured by an equity index account that includes a guarantee of at least principal (except for charges) where the amounts paid to the policyholder are not withdrawn from the separate account. In this instance, the funds securing the loan would earn the results of the equity index account.

- (t) A policy may include a provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of other policy loans under Section 54.6(b)(10) of Regulation 77. Section 54.6(c)(3) of Regulation 77.
- (u) For a private placement variable life insurance policy, there must be a provision stating that the payment of the policy loan shall be made as expeditiously as possible but in no event later than fifteen (15) months from the date the request for payment is received. Section 54.6(b)(16) of Regulation 77.

D.8) Participating Policies

- (a) Section 3203(a)(6) requires the policy to state that the insurer annually ascertains and apportions any divisible surplus accruing on the policy.
- (b) Policy language regarding participation in surplus must be in compliance with Section 4231.
- (c) The following dividend options must be made available: cash, reduction in premium payments (this can be satisfied with crediting to the account value), accumulation at interest, and purchase of paid-up additions. Section 4231(b)(1). Available dividend options must be stated in the policy. Section 3204. The Department has approved one-year term additions as an additional dividend option. The policy may include the dividend options specified in Section 54.6(c)(1) of Regulation 77.
- (d) The automatic dividend option when none is elected is paid-up additions. Section 4231(b)(4). This automatic option must be stated in the policy. Section 3204. The amount of the dividend may be applied to provide paid-up amounts of additional general account or variable life insurance. Section 54.6(c)(1)(i) of Regulation 77.
- (e) Whenever one year term insurance is purchased by dividends in connection with a policy, it shall provide for an equitable adjustment in the event of termination of the policy (other than by death) prior to the expiration of such one year term insurance. Section II.F.2 of Circular Letter No. 4 (1963).
- (f) Any additional supplemental benefits attached to a participating policy, whether or not considered in determining surplus earnings, may not be specially labeled or described as non-participating. Section II.F.3 of Circular Letter No. 4 (1963).
- (g) If dividends are not expected to be paid, the policy should so state.

D.9) Misstatement of Age or Sex

- (a) A Misstatement of Age provision is required to be in the policy and shall state that if the age of the insured has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age. Section 3203(a)(5).
- (b) The adjustment in cases of discovery at time of death should be based on adjustment of the net amount at risk by the ratio of the incorrect COI rate to the correct COI rate. Other approaches will be considered. In the case of discovery while the insured is alive, we have also permitted retroactive adjustment to the account value. Based on Section 3201(c)(2).
- (c) If the premiums, benefits or values differ depending upon the sex of the insured, the misstatement of age may include a provision for adjustment in the event of misstatement of sex. Section II.H.8 of Circular Letter No. 4 (1963).
- (d) For survivorship forms, any adjustment applies to misstatement of age or sex for either or both insured persons. Section II.H.8 of Circular Letter No. 4 (1963).

D.10) Maturity Date

For purposes of this outline provision, the term Maturity Date means the date the cash value of the policy becomes payable based on the survival of the insured(s) to that date and where upon payment of the cash value the policy terminates.

- (a) A policy may be written with or without a maturity date. If the policy has no maturity date or has a maturity date beyond age 120 then the following conditions must be satisfied:
 - (i) There must be a policy provision to the effect that after age 120 there will be no cost of insurance charges or other charges except for:
 - (I) service charges (Section 54.7(b)(1)(iii) of Regulation 77); or
 - (II) administrative charges (Section 54.7(b)(1)(iv) of Regulation 77); and
 - (III) charges made as a reduction in investment return (Section 54.7(b)(1)(vii) of Regulation 77).
 - (ii) There must be a policy provision to the effect that no further premium payment, except as necessary in order to prevent the policy from lapsing, will be accepted after age 120.
 - (iii) If partial withdrawals are not available after age 120, the policy must so state.
 - (iv) Policy loans and loan repayments must be permitted.

- (b) There must be a provision in the policy describing the relationship between payment of the planned premium and the maturity date (or if no maturity date, age 120).
- (c) The policy may state: “There may be tax consequences to either surrendering the policy on or after Age ____ [fill in appropriate age] or continuing the policy past Age ____ [fill in appropriate age]. A tax advisor should be consulted to determine which choice best meets your needs.” As of the date of this outline, due to the Internal Revenue Code, Age 100 is the appropriate age to complete the above brackets. The Department would also allow the disclosure to reference Age 121. *See IRS Revenue Procedure 2010-28.*
- (d) For the fixed account, if any, the cash values after the last age in the mortality table underlying the nonforfeiture values must increase annually at an interest rate not less than a reasonable current interest rate (i.e., the settlement option interest rate, the interest rate paid on death claims). The Department would also find acceptable the use of an interest rate not less than the maximum nonforfeiture interest rate in effect at the time the policy was issued.
- (e) The death benefit cannot be less than the cash value at the time of death.

D.11) Settlement Options

- (a) If the policy proceeds can be paid out in fixed installment or annuity payments, there must be a table in the policy. Section 54.6(b)(11) of Regulation 77. The guaranteed interest rate and mortality table being utilized for the tables should be identified in the policy for disclosure purposes.
- (b) If any life income settlement option with a period certain provides for installment payments of the same amount at some ages for different periods certain, the policy must state that the insurer will deem an election to have been made for the longest period certain which could have been elected for such age and amount. Section II.J.1 of Circular Letter No. 4 (1963).

Example: If at age 45 the life income option with 10 years certain paid \$50 per month for 10 years certain and the life income option with 20 years certain paid \$50 per month for 20 years certain the life option with 20 years certain would be deemed chosen.

- (c) Policy language may not refer to the placement of death proceeds into a checking or other type of account since this would relate only to the manner of distribution. Section 3201(a).
- (d) Settlement options need not appear in the policy. However, in light of Circular Letter 4 of 2012, in order for insurers to be able to offer settlement options, in addition to the payment of the full life insurance proceeds in a single check to the beneficiary, language needs to be included in the policy form that indicates that additional settlement options may be made available. The Department would

consider the following language acceptable and would consider alternatives on a case-by-case basis:

- (i) "Unless otherwise elected by the policyholder or beneficiary, benefits will be paid in a single lump sum check. We may make other options available in addition to the single check option"; or
- (ii) "When the benefit is payable, we will pay it in a single lump sum check, unless another method of payment is requested by the policyholder or beneficiary and agreed to by us."

D.12) Account Value

- (a) Policy must clearly indicate which cost factors are subject to adjustment. Section 3203(a)(12), Section 3203(a)(4) and Section 3204(a)(1); Section 54.6(b)(5) of Regulation 77. Mortality and expense risks shall be borne by the insurer. The mortality and expense charges shall be subject to the maximums stated in the contract. More favorable charges, if any, must be credited to the policy not less frequently than annually. Section 3203(a)(14); Section 54.6(a)(1) of Regulation 77.

NOTE: The guaranteed maximum COI charge for any month may not exceed 83.33 per 1,000 of net amount at risk (NAR). For this purpose the NAR is the difference between the death benefit and account value at the start of the month after the monthly deductions due at the beginning of the month.

- (b) Policy must state the guaranteed factors of mortality, expense and interest. Section 3203(a)(12). The interest and expense factors should appear on the specification page. The table of mortality charges (COI rates), and the basis of such table must be stated. Sections 54.7, 54.6(a)(1) and 54.6(b)(5) of Regulation 77.
- (c) The policy must provide a statement of the method used by the insurer in calculating actual policy values. Section 3203(a)(12).
 - (i) The procedure for the crediting of interest to a fixed account's value must be unambiguous.
 - (ii) The order of application of charges and credits must be described.
 - (iii) All related terms must be fully defined.
- (d) The policy must provide that additional amounts are nonforfeitable after the effective date of their crediting, except for any charges imposed under the policy which are not greater than those allowed under Section 54.7 of Regulation 77 or any market value adjustment made pursuant to Section 4221(n-2). Section 54.5 of Regulation 77; Section 3203(a)(13).

NOTE: For policies with a fixed account, Section 54.7(b)(5)(ii), which permits forfeiture, upon surrender, of additional amounts associated with the fixed account that were credited in the last twelve (12) months, has been superseded by Section 3203(a)(13) which does not permit such forfeiture.

- (e) The policy must state that additional amounts will be credited no less frequently than annually. Section 3203(a)(14)
- (f) If there is a possibility that two (2) or more different rate classes could apply at the same time (e.g., due to a change in class prior to a face amount increase), the policy form or submission materials (e.g. nonforfeiture statement) must describe how the net amount at risk for COI calculation purposes is allocated. Similarly, if there are two (2) or more rate classes applicable to the face amount, the policy form must describe how a decrease in face amount would be allocated to those classes. Based on Section 3203(a)(12), Section 3203(a)(4), and Section 3204; Section 54.6(b)(5) of Regulation 77.
- (g) The policy must include a summary of the method for computing the policy value and the cash surrender value. Section 54.6(b)(9) of Regulation 77.
- (h) The policy must include a full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy. Section 54.6(b)(5) of Regulation 77. Specifically, the procedure for the crediting of variable returns to the account value must be unambiguous; the order of application of charges and credits must be described; and all related terms (e.g., net asset value) must be fully defined.
- (i) The policy must state the essential features of the procedures used to determine the dollar amount of the variable elements. Section 4240(a)(11)(A).
- (j) For scheduled premium policies, a minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid (subject to the provisions of Section 54.6(b)(10) of Regulation 77). Section 54.6(a)(2) of Regulation 77.
- (k) Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base. Section 54.6(a)(4) of Regulation 77.

D.13) Separate Account

- (a) The policy must contain a provision designating the separate account to be used and stating that the assets of such separate account shall be valued at least as often as any policy benefits vary, but no less frequently than annually for private placement variable life insurance and monthly for any other variable life insurance. Sections 54.3(g) and 54.6(b)(6) of Regulation 77.

- (b) The policy value and cash surrender value shall be determined no less frequently than annually for a private placement variable life insurance policy and at least monthly for any other variable life insurance policy. Section 54.7 of Regulation 77.
- (c) The separate account must comply with Section 54.3 of Regulation 77.
- (d) The policy must include a provision that in the event of a material change in the investment policy of a separate account, any policyholder objecting to such change shall have the option to convert, without evidence of insurability, to a general account life insurance policy; that the insurer will give appropriate notice to such objecting policyholder of the options available; and that the option to convert is exercisable within sixty (60) days after (i) the effective date of such change in the investment policy or (ii) the receipt of the notice of the options available, whichever is later. Sections 54.4(c) and 54.6(b)(12) of Regulation 77.

NOTE: If a general account is offered in the policy to which all separate account funds can be transferred without restriction, the Department has not required the exchange to a general account product, provided the insurer can demonstrate that this approach is more favorable to the policyholder (e.g., the general account is competitively priced in relation to such other general account products). Section 54.6(b) of Regulation 77.

- (e) The policy benefits shall reflect the investment experience of one or more separate accounts established and maintained by the insurer. Section 54.6(a)(3) of Regulation 77.
- (f) Income, gains and losses, whether or not realized, from assets allocated to a separate account shall, in accordance with the applicable agreement or agreements, be credited to or charged against such account without regard to other income, gains or losses of the insurer. Section 4240(a)(1).
- (g) To the extent applicable, there must be a statement that assets in the separate account (the variable funds will always be insulated, but the fixed account may also be insulated based on Section 4240(a)(5)) shall not be chargeable with liabilities arising out of any other business of the insurer. Section 4240(a)(12).
- (h) There may be no guarantee of the value of the assets allocated to a separate account, except as permitted under Section 4240(a)(5).

D.14) Exchange

- (a) Except in the case of a private placement variable life insurance policy, the policy must contain a provision that at any time during the first 18 policy months, so long as the policy is in force on a premium-paying basis, the owner may exchange the policy without evidence of insurability for a policy of general account life insurance on the life of the insured for the same amount of insurance as the initial

face amount of the variable life insurance policy, and on a plan of insurance specified in the policy, subject to the following requirements:

- (i) the new policy shall bear the same date of issue and issue age as the variable life insurance policy;
- (ii) the new policy shall be issued on a substantially comparable plan of insurance offered in this state by the insurer (or if not available from the insurer, by a subsidiary of the insurer, its parent or an affiliate licensed to do a life insurance business in this state) with the same date of issue as the variable life insurance policy and at the rates in effect on that date for the same class of risk;
- (iii) the new policy shall include such incidental insurance benefits as were included in the variable life insurance policy if such incidental insurance benefits were then available for issue with the new policy; and
- (iv) the exchange shall be subject to an equitable premium or policy value adjustment that takes appropriate account of the premiums and policy values under the original and new policies. A detailed statement of the method of computing such adjustment shall be filed with the Superintendent.

Section 54.6(b)(7) of Regulation 77.

- (b) If a general account is offered in the policy to which all separate account funds can be transferred without restriction, the Department has not required the exchange to a general account product provided the insurer can demonstrate that this approach is more favorable to the policyholder (e.g., the general account is competitively priced in relation to such other general account products). Section 54.6(b) of Regulation 77.

D.15) Premiums

For scheduled premium policies which permit the insurer to adjust premiums, the policy must contain a provision stating the frequency with which premium will be reviewed to determine whether an adjustment should be made. Such frequency must be at least once every five policy years. Section 54.6(b)(14) of Regulation 77.

D.16) Death Benefit

- (a) Describe the amount and/or calculation of the death benefit; may be variable or fixed and may include incidental insurance benefits; *see* Section 54.1(f) – (h) of Regulation 77 (for survivorship forms, describe when base policy benefit is payable - upon death of first insured or only on death of last to die; also define who is the first insured for a first-to-die policy when both insureds die at the same time.).

- (b) Any changes in variable death benefits of each variable life insurance policy shall be determined at least annually. Section 54.6(a)(5) of Regulation 77.
- (c) The policy may offer a minimum death benefit. A minimum death benefit means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment experience of the separate account if there are no outstanding policy loans, partial withdrawals or partial surrenders. Section 54.1(g) of Regulation 77; *see also* Section III.F.1 of this Outline.
- (d) For a private placement variable life insurance policy, there must be a provision stating that the payment of variable death benefits shall be made no later than thirty (30) days from the date the request for payment and all necessary documentation are received. Section 54.6(b)(15) of Regulation 77.

III.E) Nonforfeiture Provisions

E.1) Minimum Cash Surrender Values

- (a) Variable life policies must provide cash surrender values that meet the requirements of Sections 54.7(a), 54.7(b)(2)(i) or 54.7(b)(2)(ii) of Regulation 77.
- (b) If Section 54.7(a) of Regulation 77 is used for compliance, then a policy with additional amounts must comply with the minimum values required by Section 4221(n-1).
- (c) If Section 54.7(b)(2)(i) or 54.7(b)(2)(ii) of Regulation 77 is used for compliance, then the policy must satisfy Sections 54.7(b)(3) and 54.7(b)(4) of Regulation 77. In addition, a policy with a fixed account must comply with Section 54.7(b)(5) of Regulation 77.
- (d) An insurer may use different methods to compute minimum cash surrender values for different variable life policies, but for any one policy form, an insurer must use the same method for all issue ages. Section 54.7(c) of Regulation 77. An insurer may revise its method for new issues. Section 54.7(c) of Regulation 77.
- (e) If an additional rider or supplemental benefit has an identifiable additional premium not credited to the account value of the policy, then the rider or supplemental benefit is subject to stand alone nonforfeiture requirements; *see* Section 54.5 of Regulation 77 and Section 4221(c)(2). If a rider or supplemental benefit is integrated with the policy value for the payment of benefits or charges, the base policy and rider or supplemental benefit combined must comply with the nonforfeiture requirements of Section 54.7 of Regulation 77.
- (f) Policy value (i.e., account value) is an amount equal to gross premiums paid under a policy (excluding separately identified premiums for riders or supplementary benefits that are not credited to the policy value) plus net investment income less the following as specified in the policy: administrative

charges (which may be taken in part from premiums and in part from policy value), acquisition and other charges, deferred acquisition and other charges, benefit charges, service charges, partial withdrawals and partial surrender charges. See Section 54.7(b)(1)(i) of Regulation 77.

Please note the following:

- (i) Policy value is intended to be the actual account value; hence, the items listed are interpreted to be mutually exclusive (i.e., no double counting) and exhaustive (i.e., capture all items of cash flow to and from the policyholder other than those for riders or supplementary benefits based on separate premiums not credited to the policy value).
- (ii) Net investment income may be positive or negative and may vary based on policy loans. The regulation does not specifically provide for a percent of account value charge or premium bonuses; these items are considered part of net investment income. Nonforfeiture testing should ignore premium bonuses and include account value charges as negative investment income.
- (iii) Acquisition and other charges do not include any charges included as part of deferred acquisition and other charges.
- (iv) Benefit charges as defined in Section 54.7(b)(1) of Regulation 77 come from the policy value. These charges may have an implicit expense or profit component as long as the charges are cost of insurance charges or charges for rider or supplemental benefits.
- (iv) Service charges as defined in Section 54.7(b)(1) of Regulation 77 are for transactional cost and therefore must be reasonably related to actual cost. A policy provision mandated by law can only have a service charge if explicitly allowed by law.
 - (I) Service charges are defined as being taken from the policy value and therefore would not include a premium collection charge. Consistent with (i) above a premium collection charge would be captured as an acquisition and other charge for a flexible premium policy and as either an acquisition and other charge or an administrative charge for a specified premium policy.
 - (II) Charges related to a reduction in the death benefit without a partial surrender are surrender charges and not service charges.
 - (III) A reasonable service charge on a partial surrender is allowed in addition to a partial surrender charge.
- (v) There are two types of acquisition and other charges, those that have been deferred from a prior year and those that have not. Such charges exclude

charges defined in Section 54.7(b)(1)(i)(a), (d), (e), (f) and (g) of Regulation 77. Acquisition and other charges can only be taken in the forms stated (e.g., they are not permitted as a percent of account value or as a percent of net amount at risk). At the time of deduction, deferred expense charges are expense charges subject to any expense charge limitations. Consistent with Section 54.7(b)(2)(i)(c) of Regulation 77 that deferred acquisition and other charges can be imposed on a face increase, deferred acquisition and other charges can only be established for the issue amount and subsequent face increases. They cannot be established just because the expense allowance in a year exceeds the expense charges. The deferral must relate to acquisition.

- (g) Excess first year acquisition and other charges means the greatest amount by which (A) can exceed (B) based, for scheduled premium policies, on the premiums set forth in the policy and, for flexible premium policies, on the assumption that any premium (other than a single premium) payable in the first policy year is also payable during the entire premium paying period, where:

(A) is the acquisition and other charges made in the first policy year; and

(B) is the arithmetic average of the corresponding charges which the policy states would be made.

Notes:

1. The "corresponding charges" are the charges stated in the policy in the amounts stated (whether stated as maximum charges or otherwise). This usually means guaranteed charges.
2. Flexible premium policies must consider all possible first year premium amounts permitted.
3. The charges in years 2 through 20 would include any first year deferred charges payable in years 2 through 20.

- (h) Net level whole life annual premium at issue means an annual premium based on face amounts of insurance set forth in the policy and on the assumption of level annual premiums for life, the mortality table rate used to calculate the maximum mortality charges and an interest rate based on the higher of 4 percent or that specified in the policy. Section 54.7(b)(1)(ix) of Regulation 77.

Notes:

1. The net level whole life annual premium may be determined using a fully continuous method.
2. If the policy matures before the last year in the mortality table, insurance for the endowment amount at maturity may be assumed to continue until the end of

the mortality table. If there is no endowment, the net level whole life annual premium will be a term premium until the maturity date.

- (i) With respect to cash surrender values meeting the requirements of subparagraph 54.7(b)(2)(i) of Regulation 77, please note the following:
 - (i) In Section 54.7(b)(2)(i)(a) of Regulation 77, we interpret the word "sum" to mean the allowance is cumulative and the cumulative allowance is compared to cumulative acquisition and other charges. This differs from the policy year wording in Section 4221(n-1)(3)(A)(i).
 - (ii) Expense charges in the first year exclude deferred first year expense charges. In subsequent years, expense charges include any deferred first year expense charge being charged to the policy in that year.
 - (iii) Ninety percent of premiums received up to the net level whole life annual premium at issue (regardless of when received), is available in the first year even if the premium is received after the first year.
 - (iv) The ten percent of all other premiums received referenced in Section 54.7(b)(2)(i)(a)(2) of Regulation 77 excludes separately identified premiums for riders or supplementary benefits that are not credited to the policy value.
 - (v) The ten dollars per one thousand dollars of initial face amount in the first policy year referenced in Section 54.7(b)(2)(i)(a)(4) of Regulation 77 excludes face amounts paid by separately identified premium not credited to the policy value.
 - (vi) Note the expense allowance of one dollar per one thousand dollars of face amount in subsequent policy years is not capped as in Section 4221(n-1)(3)(A)(i)(V).
- (j) The following applies to policies complying with subparagraph 54.7(b)(2)(ii) of Regulation 77:

NOTE: The expense allowance of § 54.7(b)(2)(ii)(a) can be \$10 per \$1000 of face amount less than the expense allowance provided in Section 4221(k)(2).

The expense allowance in Section 54.7(b)(2)(ii)(a) is 1% of the face amount at issue plus the lesser of 125% of the net level whole life annual premium at issue and 4% of the initial face amount of insurance.

The expense allowance in Section 4221(k)(2) is 1% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years plus 125% of the lesser of the nonforfeiture net level premium and 4% of the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years.

- (k) For nonforfeiture compliance based on Section 54.7(b)(2)(i) or Section 54.7(b)(2)(ii) of Regulation 77, Section 54.7(b)(3) of Regulation 77 limits the maximum allowable surrender charge for a year to the lesser of (1) the maximum initial allowable surrender charge reduced by the annuity factors and (2) the maximum initial surrender charge less all deferred first year expense charges made to the policy. This limitation is applied separately to face increases. Surrender charges include any deferred acquisition expense charges accelerated on surrender. Regulation 77 has been amended to change the annuity factors from a 15 year amortization based on immediate annuities to a 20 year amortization based on annuities due.
- (l) For nonforfeiture compliance based on Section 54.7(b)(2)(i) or Section 54.7(b)(2)(ii), Section 54.7(b)(4) of Regulation 77 limits the maximum mortality tables for medically underwritten policies to those allowed in Section 4221(k) (e.g., for standard issues after January 1, 2009, the 2001 CSO tables).
- (m) Section 54.7(b)(5) of Regulation 77 provides additional nonforfeiture requirements to use Section 54.7(b) when a policy offers both separate and general accounts.
 - (i) Guaranteed rates must be specified for fixed funds.
 - (ii) The policyholder must be provided an option to transfer all separate account funds to the general account and apply the policy's cash surrender value to purchase a guaranteed fixed paid-up benefit at least once every five years for a private placement variable life insurance policy and at least once each year for any other variable life insurance policy.
 - (I) The minimum amount of paid-up is based on no expense charges, mortality on which maximum mortality charges have been calculated and the interest rate guaranteed in the policy.
 - (II) The policy must specify the purchase basis. Section 3204(a)(1); Section 54.5 of Regulation 77.
 - (III) The policy must specify how subsequent cash surrender values are determined.
 - (IV) Rider payments may be taken from the guaranteed paid-up life insurance if the right to cancel the rider exists.
 - (V) The guaranteed paid-up life insurance may have options to increase (with evidence of insurability) or decrease the death benefit.
 - (VI) In the event of default of a scheduled premium policy, reduced paid-up insurance must be eligible for excess interest. Section 4232(b)(3).

- (VII) For joint life policies, the fixed paid up insurance benefit must cover the same lives on the same basis (i.e., a last-to-die policy must provide for a last-to-die paid-up benefit if both insureds are alive).

E.2) Interest and Mortality Tables

- (a) The policy must specify the mortality table, interest rate and method used in calculating paid-up nonforfeiture benefits available under the policy. Section 3204. The policy must state the guaranteed factors of mortality, expense and interest, Section 54.6(a)(1) and 54.7(b)(5)(i) of Regulation 77, and must include a statement of the method used in calculating actual policy values. Section 54.6(b)(5) and 54.7 (introductory paragraph) of Regulation 77.
- (b) The mortality table description must be complete (e.g., sex distinct/ unisex, smoker/nonsmoker or composite, age last birthday or age nearest birthday, etc.). If both smoker and nonsmoker tables are used, it must be clear which table is applicable, and the word “smoker” or “nonsmoker” must be included in the identification of the risk class on the specification page.
- (c) A rider based on the 2001 CSO table can be attached to a policy based on the 1980 CSO table if the rider has its own separately identified premium and is treated as distinct for nonforfeiture. Note that Internal Revenue Code Section 7702 tax implications may arise and the insurer should consult tax counsel.
- (d) If a rating class within a plan of insurance does not have separate premiums for smokers and non-smokers, then (i) non-smoker mortality tables are not available to determine minimum cash surrender values and (ii) smoker mortality tables are not available to determine minimum paid-up nonforfeiture benefits when such tables are limited by law. *See* Section 54.7(b)(4) of Regulation 77 and Regulation 113.

E.3) Accounts with an Equity Index Feature

- (a) An additional amount based on an equity index is nonforfeitable once it is credited. Section 3203(a)(13).
- (b) Additional amounts must be credited no less frequently than annually. Section 3203(a)(14).
- (c) The guaranteed minimum interest, if greater than zero, must be credited from the date of deposit to the date of withdrawal for any type of withdrawal, surrender, or loan. The minimum interest rate must be credited on death if the death benefit option includes the account balance. Section 3201(c)(2).
- (d) Disclosure must be made in the policy when a credit, based on the equity index formula, is not applied on the date of death or any withdrawal (i.e., surrender or policy loan).

E.4) Market Value Adjustment (MVA)

Any market value adjustment must meet the requirements of Regulation 136. The Department has not seen an MVA in a variable life policy and notes special attention would need to be given to ensure a variable universal life policy with an MVA satisfies the definition of life insurance under Section 7702 of the Internal Revenue Code.

E.5) Required Disclosures

- (a) Surrender charges, if any, and partial withdrawal charges, if any, must be shown in a table or otherwise described in the policy. Section 54.6(b)(5) and (9) of Regulation 77. The policy must provide sufficient detail to allow the policyowner to determine the surrender charge applicable upon a partial withdrawal or face amount decrease and to determine how the remaining surrender charge schedule is impacted by a partial withdrawal or face amount decrease.
- (b) The policy must either provide a detailed statement of the method of computation of the values and benefits shown in the policy or a statement that the method of computation of the values and benefits shown in the policy has been filed with the insurance supervisory official of the state in which the policy is delivered. If the latter, then the policy must include a summary of the method for computing the policy value and the cash surrender value under the policy. Section 54.(7) of Regulation 77.
- (c) The policy must explain how nonforfeiture benefits are affected by loans. Section 54.6(b)(10)(iii) and (iv) of Regulation 77.
- (d) For amounts to be paid from the general account, the policy must state that the insurer reserves right to defer payment of loan value, except to pay premiums, for six (6) months. Section 4222; Section 54.6(b)(8)(ii) of Regulation 77.

E.6) Joint Life Policies

- (a) Minimum nonforfeiture values are based on the exact joint life mortality using mortality tables that would be required for each single life and assuming that the mortality of the joint lives are independent.
- (b) For second-to-die policies, minimum nonforfeiture values and policy disclosures may be based on the use of joint life mortality throughout the lifetime of the policy. Minimum nonforfeiture values and policy disclosures on each possible status of the lives under the terms of the policy are also acceptable if the disclosures and minimum value requirements of the Insurance Law are met for each possible status.

E.7) Deferral Provisions and Continuation under Nonforfeiture Benefit

The policy must include a provision providing that:

- (i) if no premium is in default or if the policy is being continued under a variable nonforfeiture benefit, payment of variable death benefits in excess of any minimum death benefits, cash surrender values, policy loans or partial withdrawals (except when used to pay premiums), or partial surrenders may be deferred for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical; and
- (ii) if the policy is being continued under a fixed nonforfeiture benefit or to the extent benefits are being paid from the general account, payment of any cash surrender value or loan may be deferred for up to six (6) months from the date of request.

Section 54.6(b)(8) of Regulation 77.

E.8) Nonforfeiture Insurance Options

For scheduled premium policies, the policy must include a provision for nonforfeiture insurance benefits. The insurer may establish a reasonable minimum cash surrender value below which any nonforfeiture insurance options will not be available, but the policyholder shall have the right to receive a lump sum cash payment. Section 54.6(b)(9) of Regulation 77.

E.9) Payments Under a Private Placement Variable Life Insurance Policy

For a private placement variable life insurance policy, there must be a provision stating that the payment of cash surrender values, policy loans, partial withdrawals or partial surrenders shall be made as expeditiously as possible but in no event later than fifteen (15) months from the date the request for payment is received. Section 54.6(b)(16) of Regulation 77.

III.F) Other Provisions

F.1) Secondary Guarantees

- (a) Secondary guarantees are guarantees that the policy will remain in force subject only to the payment of specified premiums (a no lapse guarantee), or similar guarantees of benefits and/or nonforfeiture values independent of fund performance or actual charges.
- (b) The policy must make it clear:
 - (i) whether or not a negative account value (or unpaid charges) will be accumulated during a no-lapse guarantee period; and
 - (ii) whether or not the deficit needs to be repaid at the end of the no-lapse period.

- (c) If a negative account value (or unpaid charges) can be accumulated, the policy must fully explain the effect, if any, on the calculation of cost of insurance charges and death benefits. In such case, the policy must be clear whether or not rates for the cost of insurance can be applied to a base in excess of the death benefit and whether the death benefit is reduced to reflect the negative account value (or unpaid charges).
- (d) It must be clear from the policy language whether a secondary guarantee can be reinstated and the conditions for reinstatement. Based on Section 3204.
- (e) The policy must explain how and when the insurer will verify that the secondary guarantee conditions continue to be met. It must state that the policy owner will be notified when an additional premium payment or other action is required to maintain the secondary guarantee. It must be clear that the secondary guarantee could terminate, even though the policy remains in force. These provisions must be on a basis acceptable to the Superintendent.
- (f) The policy specifications page must contain a prominent statement that based on payment of the no-lapse premium, an additional lump sum payment may be required to keep the policy in force at the end of the no-lapse period. It must advise the policyowner to contact the insurer to obtain additional information about this. Based on Sections 3203(a)(12), 3203(a)(4) and 3204(a)(1).
- (g) The policy and annual report must describe in a prominent place any policyholder action (e.g., partial withdrawal or loan) that will nullify the secondary guarantee. Based on Section 3201(c)(2).
- (h) The annual report must state whether or not the guarantee is in effect on the date of the report. If a lump sum is projected to be required to be paid at the end of the no-lapse period to maintain the policy in force, it is recommended that the annual report include an early warning notice to that effect. Section 54.11(d) of Regulation 77.
- (i) Section 4240(d)(3) excludes application of certain provisions of the law (e.g., Section 4221 on nonforfeiture) to variable life policies. However, Section 4240(d)(3) states that it does not apply to “any policy providing benefits with respect to the amounts so allocated, if such benefits are guaranteed at any time to be not less than an amount equal to or greater than such allocated amounts accumulated to such time at three percent per annum”. A secondary guarantee on the policy may require the policy to comply with sections of the law that would otherwise not apply.
- (j) The submission of policy forms with secondary guarantees must include a certification of compliance pursuant to Section 98.9(c)(2)(x)(j) of Regulation 147. See “Important Notice Regarding Universal Life Insurance with Secondary Guarantees” dated 03/08/2013, available on the Department's website.

F.2) Partial Withdrawals

- (a) If the policy provides for partial withdrawals, there must be a separate provision in the policy describing how the partial withdrawal operates. Such provision must describe:
- (i) how a partial withdrawal is allocated among account balances;
 - (ii) how a partial withdrawal is allocated when two or more rate classes are possible; and
 - (iii) how a partial withdrawal is allocated to changes in amount of insurance when such changes have separate withdrawal charges.

Sections 3203(a)(12) and 4221(a)(6); Section 54.6(c)(5) of Regulation 77.

- (b) Policy language must ensure that a policyholder cannot increase the net amount at risk by making a partial withdrawal. Based on Section 3201(c)(2).

NOTE: This is a solvency concern and, therefore, applies to out-of-state business as well.

- (c) For policies with no explicit COI charges or COI charges expressed as a percent of account value, there must be a disclosure statement in the partial withdrawal provision and the death benefit provision of the contract regarding adjustment to the death benefit following partial withdrawals. The insurer must justify any adjustment other than a pro rata reduction. Based on Section 3201(c)(2).

F.3) Interest on Surrenders, Policy Loans

Policy language, if any, regarding a deferral period on payment of surrenders or policy loans (other than the 6-month deferral pursuant to Section 4222 or the paragraph following Section 4221(a)(8)) must comply with Section 3227. Interest is payable if the amount of interest is at least \$25 and if the funds are not mailed or delivered by the insurer within 10 working days after receipt of the documentation necessary to complete the transaction. Interest shall be computed at the rate of interest currently paid by the insurer on proceeds left under the interest only settlement option. Sections 3227(a) and 3214(c). The policy may state that the interest rate will be at least equal to the rate required by the state in which the policy was delivered. However, "rate required by law" language is not permitted.

F.4) Interest on Death Proceeds

Policy language, if any, must be in compliance with Section 3214. If no action has been commenced, interest shall be computed daily at the rate of interest currently paid by the insurer on proceeds left under the interest only settlement option from the date of death. The policy may state that the interest rate will be at least equal to the rate required by the state in which the policy was delivered. However, "rate required by law" language is not permitted.

F.5) Owner and Beneficiary Provisions

- (a) The policy must describe how contingent owner and joint owner provisions operate if such options are made available. Required for disclosure purposes. *See* Sections 3203(a)(4) and Section 3204.
- (b) For disclosure purposes, the policy must describe how primary, secondary, and multiple beneficiary designations operate if such options are made available. *See* Sections 3203(a)(4) and 3204.
- (c) If the policy provides for an automatic survivorship provision in the event of simultaneous death the provision must include the phrase “unless otherwise provided” so that the policyowner may choose another alternative.
- (d) Any change in the owner or beneficiary designation must take effect on the date the notice of change is signed, subject to any actions taken by the insurer prior to receipt of this notice by the insurer. The change must not take effect only when recorded by the insurer since there could be substantial delays. The Department has found such administrative delays to be unfair, unjust, and inequitable in violation of Section 3201(c)(2).
- (e) For disclosure purposes, if irrevocable beneficiaries are expressly permitted in the policy, the beneficiary provision must clearly explain that such beneficiaries cannot be changed without the written consent of the irrevocable beneficiaries as compared to the revocable beneficiary designations. *See* Sections 3203(a)(4) and 3204.

F.6) Assignments

- (a) Life insurance policies are freely assignable unless otherwise restricted under the policy for tax qualification purposes.
- (b) The insurer’s procedures on assignments (i.e., must be in writing, filed with the insurer, etc.) should be described in the policy for disclosure purposes. *See* Sections 3203(a)(4) and 3204.
- (c) An assignment must take effect on the date the assignment is signed subject to any actions taken by the insurer prior to receipt of the assignment. The assignment should not take effect only when recorded by the insurer since there could be substantial delays. The Department has found such administrative delays to be unfair, unjust, and inequitable in violation of Section 3201(c)(2).

F.7) Claims of Creditors

- (a) Certain life insurance proceeds may be exempt from claims of creditors. Policy language, if any, must be in compliance with Section 3212.
- (b) The policy must include statements from Section 4240(a)(1) and (a)(12) if separate account assets are to be insulated from claims of insurance creditors.

F.8) Proof of Loss

The policy may indicate that due proof of death (i.e., a copy of the death certificate) and information reasonably necessary to process the death claim (i.e., beneficiary identification) must be provided to the insurer.

F.9) Policy Changes

- (a) The policy must permit the insurer to require evidence of insurability if, at the time of death benefit option change, the net amount at risk is increased. Otherwise, a change in death benefit option must not be subject to evidence of insurability unless appropriate justification can be provided to the Department. Based on Section 3201(c)(2).
- (b) Automatic increases in the face amount (i.e., increases that occur by operation of the policy and not by policyholder request) must not be subject to evidence of insurability. Based on Section 3201(c)(2).
- (c) For a policy change being requested by the policyowner including payment of additional premium or an increase in the planned premium that results in an increase in the net amount at risk, the insurer must reserve the right to request evidence of insurability and/or reserve the right to refuse the premium. Based on Section 3201(c)(2).
- (d) The policy must provide that it will refund the excess of any premium payment made over the maximum amount that could be paid without disqualifying the policy as life insurance under Section 7702 of the Internal Revenue Code. Based on 3201(c)(2).
- (e) Any limitations on policy changes must be specified in the policy (e.g., the minimum and maximum face amount increase permitted as well as the number of such increases allowed). Based on Section 3204.

F.10) Arbitration

Binding mandatory arbitration provisions are not permitted.

F.11) Waiver of Surrender Charges or Reduction in Fees

- (a) The Department has approved waiver of surrender charge/fee provisions triggered by terminal illness, total and permanent disability, nursing home confinement or provision of long-term care either at home or in a nursing home. We would consider other waiver of withdrawal charge/fee provisions on a case-by-case basis. The waiver of withdrawal charge/fee provisions must set forth all terms, conditions and restrictions related to the benefit.
- (b) If based upon total and permanent disability, the benefit must be drafted in accordance with Section 3215 of the Insurance Law.

- (c) A life insurance policy with this feature cannot be marketed, advertised or sold as long term care coverage or as an alternative to long term care insurance.
- (d) Exclusions from paying disability benefits due to terrorism are not permitted. *See* Section 3215(b).

III.G) Dividend Recognition Issues

If a policy provides that loans may affect the amount of dividends payable, there must be language to that effect in the policy loan provision, in the dividend provision, and in the sales illustrations. *See* Section 3201(c)(2).

III.H) Policies for the IRC Section 403(b) Market

- H.1) Compliance with Circular Letter No. 16 (1993).
- H.2) Neither the policy loan provision of Section 3203(a)(8) nor the nonforfeiture provision of Section 4221 applies to any policy qualified for special tax treatment under Section 403(b) of the Internal Revenue Code to the extent that such application would prevent such tax qualification. Sections 3203(a)(8)(J) and 4221(q).
- H.3) Policy loan provisions should not be deleted but revised to comply with Section 72(p) of the Internal Revenue Code.
- H.4) The disclosure form required by Section 3209(j) must be provided at or prior to the time of application and must be submitted to the Department for approval.
- H.5) The insurer must provide tax counsel certification that the policy is in compliance with the Internal Revenue Code.
- H.6) The policy must be issued on a unisex basis or used with a unisex endorsement if the employer-employee group is subject to the Norris decision.

III.I) Minors

- I.1) Policies issued on the lives of minors (under the age of 14 ½) must be in compliance with the monetary limitations of Section 3207. Such limitations should be set out in the policy or in an endorsement to be attached to the policy when the policy provides for coverage on the life of a minor. Section III.B.1 of Circular Letter No. 4 (1963).
- I.2) Section 3207(c) provides an exception to the monetary limitations when the person seeking to effectuate (and pay the premiums for) the insurance has an insurable interest in the child, and the minor is not dependent on this person for support and maintenance.

III.J) Additional Insurance Amounts on the Life of the Same Insured

- J.1) An additional insurance amount is an additional death benefit on the same insured under the base policy subject to different cost where the difference in cost is not based on a different mortality expectation (i.e., additional amounts other than additional insurance

underwritten at a different risk class). These are distinct from the base insurance amount benefits. An additional insurance amount may be offered in a rider or incorporated in the base policy or offered in a rider and then incorporated into the base policy at a specific age.

- J.2) The rider is subject to the age limitation of Regulation 149.
- (a) For riders subject to Subpart 42-1 of Regulation 149 the age limit is age 80 unless one of the exemptions set forth in Section 42-1.4 is met.
 - (b) For riders subject to Subpart 42-2 of Regulation 149 the age limit is the last age in the mortality table for which minimum nonforfeiture values for whole life insurance are determined at the time of the term policy's issue. Section 42-2.12 of Regulation 149.
- J.3) An additional insurance amount rider cost, especially on a guaranteed basis, must be separately disclosed to the applicant and not presented as a combined premium with the base policy. Section 3209(e)(5).
- J.4) If an additional insurance amount is provided in the base policy or can be converted from a term rider to the base policy:
- (a) The amount of additional insurance and the base insurance amount must be listed separately on the specification pages.
 - (b) The additional insurance amount and the base insurance amount must have separate tables of guaranteed cost of insurance rates.
 - (c) Planned premiums and other elements of policy mechanics need to be clearly defined in terms of the base insurance amount, the additional insurance amounts or both, whichever is intended.
 - (d) The net amount at risk from the additional insurance amount and the base insurance amount must be clearly defined and the allocation of account value among them must be unambiguous.
 - (e) The relationship among the additional insurance amount, the base insurance amount and tax qualification must be fully explained.
 - (f) Suicide, Incontestability, Misstatement of Age and other policy provisions must reference the additional insurance amount when required to comply with New York Law and Regulation.

III.K) Annual Report to Policyholders

Annual reports must comply with Section 54.11 of Regulation 77.

See also Sections III.F.1(g) and III.F.1(h) of this Outline.

IV. Special Filing SituationsIV.A) Guaranteed Interest Rates

- A.1) Any change in the guaranteed interest rate requires a change to the policy form and, therefore, requires prior approval from the Department. Please follow the general filing process in Section II.A of this Outline. If this is the only change to the policy, then only the pages affected may be submitted for approval. The new pages must have a distinguishing form identification number such as “Rev.” or the date. The actuarial memorandum must be reviewed to see if it also needs to be revised and submitted to the Department as necessary.

IV.B) Changes to Other Policy Cost Factors and Other Changes

- B.1) Any changes to the guaranteed maximum policy cost factors set forth in the policy requires prior approval from the Department. Please follow the general filing process in Section II.A of this Outline. If this is the only change to the policy, then only the pages affected must be submitted for approval. The new pages must have a distinguishing form identification number such as “Rev.” or the date. The actuarial memorandum must be reviewed to see if it also needs to be revised and submitted to the Department as necessary.

V. Separate Account Plan of Operations

New York domiciled and foreign insurers must file and receive approval for their plan of operations or amendment to an approved plan of operations of separate accounts or investment policies offered under the contract. Section 4240(e). A policy form cannot be marketed or issued until the plan of operations has been approved. However, a policy form may be approved contingent upon the insurer’s receipt of the approval of the plan of operations. The insurer should forward a copy of the approval letter to be added to the file.

All plan of operation filings should be made directly to Mr. Roy Mensch, Assistant Chief Life Actuary, Life Bureau, NYS Department of Financial Services, 25 Beaver Street, New York, New York 10004.