

GROUP UNIVERSAL LIFE INSURANCE OUTLINE
(09/09/02)

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GROUP UNIVERSAL LIFE INSURANCE OUTLINE

(09/09/02)

I. Applicability

A. Products Covered

1. Group universal life insurance policies and certificates delivered in the state of New York.
2. Group universal life insurance certificates deemed to be delivered in the state of New York. A certificate is deemed to have been delivered in New York under 3201(b)(1) if:
 - (a) The certificate evidences insurance on a resident of the state, and
 - (b) The group is either not described in 4216(b) or the group is described in 4216(b)(4) (i.e., where the employers are not in the same industry), (12), (13) or (14), and
 - (c) The master policies were lawfully issued outside of New York in a jurisdiction where the insurer was authorized to do an insurance business.

B. Product Characteristics

Group universal life insurance is characterized by flexibility in the amount and timing of premium payments, cost of insurance charges that change, subject to maximum guaranteed charges, and the crediting of additional amount on general account funds in a manner similar to the crediting of additional amounts under §4232(b) of the Insurance Law for individual products.

C. Certificate/Policy

In this outline, the reference to “policy” include the policy and certificates, unless the context clearly indicates otherwise.

II. Filing Requirements

A. Overview

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).

2. Discretionary Authority For Disapproval

Section 3201(c)(1) and (2) permits the Superintendent to disapprove any policy form that contains provisions that are misleading, deceptive, unfair, unjust, or inequitable or if its issuance would be prejudicial to the interests of policyholders or members. See also §§ 2103, 3209, 4224, 4226, 4231.

- (a) Misleading or Deceptive Provisions. Section 3201(c)(1). See also Sections 4226, 2123, 3209.

- (b) Prejudicial to the Interests of Policyholders or Members. Section 3201(c)(2). See also Section 4216(c)(1) with respect to self-support.
- (c) Unjust, Unfair, Inequitable Provisions. Section 3201(c)(2). See also Sections 4224, 4231, 4239, 2403.
- (d) Contrary to Law or Public Policy. See also Sections 3207, 3208, 4213, 4214, 2611, and 2612.
- (e) Premium Unreasonable In Relation to Benefits. See Sections 3201(b)(1), 4216(b)(12), (13) and (14), 4216(e), Regulation 123.

B. Types of Policy Form Filings with the Life Bureau

1. Traditional Prior Approval

Section 3201(b)(1).

2. Alternative Approval Procedure (Deemer Submissions)

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 fail to act in a timely manner.

3. Prior Approval With Certification Procedure

Circular Letter No. 27 (2000) provides for an expedited approval procedure based on completed product checklists and an appropriate certification of compliance signed by an officer of the Company.

4. Accelerated Approval For Certificates Deemed To Be Delivered in New York

Section 3201(b)(1) and Section 59.6 of Regulation No. 123 provide for an accelerated approval procedure for certain certificates deemed to be delivered in New York in which a conditional approval will be granted in reliance upon the insurer's certification of full compliance with all applicable laws and regulations.

5. Prefiled Insurance Coverage

Circular Letter 64-1 establishes the conditions and procedures under which insurers may provide or assume risk for group life coverage prior to the filing or approval of policy forms. The conditions include the following:

- (a) Immediate coverage requested to meet specific need of policyholder.
- (b) Insurer has reasonable expectation of approval or acceptance for filing.
- (c) Confirmation letter sent to policyholder by the insurer stating:
 - (i) the nature and extent of benefits or change in benefits;
 - (ii) that the forms may be executed and issued for delivery only after filing with or approval by the department;
 - (iii) an understanding that, if such forms are not filed or approved or are disapproved, the parties will be returned to status quo insofar as possible, or the coverage will be modified retroactively to meet all requirements necessary for approval; and

- (d) Department notification.
 - (i) Statement explaining circumstances and reasons for delay in submitting forms within nine months for group life insurance. We recommend providing a copy of confirmation letter within 30 days of agreement to provide insurance.
 - (ii) Follow-up statement every six months to group life until form is submitted. If reason for delay is unacceptable, Department may pursue a violation under Section 4241 for willful violation of the prior approval requirement.
- (e) Forms must be submitted within nine months for group life subject to extension with satisfactory explanation for delay.

6. Out-of-State Filings

- (a) Domestic Insurers - Pursuant to Section 3201(b)(2), domestic insurers must file all policy forms intended for delivery outside of the state.
- (b) Section 3201(c)(6) permits disapproval of such out-of-state filing if the issuance would be prejudicial to the interests of the insurers, policyholders, or members.
- (c) Procedures
 - (i) File one copy of each policy form issued by a domestic insurer for delivery only outside of New York or with policies or contracts delivered outside New York. Note that some certificates covering New York residents will be deemed to be delivered in New York.
 - (ii) The transmittal letter should include the following information (Circular Letter 63-6):
 - (I) An explanation of how the provisions and rates of the policy form(s) submitted differ from comparable form(s) approved for delivery in New York.
 - (II) A statement that the form(s) submitted is (are) not readily comparable with any form(s) approved for delivery in New York.
 - (III) A list of the states or jurisdiction in which the form is be delivered.
 - (IV) A commitment to notify the Department in the event any such state disapproves any of the forms.

C. Policy Form Submission Rules

1. Preparation of Forms For Submission.

Basic Rules - See Circular Letters 1963-4, 1963-6 and 1969-4. References are to Circular letter 6 (1963), unless otherwise indicated.

- (a) No filing fee required.
- (b) Each policy form should be designated with form number on lower left-hand corner of face page. § I.D.
 - (i) Distinguishes the form from all others of the insurer.

- (ii) We object to a company's use of the matrix approach that identifies benefit provisions within a document with separate form numbers.
- (c) Submit duplicate copies of forms § I.G. and I.E.7, except:
 - (i) Combination group life and group accident and health (e.g., accidental death and dismemberment) should be submitted as two separate filings, each in duplicate. Note that accidental death and dismemberment ("AD&D") benefits are accident and health insurance under §1113(a)(3) of the Insurance Law and Section 52.9 of Regulation 62. The group life filing should be made to the Life Bureau and the AD&D filing should be made to the Health Bureau, with all file correspondence on each copied to the other Bureau. (As a preferred alternative, the group life coverage and the group accident and health forms may be separated out into separate forms, with each type submitted in separate filings to the Life Bureau and to the Health Bureau, respectively.)
 - (ii) Where the forms include only group life and accidental death coverage (not accidental death and dismemberment), a single filing may be made for review by the Life Bureau only. An additional benefit in the event of death by accident (Accidental Death Benefits) under life insurance policies is defined to be life insurance under §1113(a)(1) of the Insurance Law. To meet this definition the Accidental Death Benefits may only be provided while there also is life insurance. If the Accidental Death Benefits can be purchased or maintained independently of life insurance then they should be submitted to the Health Bureau.
- (d) Printed forms should be used unless its use is too limited to justify printing. The form should be clear, legible and reasonably permanent. § I.F.1. Computer-generated forms are acceptable. See also readability provision Section 3102.
- (e) Blank spaces in forms (other than application forms) should be filled in and completed with hypothetical data to indicate purpose and use of forms. In the alternative, the submission letter should explain purpose and use of each form submitted for review. §I.E.1.
- (f) All incorporations by reference should be attached to the forms and submitted for approval or if previously approved, accompany the submission. See Section 3204 and 3201 and Circular Letter 1963-4 Guidelines for Examination of Group Life Forms § I. B.12.
- (g) The application (or enrollment form), regardless of whether it will be attached to policy, should be submitted. If previously approved, the form or submission letter should so indicate (with Department file number, form number and approval date). § I.E.4.
- (h) All endorsements to be applied by stamp should be submitted, with separate form number, on company letterhead for prior approval. § I.E.5.
- (i) Variable material used with impairment, waiver or exclusion riders should be submitted with the form for approval. § I.E.2.

2. Explanation of Variable Material

- (a) Illustrative material may be used for items which may vary from case to case such as names, dates, premiums and schedules for determining the amount of insurance for each person insured. See § I.F.4.

- (b) Material in forms other than illustrative items may vary if filing includes an explanatory memorandum (i.e. explanation of variability separate from cover letter).
- (c) The variable material must be clearly indicated in forms (e.g., with red ink, bracketing, underlining or otherwise). The method of indicating variable material should be clearly stated in both the submission letter and the explanation of variable material.
- (d) The explanation of variability must clearly indicate the nature and scope of the variations to be used for the variable portions of provisions such as insuring clauses, benefit provisions, restrictions, eligibility requirements, and termination of coverage provisions. § I.F.4.
 - (i) The explanation of variability should be drafted in sufficient detail to determine the scope of variation for each bracketed item.
 - (ii) Where text is bracketed, the memorandum should include alternative text and/or an explanation of when the bracketed text will be omitted from the form.
 - (iii) Similarly, bracketed numerical items should include the range (i.e. minimum and maximum) of variation. Such items should include:
 - (I) Minimum guaranteed interest rate;
 - (II) Maximum charges;
 - (III) Alternative surrender charges.
 - (iv) An explanation of variable material that the variations "will conform to law" or "as requested by the policyholder" is not acceptable.
- (e) The alternative language, if any, should be supplied in duplicate, independent of the insurer's letter.
- (f) Open-face riders or endorsements may be submitted for approval for general use in amending illustrative or variable material within the limitations of § I.F.4 of Circular Letter 63-6.
 - (i) Except for riders by which the insurer exercises a specifically reserved right under the policy or which concern only administrative changes, all riders which may be added to the master policy after date of issue and which reduce or eliminate coverage in the policy should provide for signed acceptance by the policyholder. See Circular Letter 1963-4 Guidelines for Examination of Group Life Forms (III)(1). In addition, Department approval must be obtained for the certificate rider or endorsement setting forth the corresponding changes to the terms and conditions as stated in the certificate.
 - (ii) Except for riders in which the insurer exercises a specifically reserved right under the policy and certificate or which concern only administrative changes, all riders added to the master policy after date of issue which reduce or eliminate coverage in the policy should clearly indicate that the rights and benefits of the certificateholder will not be reduced after coverage is issued without delivery of a corresponding certificate endorsement or rider.

3. Submission Letters

Circular Letter 1963-4; Circular Letter 1963-6; Circular Letter 1969-4, Circular Letter 1999-8.

- (a) In duplicate, signed by a representative of the company authorized to submit forms filing or approval. Circular Letter 1963-6 § I.G.
- (b) Identification of Insurer.
- (c) Listing of form numbers. Circular Letter 1963-6 § I.G.1.
- (d) Table of Contents of all material in the filing.
- (e) When the policy form is designed as an insert page form, the insurer must submit a statement of the mandatory pages which must always be included in the policy form, and a list of all optional pages, if any, including application forms, together with an explanation of how the form will be used. Previously approved forms should be identified by form number and approval date. See § I.G.8. See also Circular Letter 1963-4 Guidelines for Examination of Group Life Forms § I.A.2.
- (f) Description of the benefits and coverage provided. Circular Letter 1963-6 § I.G.2 and 7. The submission letter should explain purpose and use of each form submitted if such purpose and use is not indicated on the policy form. Circular Letter 1963-6 § I.E.1.
- (g) Type of group, as defined in Section 4216(b). Specify the applicable paragraph in §4216(b) which best describes the group or groups for which the policy forms are intended. The statement that the forms are for use with all eligible groups should be avoided.
- (h) Classes covered, as defined in Section 4216 (i.e., conditions pertaining to employment and family status). See Circular Letter 1963-4 Guidelines for Examination of Group Life Forms § I.B.3.
- (i) Statement as to whether the policy is contributory. If the policy is contributory for some insureds, or for some levels of insurance, or under some conditions, indicate situations or conditions under which contributions from the insureds would be permitted or required. (For example, a policy may provide non-contributory basic life and optional contributory supplemental life insurance).
- (j) Statement as to whether the form is new or is intended to replace a previously approved form. Circular Letter 1963-6(I)(G)(3), (4), (5), (6), and (8).
 - (i) If the form is intended to supersede another approved or filed form, the number of the approved or filed form, together with a statement, of the material changes made; if the previous form is still in process, the form number, control number, and submission date. A redlined copy is helpful.
 - (ii) If a form being filed for formal approval had previously been submitted for preliminary review, a reference to the previous submission and a statement setting out either (1) that the formal filing agrees precisely with the previous submission or (2) the changes made in the form since the time of preliminary review. A redlined copy is helpful. Any resubmission of the forms must address all outstanding issues in the new submission letter. The new submission must be complete in and of itself and not incorporate previously submitted material by reference.
 - (iii) If the form is other than a policy or contract, give the form number of the policy or contract form or forms with which it will be used, or, in unusual cases if for more general use describe the type or group of such forms.

- (iv) If a form is intended to replace a very recently approved form because of an error found in the approved form, the insurer must, if the approved form has not been issued, return the original approval-stamped form with a statement in the submission letter that the form has not been issued. The insurer may, under these circumstances, use the same form number on the corrected form being submitted. 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.
 - (k) Statement as to whether or not rates are included.
 - (l) Statement as to whether or not Compensation Schedules are included.
 - (m) Statement as to whether group policy will be delivered and/or issued inside and/or outside of New York. In addition, statement as to whether certificate will be delivered inside and/or outside of New York.
 - (n) Description of the method used to indicate variable material.
 - (o) Explanation of any unique or innovative product or product feature and identification of any special market (e.g., Section 3205(d) COLI market. Mail order, IRC Section 403(b), pre-need, etc.). Innovative or unique is defined in Circular Letter 2000-27.
 - (p) Noncompliance explanation. If the policy does not comply with a specific product outline provision, the submission letter must identify the provision and provide a complete explanation of the Company's position on the issue.
 - (q) Submission letter must advise whether the policy/certificate is sex-distinct or unisex. If sex-distinct, the letter must confirm that the certificate will not be delivered under the policy in any employer-employee situation subject to the Norris decision and/or Title VII of the Civil Rights Act of 1964.
 - (r) Caption of Submission Letter
 - (i) The "re" or caption of the submission letter should identify all forms submitted for approval or acceptance. Specify form number, designate form as individual or group, provide a generic product description and generic form description. See Circular Letter No. 8 (1999).
 - (ii) Section 3201(b)(6) ("Deemer") filings must be identified in the "re" or caption.
 - (iii) Circular Letter No. 27 (2000) filings must be identified in bold print in the body of the submission letter or in the "re" or caption.
 - (s) The submission letter should indicate whether nonforfeiture values less than the minimum nonforfeiture values permitted under individual life standards in New York are possible.
 - (t) Advise as to whether or not the policy will be illustrated pursuant to §53-3.1(b) of Regulation No. 74. If yes, submit the certification required by §53-3.7(d) of Regulation No. 74.. A copy of the draft or final illustration should be available upon request.
 - (u) Circular Letter 1997-14. Filings that are incomplete or do not comply with applicable law and regulations will be closed.
4. Attachments To Submission
- (a) Actuarial Nonforfeiture Certification and Memorandum

- (i) The non-forfeiture requirements for group life insurance are at the discretion of the Superintendent. (Section 3220(a)(11)). For group universal life Insurance, the Department has accepted nonforfeiture values that are not less than the minimums required by New York Law and Regulation for individual universal life insurance.
 - (ii) If the forms' nonforfeiture values meet the individual nonforfeiture standards a certification and memorandum are required. 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(s) is in compliance with the nonforfeiture requirements of the New York Insurance Law and regulations applicable to individual universal life insurance.
 - (iii) If the forms' nonforfeiture values may be less than the individual standards, provide an actuarial memorandum on the nonforfeiture values. The memorandum must demonstrate that the nonforfeiture provision(s) is (are) equitable to the insured persons and to the policyholder and provide a detailed explanation of the method and calculation of nonforfeiture values so that the Department can determine in all circumstances what nonforfeiture values the forms will provide. Sample projections (including beginning and ending account value and cash surrender value and all policy cost factors) should be provided so that the account value mechanics can be fully understood.
- (b) Statement of the Method of Computation of the Cash Surrender Values and Paid-Up Nonforfeiture Benefits.

If the policy provides that a detailed statement of the method of computation of the cash surrender values and paid-up nonforfeiture benefits shown in the policy has been filed with the insurance supervisory official of the state in which the policy is delivered, then such statement should be provided with the submission. Section 3201(c)(5) and Section 4221(a)(6). Such statement should include sample projections (including beginning and ending account value and cash surrender value and all policy cost factors) so that the account value mechanics can be fully understood.

(c) Experience Rating Memorandum

Any experience rating of the group's premium must be addressed in the actuarial memorandum filed with the Department.

(d) Letter of Authorization

If filing is made on behalf of the company by another party, a letter of authorization from the company must be submitted by the party authorized to submit the filing.

(e) Circular Letter No. 27 (2000) Submissions Attachments

Circular Letter No. 27 (2000) submissions must include the certification of compliance signed by officer of company in the format provided by C.L. 27 (2000) and a completed product checklist.

(f) Deemer Submission Attachments

Section 3201(b)(6) deemer submissions must include the required certification of compliance signed by an officer of the insurer who is knowledgeable of the law and regulation applicable to the type of policy form. Circular Letter No. 2 (1998) requires that the certification of compliance should make reference to any law or regulation that specifically applies or is unique to the type of policy form (and rates as required) submitted. An alternative would be to submit a certification of compliance with applicable laws or regulations in this product outline.

(g) Market Value Adjustment Policy

For a market value adjustment policy, an actuarial opinion and memorandum (AOM) is required by Section 3201(c)(10) and § 43.7 of Regulation No. 136.

(h) Readability Requirement -- Flesch Score Certification

- (i) Readability requirements described in Section 3102 apply to any policy covering a group with fewer than 100 lives, and to any certificate issued pursuant to a policy delivered or issued for delivery in New York.
- (ii) Provide Flesch score certification. The Flesch score must be at least 45. See February 18, 1982 letter from Department for sample certification form. Copies of this letter can be obtained from the Life Bureau

5. Filing For Limited Modifications

- (a) For filings limited to the modifications in (b), (c), or (d) below the following applies:
 - (i) If these are the only changes to the policy, then only pages, if any, which reference these changes need to be re-filed rather than the entire policy (note: even if no new policy pages are needed, extension of approval is still required).
 - (ii) The new pages must have a distinguishing form identification number such as "Rev." or the date. It may also be possible to accomplish these changes through the submission of additional variable material.
- (b) Any change in the *guaranteed minimum* interest rate set forth in the policy requires prior approval from the Department.
- (c) Any change to the *guaranteed maximum* policy cost factors set forth in the policy requires prior approval from the Department.
- (d) If the *maximum issue age* or *maximum renewal age* is increased after a policy has been approved, this change will need to be filed with the Department for prior approval.

6. Key Legal Sources

- (a) Insurance Law Sections 3105, 3201 (Approval of Forms), 3203, 3204, 3205, 3208, 3209, 3214, 3220 (Standard Provisions), 3227, 4216, 4221 (Standard Non-Forfeiture General Account), 4222, 4228.
- (b) Insurance Regulation 123.
- (c) Circular Letters 12-21-1949, 1957-4, 9-8-1960, 7-19-62, CL4 (1963), CL6 (1963), CL1 (1964), CL4 (1969), CL3 (1977), CL16 (1993), CL2 (1994) CL3 (1996), CL14 (1997)

(Submission and Approval Process), CL2 (1998), and CL8 (1999) (Submission Letters), CL27 (2000) (Prior Approval With Certification).

III. Contract Provisions

The enabling legislation for universal life insurance (Chapter 627 of the Laws of 1982 refers only to individual life insurance policies. See § 4232(b). We have permitted group universal life insurance to be sold in New York as long as the certificates delivered in this state substantially comply with the requirements applicable to individual universal life insurance.

A. Cover Page

1. Company Name and Address

- (a) The licensed New York company's name appears on the cover page (front or back) of the group policy and the certificate.
- (b) Full street address of the company's home office appears, for disclosure purposes, on front or back cover page of group policy and certificate.
- (c) Any corporate logo, trademarks, or affiliations will be reviewed on a case-by-case basis pursuant to Section 219.4(p) of Reg. 34-A.
- (d) No unlicensed insurer's name can appear anywhere on the form. Section 3201(c)(1).

2. Free Look Provision

- (a) Section 3220 of the Insurance Law does not provide for a free look provision. However, since group universal life insurance is not funded by employer contributions, we have not approved policy forms that fail to grant drt holders free look rights complying with § 3203(a)(11) of the Insurance Law. In any event, such provision can be required for groups that are not recognized in §4216(b).
- (b) The provision must permit the certificate holder to surrender the certificate, together with a written request for cancellation, during a period of not less than ten days nor more than thirty days from the date the certificate was delivered. Upon such surrender the insurer must refund either
 - (i) any premium paid for the policy, including any policy fees or other charges, or
 - (ii) if the policy provides for the adjustment of the cash surrender benefit in accordance with a market-value adjustment formula and if the notice attached to it so provides, the amount of the cash surrender benefit provided under the policy as so adjusted assuming no surrender charge plus the amount of all fees and other charges deducted from any premium paid or from the policy value.
- (c) The free look provision must be clearly explained on the cover page of the group policy and certificate forms.
- (d) A 30-day Free Look period is required for any certificate sold by mail order.

3. Form Identification Number

A form identification number must appear in the lower left-hand corner in accordance with Circular Letter 1963-6 § I.D.

4. Brief Description of Policy

(a) A description of the policy (e.g., group universal life insurance) appears on the cover page of the group policy and certificate forms.

(b) The description of the universal life insurance policy must address the flexibility of premiums, benefits or period of coverage, if applicable. See §§ 3203(a)(4), 3204(a)(1), 3220(a)(2).

(c) Description indicates whether policy is participating or non-participating.

5. Officer's Signature(s)

The signature of at least one officer of the company appears on the group policy to execute the contract is required as a matter of contract law. The signature should be bracketed or underlined or otherwise marked to denote variable material.

B. Specification Page

1. Hypothetical Data

Complete with hypothetical data. Circular Letter 1963-6 § I.E.1.

2. Maximum Charges And Loads

The guaranteed maximum expense charges and loads that may be deducted from the premiums paid or from the account value must be set forth. See §§ 3203(a)(12) and 3204.

3. Section 3203(a)(15) Compliance

For participating policies, the data or specifications page must state:

(a) that dividends are not guaranteed, and

(b) 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 premium to be paid than illustrated.

4. Section 3203(a)(16) Compliance

For policies subject to §4232(b), the data page or the specification page must state, to the extent applicable, that

(a) Additional amounts are not guaranteed, and

(b) The insurer has the right to change the amount of interest credited to the policy and the amount of the cost of insurance or other expense charges deducted under the policy which

- (i) may require more premium to be paid than was illustrated, or
- (ii) may result in the cash values being less than was illustrated.

5. Section 3203(a)(17) Compliance

The data page or specification page must state the minimum guaranteed interest rate used to determine the guaranteed policy values.

6. Limitation On Crediting Additional Interest

Any limitation on the crediting of additional interest on a portion of the policy value or cash surrender value must be set forth. Based on Section 3203(a)(4) and Section 3204(a)(1).

7. Surrender Charges And Withdrawal Fees

Any partial withdrawal fees or surrender charges must be set forth on the specifications page. See §3203(a)(12) and §4221(a)(5-a) and §4221(n-1)(2)(A). Section 4221(a)(5-a) requires a statement as to any charges that will be imposed upon surrender of the policy for §4232(b) policies and provide for surrender charges in accordance with §4221(n-1).

8. Factor Prominence

If the policy contains non-guaranteed interest, mortality and expense factors, it must give equal prominence to the guaranteed factors. Based on 3201(c)(1).

9. Planned Premium

For a group universal life policy, the “planned premium” should be disclosed and the planned premium defined in the policy. Based on Section 3203(a)(4) and Section 3204(a)(1).

10. No Lapse Premiums

Any no-lapse premium and the period for which it is payable should be disclosed. Based on Section 3203(a)(4) and Section 3204(a)(1). 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.

11. Maturity Disclosure

Disclosure that the policy might not mature even if planned premiums are paid due to:

- (a) Changes in current cost of insurance charges and expense loads;
- (b) Changes in interest rates credited,
- (c) Changes in the investment performance of the funds in the separate account(s),
- (d) Policy loans and partial withdrawals may be taken and
- (e) There may be changes in the death benefit option.

* This disclosure can appear in the policy under the Maturity Date provision instead of on the specifications page.

C. Table of Contents

A table of contents is required for policies that are more than 3,000 words or more than three (3) pages regardless of the number of words in accordance with Section 3102(c)(1)(G).

D. Standard Provisions

Group life policies must contain in substance the following provision or provisions which in the opinion of the superintendent are more favorable to certificate holders or not less favorable to certificate holders and more favorable to policyholders.

1. Incontestability

- (a) Section 3220(a)(1) requires a provision stating the policy is incontestable after two years from its date of issue, except for non-payment of premiums by the policyholder.
 - (i) Pursuant to Section 3203(a)(3), the policy should be incontestable after being in force for two years *during the life of the insured* for a period of two years. We would not object to the italicized language.
 - (ii) Incontestability cuts off a claim of fraud in the application.
- (b) Section 3220(a)(1) also provides that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime and in no event unless a written instrument signed by him, a copy of which is or has been furnished to such person or to his or her beneficiary.
- (c) Any policy or certificate issued as a result of a conversion (or portability) option must indicate that the incontestable period for the converted (or ported) amount does not start anew, but is effective as of the date the original group policy coverage was issued. See Circular Letter 1963-4 § II.H.6.
- (d) Section 3203(a)(3) adds that if a policy provides that the death benefit provided by the policy may be increased, or other policy provisions changed, upon application of the policyholder (certificate holder) and the production of evidence of insurability, the policy with respect to each such change shall be incontestable after two years from the effective date of such increase or change, except in each case for nonpayment of premium or violation of policy conditions relating to service in the armed services.
 - (i) For group life insurance, it must be clearly stated that the incontestability provision will begin again only for "applied for" increases and will be applicable only to the applied for increased amount.
- (e) Section 3203(a)(3) permits insurers to except benefits for total and permanent disability and additional benefits for accidental death from the incontestability provision. Section 3220 is silent with respect to exception from incontestability other than for non-payment of premium.
 - (i) Note that §3215(a)(5) of the Insurance Law requires that a contract of disability insurance to include an incontestability provision. See also C.L. 63-4 § II.H. 2 of the *Guidelines For Examination Of Individual Life Policies And Related Forms*.
- (f) Must be based on "material misrepresentations" in accordance with Section 3105.

2. Entire Contract.

Sections 3220(a)(2) and 3204, and Circular Letter 1963-4

- (a) Section 3220(a)(2) requires a provision stating: “The rights of any policyholder, insured or beneficiary shall not be affected by any provision not contained: (a) in the policy, riders, endorsements, or amendments signed by the policyholder and the insurer, (b) in the policyholder’s application attached to the policy, or (c) in any individual statement submitted with the application.
- (b) Sections 3204(a) requires that the approved policy forms contain the entire contract between the parties. Section 3204 further provides:
 - (i) Nothing shall be incorporated therein by reference to any writing, unless a copy thereof is endorsed upon or attached to the policy when issued.
 - (ii) No application shall be admissible in evidence unless a true copy was attached to the policy when issued.
 - (iii) Such policy cannot be modified, nor can any rights or requirements be waived, except in writing by a person specified by the insurer in such policy.
 - (iv) All statements made by, or by the authority of, the application for the issuance, reinstatement, or renewal of such policy shall be deemed to be representations and not warranties. See also Section 3105.
 - (v) No insertion or other alteration of any written application shall be made by any person other than the applicant without his/her written consent, except that the insertions may be made by the insurer for administrative purposes only in such manner as to indicate that the insertions are not be ascribed to the applicant.
 - (vi) Note: a table or schedule of rates, premiums or other payments which is on file with the Superintendent for use in connection with such policy or contract is excepted from the requirements of Section 3201(a).
- (c) The Guidelines for Examination of Group Life Forms in Circular Letter 1963-4 §I.B.12 provides that incorporation by reference is governed by Section 3204(a).
 - (i) References to other sources to determine factual situations, such as facts of employee status, membership in a collective bargaining unit or a union, other benefits, salary, termination of employment or membership, etc., are not incorporations by reference.
 - (ii) Where sources outside the group policy are referred to for such data as the plan of benefits expressed in a collective bargaining agreement or trust instrument, etc., such source documents or sufficient excerpts therefrom should, for information purposes, accompany the filing, as part of the file.
- (d) Pursuant to Circular Letter 1963-4, §II.H.7, the entire contract provision for individual life insurance policies cannot include the words “in absence of fraud.” We object to such language in group life policies as well.
- (e) In general, the entire contract provision should include reference to the certificate. We may object to language stating that the certificate merely summarizes the terms of the group policy and that the terms of the group policy control in the event of a conflict

between the policy and the certificate, especially where coverage is voluntary the certificateholder pays part or all of the premium.

- (f) Except for riders by which the insurer exercises a specifically reserved right under the policy or which concern only administrative changes, all riders which may be added to the master policy after date of issue and which reduce or eliminate coverage in the policy should provide for signed acceptance by the policyholder. See Circular Letter 1963-4 Guidelines for Examination of Group Life Forms § III.1.
 - (i) Department approval must be obtained for such riders.
 - (ii) In addition, certificate rider or endorsement forms must be submitted for approval to the extent that certificate holder rights and benefits are affected.
 - (iii) Where the certificateholder pays part or all of the premium, all riders which reduce or eliminate coverage in the policy or invalidate or impair certificate holder rights should clearly indicate that the rights and benefits of the certificateholder will not be altered without delivering a corresponding certificate endorsement or rider form.

3. Misstatements

- (a) Section 3220(a)(3) requires a provision stating that for the equitable adjustment of the premium, or if the amount of insurance depends on the age of the insured, for the equitable adjustment of the amount of insurance and the premium in the event of a misstatement of the age of the person insured.
- (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 cost of insurance rate to the correct cost of insurance 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 provision may include an adjustment in the event of misstatement of sex. See Circular Letter 1963-4 § II.H.8. Note that products sold in the employer/employee market are generally subject to the *Arizona v. Norris* decision and must use unisex rates.

4. Certificate Issuance and Validity

Sections 3220(a)(4) and 4216(b)

- (a) Section 3220(a)(4) requires a provision stating that the insurer will issue a certificate to the policyholder for delivery to person whose life is insured under such policy containing a statement of the insurance protection to which s/he is entitled including any changes in such protection depending on the age of the person whose life is insured and the statutory conversion rights.
 - (i) Section §4216(b)(1), (2), (6), (7), (10), (11), (12), (13) require issuance of a certificate to the policyholder for delivery to the person insured or such beneficiary as evidence of insurance.

- (b) The certificate must include in substance all provisions of the policy that are directly relevant to the insureds (i.e., all provisions required for individual universal life insurance).
 - (i) Any inconsistencies or conflicts between the group policy and certificate must be eliminated prior to approval. The terms of the group policy should not conflict with the terms of the certificate. Otherwise, the certificates would be misleading.
 - (ii) The policy and certificate should include a statement that nothing in the group policy invalidates or impairs any rights granted to the certificateholder in the certificate.
- (c) Note that certificates deemed to be delivered in New York under a group policy issued out-of-state to a non-recognized group are subject to individual or group standards that afford the insured the greatest protection pursuant to § 59.4(b) of Regulation No. 123. In such cases, the terms of the group policy should not invalidate or impair the rights granted to the certificate holder in the certificate.
- (d) Certificate forms delivered or deemed to be delivered in New York should clearly state that rights and benefits granted to the certificateholder will not be less than those required by New York law.

5. Grace Period

- (a) Policies must be in compliance with Section 3203(a)(1) and (2), which provide for at least a 31-day grace period or of one month. Section 3211(a)(2) makes Sections 3203(a)(1) and (2) applicable to flexible premium policies when the account value or cash surrender value, as applicable, is no longer adequate to prevent default as defined in the policy.
- (b) Policies must provide for at least 15 days and no more than 45 days written notice to be sent to the policyholder's last known address prior to the date of default, Section 3211(a)(1). The notice must be in accordance with Section 3211(b).

6. Beneficiary and Facility of Payment

- (a) Designated Beneficiary. Section 3220(a)(5) of the Insurance Law requires a provision stating that the benefits payable under the policy shall be payable to the beneficiary or beneficiaries designated by the insured, except where the policy contains conditions pertaining to family status, the beneficiary may be the family member specified in the policy.
- (b) Specified Beneficiary. If policy contains conditions pertaining to family status, the beneficiary may be the family member specified in the policy. (See L.1959, c 464 "family status" amendment). Employers wanted to make sure that spouse and/or children would receive death benefit for life insurance amounts typically paid for by the employer.
- (c) Absence of Designated or Specified Beneficiary. If there is no designated or specified beneficiary as to all or part of the insurance payable at the death of the insured, then the amount of insurance shall be payable to the:

- (i) Estate of the insured; or
 - (ii) Surviving Relatives. At the insurer's option, to one or more of the following surviving relatives: wife, husband, mother, father, child or children, brothers or sisters.
- (d) Insurer may deduct from the death benefit an amount not to exceed \$500 to be paid to any person or persons appearing to the insurer to be equitably entitled to such payment by reason of having incurred expenses on behalf of the insured or for his or her burial.
 - (e) The policy and certificate should clearly describe how primary and secondary beneficiary designations operate if being made available, and should describe how multiple beneficiary designations are handled. Based on § 3203(a)(4) and §3204.
 - (f) Any change in the beneficiary designation should take effect on the date the notice of change is signed subject to action taken by the insurer prior to receipt of this notice. The change should not take effect only when recorded by the insurer because there could be substantial delays.
 - (g) Except as provided in Section 4231(b) and Section 3220(a)(5), such policy shall provide for payment of all benefits thereunder, to the person insured or to some beneficiary or beneficiaries other than the employer/policyholder. Section 4216(b). See also Section 4216(i)(2) which provides an exception for corporate-owned life insurance described in Section 3205(d).
 - (h) If irrevocable beneficiaries are permitted, 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.
 - (i) 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 would have the option of not having the automatic survivorship provision be applicable.

7. Reinstatement

- (a) A policy that provides for scheduled premium payments must comply with Section 3203(a)(10) including the minimum reinstatement period requirement of three years. Section 3203(a)(10).
- (b) Policy must explain how the account value and surrender charge will be determined upon reinstatement.
- (c) A new incontestable period can begin again upon reinstatement based on the application for reinstatement in accordance with Section 3210.

8. Assignment

- (a) Unless the policy expressly prohibits or restricts the right of assignment, an insured is permitted to make an assignment of all or any part of his/her incidents of ownership in such insurance, including any right to designate beneficiaries and any right to convert to an individual policy. Section 3220(c).

- (b) No group life policy which permits assignment of a covered person's rights shall restrict the covered persons from making assignment other than by gift. Section 7809.
- (c) Insurer's procedures on assignments should be described in the policy and certificate. Assignments should be effective as of the date signed, subject to action taken by the Company prior to receipt of notice of the assignment.
- (d) The policy and certificate must comply with Section 3212.

9. Termination of Coverage

The policy and certificate should state specifically and clearly all reasons for termination of coverage. See Circular Letter 1963-4 Guidelines for Examination of Group Life Forms § I.B.4.

10. Policy Loans

- (a) Required pursuant to Sections 3203(a)(8) and 4222.
- (b) Can be either a fixed interest rate not to exceed 7.4% (payable in advance) or 8% (payable in arrears), an adjustable interest rate up to a maximum cap of 8%, or an adjustable interest rate with no cap but subject to the maximum limits of section 3206. Section 3203(a)(8)(F) and 3206.
- (c) For adjustable rate loans, (whether or not as defined in 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. (Section 3203(a)(8)(F))
- (d) Adjustable interest rate based on Moody's Index must be in compliance with Section 3206 requirements as follows:
 - (i) Adjustable maximum loan rate shall not exceed the greater of published monthly average for the calendar month ending two months previous or cash surrender value rate plus 1%;
 - (ii) Adjustments made on regular intervals, provided such adjustments may be increased when rate increases by ½% or more and 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. Section 3206 (e).
- (e) Based on 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 Section 3206(e) requirement for adjustable loan provisions that no policy shall terminate in a policy year as the sole result of a change in the interest rate) 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.

- (f) Security for the loan shall be assignment or pledge of the policy, Section 3203(a)(8)(B).
- (g) Policy must state that insurer reserves right to defer payment of loan value, except to pay premiums, for 6 months (Section 4222).
- (h) The maximum differential between the interest charged on the policy loan and the interest rate credited to the portion of the account value equal to the loan balance may not exceed 2%. This must be a reduction in additional amounts only and the resulting interest rate credited to the portion of the account value equal to the loan balance must not be less than the minimum guaranteed interest rate in the policy. We have permitted a 3% spread for a single premium policy, which has no current expense or cost of insurance charges. Section 3203(a)(8)(H).
- (i) If a future reduction in loan spread is illustrated or otherwise disclosed, it must be guaranteed in the policy. See Section 53-3.2(d) of Regulation 74.
- (j) Loan value is defined as cash surrender value at the end of the current policy year. This applies to scheduled premium as well as flexible premium policies. See Section 4222. We have permitted (i) the current cash surrender value less up to 3 months current expense and cost of insurance charges as well as (ii) the current cash surrender value projected from the date of loan to the following anniversary and discounted at the loan interest rate.
- (k) The policy must state how a deposit not designated as a premium or loan repayment will be treated if a loan is outstanding.
- (l) A required minimum loan amount is not authorized by statute.
- (m) Any indebtedness can be deducted from proceeds payable on death.
- (n) Any indebtedness can be deducted from the cash surrender value upon surrender or in determining any nonforfeiture benefit.
- (o) If a policy provides that loans may affect the amount of dividends payable, there should be language to that effect in the policy loan provision, in the dividend provision and in the sales illustrations. Based on Section 3201(c)(2).

11. Settlement Options

- (a) If death benefit proceeds can be paid out in installment or annuity payments, there must be a table in the policy. Section 3203(a)(9).
- (b) If any life income settlement option with a period certain provides for installment payments of the same amount at same 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. 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. Section II (J)(1) of Circular Letter 4 (1963).

- (c) The guaranteed interest rate and annuity table being utilized for the tables should be identified in the policy for disclosure purposes. Based on Section 3203(a)(9) as well as Section 3203(a)(4) and Section 3204(a)(1).

E. Conversion Privilege and Notice of Conversion

1. Conversion Right

- (a) Pursuant to Section 3220(a)(6) of the Insurance Law, an employee or member shall be entitled to have issued to him or her by the insurer a policy of life insurance upon the termination or reduction in coverage only under the following conditions:
 - (i) without evidence of insurability,
 - (ii) upon application made to the insurer within 31 days after such termination or reduction of insurance or within any extended conversion notice period, whichever is later. See “Notice of Conversion” below.
 - (iii) upon payment of premium applicable to:
 - (IV) the class of risk to which he/she belongs, and
 - (V) the form and amount of the policy at his/her then attained age;
 - (iv) the policy of life insurance is in any one of the forms customarily issued by such insurer, except term insurance. Note that “any” is interpreted to mean a choice by the insured from all form customarily issued by insurer.
 - (v) the amount of protection equals the amount of life insurance protection (i.e. including any supplemental life coverage) under the group policy at the time of such termination or reduction, less any amount of life insurance remaining in force, except
 - (VI) 3220(a)(6)(B)(ii) in the case of a reduction above, in an amount equal to 80% of his/her coverage under such group policy immediately prior to such coverage.
 - (VII) See replacement coverage below.
- (b) We have permitted affiliated and unaffiliated insurers to provide individual conversion policy where the group life insurer does not offer any individual policies under limited circumstances. We review the contractual arrangement between the two insurers, the subsidy or charge made against the group life insurer and the rate class to which the convertees convert.
- (c) Conversion rights under Section 3220(a)(6) do not apply to groups described in Section 4216(b)(3) (credit life) or (8) (municipal corporation or public housing authority).

2. Events Triggering Termination or Reduction in Coverage

- (a) Employee’s or member’s group life insurance coverage ceases because of termination of:

- (i) employment or membership in the class or classes eligible for coverage. Note that retired employees must be granted equitable rights of conversion for individual termination of coverage. See Circular Letter 1963-4 Guidelines for Examination of Group Life Forms § I.B.6. and Circular Letter dated June 2, 1953.
 - (ii) the policy - (See replacement or reinstatement of such group policy).
 - (iii) for an insured covered under a Section 4216(b)(12), (13) or (14) group policy, within 31 days after notice from the insurer that to continue coverage, he/she must contribute more than 133% of the net premiums computed according to the Commissioners 1960 Standard Group Mortality Table at 3.0% interest.
- (b) Employee's or member's group life insurance coverage is reduced
- (i) in the case of a policy covering an employee or union member under a plan arranged by the insured person's employer or union, on or after the employee's or union member's attainment of age sixty (60) in any increment or series of increments aggregating 20% or more of the amount of coverage in force before the first reduction on account of such age;
 - (ii) in the case of a policy covering any member other than described in item (i) above, at the time of the first reduction of insurance;
 - (iii) due to change in class; or
 - (iv) due to an amendment of the policy to take effect immediately or at any subsequent date.

3. Replacement Coverage

The group policy may (i.e. permissive) contain a provision that if the policyholder or insurer terminate the policy, the amount of life insurance that may be converted shall in no event exceed the amount of such employee's or member's life insurance protection less any amount of life insurance for which he/she may be or may become eligible under any group policy issued or reinstated by the same or another insurer within 45 days after the date of such cessation.

4. Preliminary Term Insurance

At the option of the employee or member, he/she shall be entitled to have issued to him/her a policy of life insurance only, in any one of such forms:

- (a) preceded by term insurance for a period of one year,
- (b) with the premium payable, at the option of the employee or member, in any mode customarily offered by the insurer.

5. Total and Permanent Disability Benefit - (L.1997,c.287).

- (a) This benefit is a mandated additional benefit.
- (b) If an employee's or member's coverage ceases because of termination of employment or membership due to total and permanent disability, the employee or member shall be entitled to have issued to him/her:
 - (i) a policy of life insurance only, in any one of such forms (i.e. including term).

- (ii) preceded by term insurance for a period of one year.
 - (iii) with premium payable at option of the employee or member, in any mode customarily offered by the insurer.
 - (iv) in an amount of such employee's or member's life insurance protection in effect immediately before termination, less the amount of any life insurance which is replaced with the same or another insurer within 45 days after cessation of the group life insurance protection.
- (c) We have interpreted the phrase "any one of such forms" to mean choice by the insured of any one from all such forms customarily issued by such insurer, including term insurance.
- (i) Term insurance was not excepted from this benefit as is the case with the general conversion right.
 - (ii) Also, this additional benefit would have no meaning if term insurance were not available.
 - (iii) The term insurance alternative is consistent with the Legislature's goal of making conversion more affordable for insureds who are least able to afford more expensive options.
- (d) For definitions of total and permanent disability, we have relied upon Section 3215, notwithstanding Section 3215(g).

6. Extension of Benefits

- (a) Death benefit (equal to full amount of death benefit payable under original policy) payable if death occurs within 31-day period or any extension pursuant to §3220(a)(8) that the employee or member was entitled to make application to convert coverage to an individual policy.
- (i) Death of insured before expiration of 90-day notice period is deemed exercise of right of conversion if no notice is provided. Oakley v. National Western Life Ins. Co., D.C. N.Y. 1968, 294 F. Supp. 504.
 - (ii) If notice is provided after 15 days but before 90 day after triggering event, death benefit is payable if death occurs within 45-day application period.
- (b) The policy may contain a provision obligating the policyholder to pay a premium to the insurer for this coverage extension if the extension is a direct result of the policyholder's voluntary termination of the policy and the policyholder replaces the coverage within six months with the same or another insurer.

7. Individual Conversion Policy

- (a) Incontestability. Statements made by the insured under the group policy relating to insurability under the group policy may be used in contesting the validity of the individual conversion policy to the same extent that such statement could have been used in contesting the validity of the coverage under the group policy if the group conversion had not ceased.

- (b) Suicide. The individual conversion policy shall not exclude or restrict liability in the event of suicide of the insured after two years from the date that the insured became covered under the group policy.

8. Conversion for Dependents

- (a) Pursuant to Section 3220(a)(7) of the Insurance Law, employee/member has the option of covering dependents who were insured under the group policy under a converted policy. The effective date of the converted policy or policies shall be the date of termination of the employee's or member's insurance under the group policy.
- (b) Conversion privilege is available to dependents
 - (i) upon termination or reduction as described in Section 3220(a)(6);
 - (ii) upon death of employee/member, to the surviving spouse/children insured under group policy;
 - (iii) to a child upon attaining the limit age;
 - (iv) upon divorce or annulment of marriage of employee and spouse.

9. Notice of Conversion

Sections 3220(a)(8) and 4216(d) provide that notice to certificateholders is required in all cases when statutory conversion right is triggered, regardless of whether continuation or porting of coverage is also available. Notice shall be provided within the following periods:

- (a) 31-Day Application Period – The certificateholder (and any person for whom conversion is available pursuant to Section 3220(a)(7)) must be notified of the conversion privilege and its duration within 15 days before or after the happening of the event.
- (b) 45-Day Period After Notice - If notice of conversion privilege is more than 15 days, but less than 90 days after the triggering of such event, the time allowed for the exercise of the conversion application privilege should be extended for 45 days after the giving of such notice.
- (c) 90-Day Period - If no notice is provided within 90 days after the triggering of the event, the time allowed for the exercise of the conversion application privilege expires at the end of 90 days.
- (d) Full Compliance with Notice requirements by
 - (i) written notice by policyholder or insurer
 - (I) given to the certificateholder or
 - (II) mailed to the certificateholder at the last known address; or
 - (ii) written notice by insurer mailed to the certificateholder at last address furnished to the insurer by the policyholder.
- (e) The policy/certificate must provide the same notice procedures (and periods) for availability of ported/continued coverage when the statutory conversion right is initially triggered and again for availability of converted coverage when the ported/continued coverage ends.

- (i) In addition, the policy/certificate must provide employee/member the right to convert at any time when continued/ported coverage is in effect.
 - (ii) Porting and continuation are permitted as options in addition to the statutorily required conversion on the basis of being more favorable to the certificateholder or not less favorable to the certificateholder and more favorable to the policyholder. Circular Letter 1996-3.
- (f) The notice to the certificateholder of the right to convert should be provided in a manner designed to ensure that the dependent spouse or children can exercise his or her own right to convert as provided in Section 3220(a)(7). A Separate notice of right, with the same notice periods set forth in Section 3220(a)(8), would ensure that the required conversion right is available under the following circumstance:
- (i) Upon the death of the employee or member to the surviving spouse with respect to such spouse and children as are then insured by the group policy,
 - (ii) To a child upon his attaining the limiting age of coverage under the group policy while insured as a dependent thereunder, and
 - (iii) Upon the divorce or annulment of the marriage of the employee or member to the spouse or former spouse of such employee or member.
- (g) Written notice can be provided by the insurer or policyholder pursuant to Section 3220(a)(8). However, to avoid ERISA preemption, it appears that the insurer should provide such notice. See Howard v. Gleason Corp., C.A.2 (N.Y.) 1990, 901F.2d 1154.

10. Group Life Continuation and Portability -- Circular Letter No. 3 (1996)

We approve this benefit on the basis of it being more favorable based on the following being satisfied.

- (a) Option may be offered in addition to conversion option (not as a substitute for conversion when events trigger statutory conversion rights. It is permissible to restrict the availability of the continuation or portability to only some of the instances where conversions are required to be available.
- (b) Portability or Continuation provided under either (i) or (ii) below:
 - (i) Group life portability trust established solely for the purpose of making continued term life insurance available to employees or members whose coverage would terminate under the group life policy.
 - (I) This trust will qualify as a discretionary group under Section 4216(b)(14) if criteria satisfied.
 - (II) Incontestability and suicide periods would relate back to the initial group life coverage.
 - (III) As this group comes under 4216(a)(14), if rates exceed 133% of the corresponding net premium computed according to the 60 CSG Table and 3% interest, we will require conversion option. Section 3220(a)(6).
 - (IV) Any provision restricting the portability option to healthy lives is not permitted. We will permit a restriction on insureds that are on a waiver of premium benefit or similar benefit.

- (V) The submission should include the actuarial memorandum required by Section 54.7 of Regulation 123.
- (ii) The insurance is continued under the existing group life insurance policy.
 - (I) the policy forms must indicate that the former employee or member who have continued their coverage can exercise the statutory conversion right at any time.
 - (II) Any provision restricting the portability option to healthy lives is not permitted. We will permit a restriction on insureds that are on a waiver of premium benefit or similar benefit.
- (c) The submission letter should include an explanation of how the rates for the continued or ported lives are calculated. The calculation should be done in such a way that the rates are sustainable. By this we mean that in the absence of other considerations that as long as the actual experience follows expectations no rate increases are necessary. The submission letter should offer specific comments in the regard.
- (d) The submission letter should confirm availability by describing the relative cost of the conversion benefit versus the portability/continuation benefit.
- (e) Notice Periods taken from Section 3220(a)(6) and (8) – notice for availability of continuation and portability options is to be provided in the same manner with same notice periods as required for conversion.

F. Permitted Exclusions

Section 3203(b) and (c) of the Insurance Law identifies permissible exclusions and restrictions of liability for individual life insurance. Note the exclusions and restrictions cannot apply to any additional benefits in the event of accidental death. In the absence of any guidance in §3220, we apply §3203(b) and (c), notwithstanding §3203(e).

1. Specified Country Exclusion

- (a) A life insurance policy may exclude or restrict liability in the event of death occurring while the insured is resident in a specified foreign country or countries.
- (b) Any life insurance policy form containing any travel exclusion or restriction cannot be approved for delivery or issuance in this state unless disclosure required under Section 3201(c)(4) is set forth on the form's face page.

2. Suicide

- (a) An insurer may exclude payment of the death benefit if the insured commits suicide within the first two years in accordance with Section 3201(b)(1)(B). 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.
- (b) The insurer must refund the premiums paid (less dividend paid in cash and any indebtedness) during the two-year period. Section 3203(b)(3) and Circular Letter 1963-4 § III.E.4.
- (c) The phrase “while sane or insane” is prohibited, except with respect to additional accidental death benefits. Circular Letter 1963-4 § II.I.1.

- (d) Any policy issued as a result of a conversion option must indicate that the two-year suicide exclusion period does not start anew, but is effective as of the date of the original coverage. Circular Letter 1963-4 § II.H.6. This applies to ported coverage as well.

3. War and Service in Armed Forces Exclusion

- (a) Section 3203(c) of the Insurance Law provides that a life insurance policy may exclude or restrict liability in the event of death as a result of
 - (i) war or 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 (6) months after termination of such service.
 - (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.
 - (iii) war or act of war, within two years from the date of issue of the policy (or certificate), 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 (6) months after the insured's return to the home area.
- (b) The war exclusion is not to be construed as an exclusion because of status of the insured as a member of any armed forces or attached civilian unit or because of presence of the insured as a civilian in a combat area. The exclusion does not exclude deaths due to diseases or accidents that are common to the civilian population and are not attributable to special hazards to which a person serving in such forces or units exposed in the line of duty.
- (c) Any war exclusion must terminate six months after (the first to occur):
 - (i) the end of the war;
 - (ii) the discharge, release, or separation of the insured from active military service,
 - (iii) demobilization of the insured, or
 - (iv) the insured permanently leaves the war area.
- (d) Any life insurance policy form containing any war exclusion or restriction cannot be approved for issuance or delivery in this state unless disclosure required under Section 3201(c)(4) is set forth on the form's face page.
- (e) Note that Section 336 of the Insurance Law requires insurers to notify the Superintendent prior to commencing the issuance of life insurance policies with war risk exclusions. See L.1991, c.467, § 27.

4. Aviation Exclusion

- (a) Section 3203(b)(1)(C) permits an exclusion or restriction for aviation under conditions specified in the policy.

- (b) Section 52.16(c)(4)(iii) of Regulation 62 permits an exclusion or limitation for aviation, other than as a fare-paying passenger on a scheduled or charter flight operated by a scheduled airline.
- (c) Any life insurance policy form containing any travel exclusion or restriction cannot be approved for delivery or issuance in this state unless disclosure required under Section 3201(c)(4) is set forth on the form's face page.

5. Hazardous Occupations Exclusion

- (a) Section 3203(b)(1)(D) permits an exclusion or restriction for hazardous occupations specified in the policy, provided that death must occur within two years from the date of issue.
- (b) Extra-hazardous activities is defined in Section 52.2(i) of Regulation 62 to mean aviation and related activities, such as sky-diving and parachuting, and participation as a professional in athletics or sports.

6. Other

Exclusions from paying the death benefit due to medical conditions are not permitted. Exclusions from paying the death benefit due to terrorism are not permitted. Section 3203(b) and (c) set forth the only permissible exclusions.

G. Participation in Surplus, Dividends and Rate Reductions

1. Distribution of Surplus - Dividends

- (a) Section 3203(a)(6) of the Insurance Law requires a policy provision stating that the insurer shall annually ascertain and apportion any divisible surplus accruing on the policy.
- (b) 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. See §II.F.2 of Circular Letter No. 4 (1963).
- (c) 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, pursuant to §II.F.3 of Circular Letter No.4 (1963).
- (d) All nonparticipating plans must contain a statement in the brief description on the face page and also on the filing back, if one is used, indicating that the plan is nonparticipating or does not share in surplus earnings. See §II.F.1 of Circular Letter No. 4 (1963).
- (e) Any participating policy crediting additional amounts under Section 4232(b) shall be labeled as participating and must provide for a distribution of surplus resulting from past gains. However, if a minimal amount of dividend is expected to be paid, the policy shall so state.

2. Dividend Options

- (a) Section 4231(b)(7) of the Insurance Law provides that in the case of a participating group life insurance policy the group policyholder determines whether dividends will be payable in cash or applied to the payment of premium under the policy.
- (b) For group universal life insurance, the insurer must explain why
 - (i) Any of the four dividend options (i.e. cash, reduction in premium payments, purchase of paid-up additions, and accumulation at interest) required for individual universal life insurance will not be available at the employee or member level. See §4231(b)(1). Note, however, the Department has determined that flexible premium policies do not have to offer the reduction in premium option.
 - (ii) The employee or member is not allowed to elect the dividend option.
 - (iii) We have accepted the use of a paid-up addition option only when the cash value of the paid-up addition at purchase is equal to the amount of the dividend and the owner has full access to the cash value.
- (c) The automatic dividend option when none is elected is paid-up additions, pursuant to §4231(b)(4).
- (d) Note that the cash payment option is not required for a policy qualified for special tax treatment under IRC§403(b) to the extent that such payment would prevent such qualification or for a policy with respect to which the Superintendent has determined that cash payment of dividends would be inappropriate.

3. Recovery of Group Policyholder/Employer Costs

- (a) Section 4231(b)(7) of the Insurance Law provides that any dividend apportioned in a participating group life policy or any rate reduction on any nonparticipating group policy issued to an employer may be applied to reduce the employer's part of the cost of such policy, except that the excess, if any, of the employee's aggregate contributions under the policy over the net cost of insurance shall be applied by the employer for the sole benefit of employees..
- (b) Any Section 4216(b)(7) group (state troopers, policemen's benevolent association, uniformed firemen or volunteer firefighter or volunteer ambulance worker association) currently holding premium dividends shall be permitted to maintain said dividends for the general purposes of the entire membership.
- (c) For Section 4216(b)(10) group (profession, trade or occupation association), if a policy dividend is declared or a reduction in rate is made, the excess, if any, of the aggregate dividends or rate reductions under the policy over the aggregate expenditure for insurance under such policy made from association or employer funds, including expenditures made in connection with administration of such policy, shall be applied by the policyholder for the sole benefit of the insured individuals.
- (d) Section 4216(h) provides that any dividend apportioned on a participating group insurance policy or any rate reduction made or continued on any nonparticipating group

policy for the first or subsequent year issued under Section 4216(b)(12), (13) or (14) may be applied to reduce the policyholder's part of the cost of such policy, except that the excess, if any, of the insured's aggregate contribution under the policy over the net cost (gross premium less dividends or rate reductions) of insurance shall be applied *at the discretion of the insurer* either as a cash payment to the insured, or to reduce the insured's premium, unless the insured assigns the dividend or rate reduction to the policyholder.

- (i) If a dividend or rate reduction is payable upon policy termination, the insurer shall either make payment to the insured, or to the policyholder upon receipt of certification from the policyholder that the dividend or rate reduction will be distributed by the policyholder to the insureds or applied to reduce the insured's premium.
- (ii) Section 4216(h) also applies to New York residents insured under group policies delivered outside of New York to groups that are not described in Section 4216(b)(1)-(11), including non-recognized groups.

4. Rate Readjustments

- (a) Pursuant to Section 4216(c)(2), any group life policy may provide for readjustment of the rate of premium based on experience thereunder, at the end of the first year or of any subsequent year, and such readjustment may be retroactive only for such policy year. Any such rate readjustment shall be computed on a basis that is equitable to all group life insurance policies.
 - (i) We have permitted insurers to experience rate group universal life insurance in limited circumstances, primarily in the employer/employee group context.
 - (ii) Any experience rating of the group's premium must be addressed in the actuarial memorandum filed with the Department.
 - (iii) For multiple employer groups, we do not permit the use of experience rating of individual employers participating in the multiple employer group.
- (b) Circular Letter No. 3 (1977) states that the term "group dividend" refers to the payment of a refund of part of a redundant premium under a participating group life insurance policy and the term "group retrospective rate credit" is the similar payment under a nonparticipating group insurance policy.
 - (i) The amount returned or credited is based upon the actual experience of a particular group policyholder or of a class of group policyholders, or a combination of such experience.
 - (ii) Such credits or refunds, like dividends, must be based upon an objective formula which is set forth explicitly and in writing, and which must be uniformly applied.
 - (iii) A group retrospective rate credit must be approved by a board of directors in the same manner that a group dividend formula is required to be approved.
- (c) Cost Plus No Claim Reserve Group Life not permitted. See Circular Letter dated September 8, 1960.

H. Excess Interest, Indeterminate Premium and Account Value Provisions

1. Additional Amounts

- (a) The policy must describe the method of crediting interest.
- (b) The policy must state that additional amounts are nonforfeitable after crediting, except indirectly due to surrender charges made pursuant to §4221(n-1) or market value adjustments made pursuant to §4221(n-2). See §3203(a)(13).
- (c) The policy must state that additional amounts (mortality or expense charges or interest credits more favorable than guaranteed) will be credited no less frequently than annually. §3203(a)(14).
- (d) The policy must be in compliance with Section 4232(b) with respect to additional amounts. Assumptions with respect to investment income, mortality, and expenses must be reasonable. The declaration of additional amounts must be made prospectively. Additional amounts cannot be credited retroactively to apply to a period prior to the time of declaration. The crediting of additional amounts must be on a basis equitable to all policyholders of a given class based upon written criteria approved by the board of directors or a committee thereof.
- (e) Additional amounts credited pursuant to §4232(b) may be applied as follows:
 - (i) As additional cash value to be used to extend the period of coverage or to allow the policy to become paid-up or to mature the policy as an endowment;
 - (ii) To reduce premiums;
 - (iii) To provide amounts in addition to the guaranteed death benefit either as funds accumulated at interest, as one year term insurance or as additional permanent insurance.
 - (iv) In any other appropriate manner approved by the Superintendent.

2. Guaranteed Factors

- (a) The policy (and certificate) must include a provision that states the guaranteed factors of mortality, expense and interest. §§ 3203(a)(12) and 4221(a)(5).
- (b) The interest and expense factors should be on the specifications page.
- (c) The table of mortality charges (cost of insurance rates) and the basis of such table should be specified in the policy.
- (d) For substandard policies, the mortality table underlying the guaranteed mortality charges must be identified.
 - (i) If the guaranteed mortality charges approved exceed those for standard policies, the policy must indicate that extra risk mortality charges apply.
 - (ii) If the guaranteed mortality charges do not exceed those for standard policies, but if extra premiums are charged for a substandard mortality risk, the policy shall indicate that extra risk premiums apply.

3. Calculation Method:

- (a) The policy (and certificate) must include a provision that states the method or formula used by the insurer in calculating actual policy values. §3203(a)(12).
- (b) The procedure for the crediting of interest to the account value must be unambiguous.
- (c) The order of application of charges and credits must be described.
- (d) All related terms must be fully defined.

4. Prospective Readjustment of Cost Factors

- (a) The policy must state that adjustments in policy cost factors [interest, mortality deductions (i.e., cost of insurance charges), expense charges and loads] are subject to adjustment. See §§ 3203(a)(4) and (12) and 3204(a)(1).
- (b) The policy should describe the policy cost factors that may be readjusted and the frequency with which such adjustments may be made. § 3204
 - (i) The prospective readjustment shall be determined upon reasonable assumptions as to investment income, mortality, persistency, and expenses. §4232(b)(2).
 - (ii) The prospective readjustment shall be on a basis equitable to all policy and contract holders of a given class and shall be based on written criteria approved by the board of directors of the company or a committee thereof.

5. Allocation of Net Amount At Risk

If there is a possibility that two 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 or submission material must describe how the net amount at risk for cost of insurance calculation purposes is allocated. Similarly, if there are 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) as well as Section 3203(a)(4) and Section 3204.

6. Illustrations of Non-Guaranteed Cost Factors

- (a) Reductions in current expense and mortality charges cannot be illustrated, unless they are guaranteed. Section 53-3.2(d) of Regulation 74.
- (b) No additional interest may be used in illustrations or otherwise disclosed unless it is guaranteed in the policy. Section 53-3.2(d) of Regulation 74.

I. Nonforfeiture Provisions

1. Substantial Compliance With Individual Standards

- (a) Section 3220(a)(11) of the Insurance Law provides that if a policy is in whole or in part on a plan of insurance other than a term plan, it shall contain a nonforfeiture provision that is equitable to the insured persons and to the policyholder. The policy need not,

however, contain the same nonforfeiture provisions that are required for individual life insurance policies.

- (b) In general, we have applied the standards applicable to individual universal life insurance to group universal life insurance, notwithstanding §4221(o)(1)(B).

2. Statement of Method Used in Calculating Values and Benefits

- (a) 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. Sections 3201(c)(5) and 4221(a)(6).
- (b) The policy must contain a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy. Sections 3201(c)(5).

3. Assumptions and Methods Specified

Policy must specify the mortality table, interest rate and method used in calculating cash surrender values and any paid-up nonforfeiture benefits available under the policy. Sections 3203(a)(7)(A) and 4221(a)(5).

4. Minimum Benefits Statement

Policy and certificate must state that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by any statute of the state in which the policy is delivered, Section 4221(a)(6).

5. Effect of Loans

Policy must explain how cash surrender values and paid-up nonforfeiture benefits are affected by loans. Section 4221(a)(6).

6. Six Month Deferral Provision

- (a) Policy must state that insurer reserves right to defer payment of cash surrender values for six months from date of request. Paragraph following Section 4221(a)(8).
- (b) Policy must reserve the right to defer any loan, except when made to pay premium, for six months after receipt of the loan application. Section 4222(b).

7. Cash Surrender Value

- (a) A cash surrender value is required when policy becomes paid up pursuant to §4221(a)(4).
 - (i) This applies to both scheduled premium and flexible premium policies which provide for a paid up or reduced paid up nonforfeiture option.

- (ii) However, we have not required cash values to be made available at retirement of insured employee for paid up insurance purchased by employer under group life policies.
- (b) The cash surrender value of any policy continued under any paid-up nonforfeiture benefit shall be an amount not less than the present value of the future guaranteed benefits provided by the policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on the policy, including interest due or accrued. Section 4221 (c)(4).
- (c) The policy and certificate must provide that a statement of the cash surrender value of the policy (or certificate) will be furnished to the policyholder (or certificate holder) within twenty business days from the date of written request. Section 4221(c)(5).
- (d) Present value of any paid up nonforfeiture benefit must be greater than or equal to the cash surrender value, or what the cash surrender value would have been if it were available. Section 4221(d).

8. Surrender Charges

- (a) Section 4221(a)(5) requires a statement as to any charges that will be imposed upon the surrender of the policy.
 - (i) Surrender charges, if any, and partial withdrawal charges, if any, must be provided in the policy. Sections 4221(n-1)(3)(A)(ii) and 4221(n-1)(3)(B)(ii) and Sections 4221(n-1)(2)(A).
 - (ii) 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) Policies with surrender charges that comply with Section 4221(n-1)(3)(B) must provide the option to surrender for a paid-up benefit required under Section 4221(n-1)(3)(B)(iii). The policy must
 - (i) indicate that no expense charges will be applied thereafter,
 - (ii) specify the purchase basis, and
 - (iii) specify how subsequent cash surrender values are determined.
- (c) The maximum amortization period for a surrender charge is twenty years pursuant to Sect 4221(n-1)(3)(C).

9. Annual Report

- (a) The policy and certificate shall state that the insurer will mail to the policyholder (and certificate holder) at least once each policy year or within 60 days after the end of the policy year, a statement as to the death benefit, cash surrender value, and loan value under the policy/certificate and other information required by the Superintendent. Section 4221(a)(7) and §A.7 of Circular Letter No. 4 (1983).
- (b) The Annual Report must be in compliance with Section 53-3.6 of Regulation 74.

J. Group Insurance Related Provisions

1. Dependent Coverage - Section 4216(f)

- (a) Spouse Coverage - A group life policy may provide for payment of life insurance benefit upon the death of the spouse of the insured employee or member, provided that insurance upon the life of the spouse shall not exceed the amount of insurance for which such employee or member is insured at the time application is made for spouse coverage.
 - (i) Domestic partners coverage is not allowed. Section 4216(f) needs to be revised to use language found in Section 4235(f) language to permit such coverage.
- (b) Child Coverage - A group life policy may provide for payment of life insurance benefit upon the death of the insured employee's or member's child dependent upon him or her for support and maintenance, provided the insurance upon the life of each dependent child shall not exceed \$4000.
 - (i) Natural children can be covered as dependents.
 - (ii) Stepchildren can be covered if the signature of the spouse of the employee or member (i.e., the natural parent) is included in the enrollment/application form;
 - (iii) Adopted children can be covered, provided that a dependent child may be eligible for coverage on the same basis as a natural child during any waiting period prior to the finalization of the child's adoption;
 - (iv) Foster children cannot be covered;
 - (v) Guardians cannot provide coverage to children under their group life policy;
 - (vi) We have permitted dependent child coverage amounts above \$4,000 in replacement cases, where prior coverage was provided under an out-of-state group policy.
- (c) Avoidance of Substantial Adverse Selection - Section 4216(f) provides that insurers shall require evidence of insurability sufficient to protect against substantial adverse selection.
 - (i) For spouse coverage, the insurer should identify the guaranteed issue amount and describe how compliance with the requirement will be made.
 - (ii) We will permit an eligibility provision which delays coverage for spouse and children who are hospital confined or commences 14 days after birth.

2. Eligibility Requirements

- (a) Pursuant to Section 3220(a)(9) of the Insurance Law, all new employees of an employer or members of the labor union or other association or eligible group or classes eligible for such insurance must be added to such groups or classes for which they are eligible.
- (b) For employer/employee groups described in §4216(b)(1) of the Insurance Law, classes must be determined by conditions pertaining to employment, or a combination of conditions pertaining to employment and conditions pertaining to family status.

- (i) Conditions pertaining to employment include geographic situs, compensation, hours, and occupational duties. See Circular Letter 1963-4 Guidelines for Examination of Group Life Forms § I.B.2. See also 52.18(f) of Regulation No. 62.
- (ii) Age may not be the sole condition of eligibility for insurance. See Circular Letter 1963-4 Guidelines for Examination of Group Life Forms § I.B.1.
- (c) For labor union groups described in §4216(b)(2) of the Insurance Law, all of the members of such union, or all of any class or classes thereof determined by conditions pertaining to employment or conditions pertaining to membership in the union or combination of both, who are actively engaged in their occupation must be eligible for coverage.
- (d) For multiple employer trust groups described in §4216(b)(4) of the Insurance Law, all of the employees of the employers, or all of the members of the unions, or all of any class or classes determined by conditions pertaining to employment, or to membership in unions, or both must be eligible for coverage.
- (e) For employer trade association groups described in §4216(b)(5) of the Insurance Law, all of the employees of the participating employers eligible for insurance, or all of any class or classes thereof determined by conditions pertaining to employment must be eligible for coverage.
- (f) For association groups described in §4216(b)(10) of the Insurance Law, all members who have not attained any limiting age are eligible, or all such members and their employees, or all of any class or classes thereof determined by conditions pertaining to their employment or association membership or both must be eligible for coverage.
- (g) Coverage may be subject to evidence of insurability requirements.
- (h) An active work eligibility requirement is acceptable for coverage based upon employment. An insurer may establish the minimum number of hours per week required for eligibility.

3. Amounts Of Insurance

- (a) Amounts of insurance must preclude individual selection by employees, policyholders, employers, or unions. Section 4216(b).
- (b) The maximum coverage for an individual employee, or limited number of employees, under a group contract must be reasonably related both to the total amount of insurance on the group and to the average amount of insurance on each member of the group. See Circular Letter dated July 19, 1962 and C.L. 63-4 §I.B.3 of the Guidelines For Examination Of Group Life Forms.
- (c) A limited number of selections by employees or member is permitted if the selections offered utilize a consistent pattern of grading the amounts of insurance for individual group members so that the resulting pattern of coverage is reasonable. Section 4216(b).
 - (i) This issue is often best addressed through the explanation of variable material. The explanation should indicate the nature of the choices that will be offered (i.e. multiple of salary, specified amount, specified contribution) and the range of the choices.

- (ii) We have interpreted “limited number of selections” to be no more than 15, unless the plan is fully underwritten.
- (iii) Fully underwritten plans can offer an unlimited number of selections.
- (d) The group policy must indicate whether, and if so when (e.g. automatic increases in basic coverage under specified circumstances versus elective increases in supplemental coverage), increases in face amount will be allowed only subject to evidence of insurability.

4. Age-Based Reductions

- (a) Group life policies often provide for a reduction in benefits for active employees who reach a certain age, commonly 65 or 70, due to the high cost of providing benefits for older employees.
- (b) Any reduction in the amount of life insurance is subject to the provisions of the Age Discrimination in Employment Act.

K. Other Provisions

1. Arbitration

Binding mandatory arbitration provisions are not permitted.

2. Payment of Claims

The policy language should not make reference to the placement of death proceeds in a checking account or other type of account because this would relate only to the manner of distribution of benefits. Section 3201(a).

3. Interest on Deferral of Death Proceeds

If there is contract language regarding interest on the deferral of death proceeds, such language must comply with Section 3214.

4. Interest on Surrenders, Policy Loans

If the policy provides for a deferral period on payment of surrenders or policy loans, the language must comply with Section 3227 including the “ten-day” period and the applicable interest rate which is the current rate payable on the interest only settlement option.

5. Proof of Loss

If the policy/certificate forms provide only life insurance coverage (i.e. no accidental death and dismemberment coverage to which Section 3221(a)(9) would apply), it is sufficient to indicate that due proof of death must be provided to the insurer. The specifics of what is necessary to process the death benefit claim (e.g., copy of death certificate) may be provided if the insurer so chooses.

6. Claims Of Creditors

- (a) If the policy and certificate provide for claims of creditors, the provision must comply with Section 3212.

- (b) If separate account assets are to be insulated from claims of insurance company creditors, the policy and certificate must include insulation language noted in Section 4240(a)(1) and (a)(12).

7. Secondary Guarantees

- (a) Secondary guarantees are guarantees that the policy (certificate) 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 (certificate) must make it clear whether or not a negative account value (or unpaid charges) will be accumulated during a no-lapse guarantee period and whether or not the deficit needs to be repaid at the end of the no-lapse period. In such case, the policy should also 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). In addition, 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 should advise the policyowner to contact the Company to obtain additional information about this. Based on §§ 3203(a)(12), 3203(a)(4) and 3204(a)(1).
- (c) The policy (certificate) and annual report must describe in a prominent place any policyholder (certificate holder) action (e.g., partial withdrawal or loan) that will nullify the secondary guarantee. Based on Section 3201(c)(2).
- (d) 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.
- (e) If the secondary guarantee is provided by rider, there may be additional nonforfeiture requirements. §4221(c)(2)
- (f) It should be clear from the policy language whether a secondary guarantee can be reinstated and the conditions for reinstatement. Based on Section 3204.
- (g) The policy (certificate) must explain how and when the company 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.

8. Partial Withdrawals

- (a) If the policy provides for partial withdrawals, there must be a separate provision in the policy describing how the partial withdrawal provision operates and the order in which the partial withdrawals will be made (e.g., against increases first). Justification must be

provided if the company believes a description of the order of withdrawal is not necessary. Sections 3203(a)(12) and 4221(a)(6).

- (b) Policy language must ensure that a policyholder cannot increase the net amount at risk by making a partial withdrawal. Note that this is a solvency concern and therefore applies to out of state business as well. Based on section 3201(c)(2).
- (c) For policies with no explicit cost of insurance charges or cost of insurance 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 should justify any adjustment other than a prorata reduction. Please note that since this is a solvency issue, this requirement is extraterritorial. (Based on section 3201(c)(2))

9. Maturity Date

A Maturity Date beyond age 100 is acceptable based on the following conditions:

- (a) If there is a net amount at risk beyond age 100, the Department will review on a case by case basis. It should be noted that if the maturity date beyond age 100 feature is provided by rider there may be additional non-forfeiture requirements.
- (b) There must be an age 100 or similar policy provision which indicates that there will be no cost of insurance charges or other charges except for service charges, administrative charge and charges made as a reduction in investment return as provide for in 4221(n-1)(2)(C), 4221(n-1)(3)(A)(i)(VIII), and 4221(n-1)(2)(A) respectively. The provision must also indicate that no further premium payment, except as needed to keep the policy from lapsing, will be accepted after age 100.
- (c) The policy must clearly indicate whether policy loans, partial withdrawals and transfers among funds can continue to be made after age 100. Loan repayments must be permitted.
- (d) A prominent disclosure statement must be provided in the policy or certificate indicating that the policy or certificate may not qualify as life insurance after the insured's attained age 100 under federal tax law, may be subject to adverse tax consequences and a tax advisor should be consulted before the policyowner chooses to continue the policy after age 100
- (e) The policy must still provide for a Maturity Date or Coverage Date provision which explains the relationship between the payment of the planned premium and coverage to age 100.

10. Death Benefit Option And Face Amount Changes

- (a) The policy must permit the Company to require evidence of insurability if, at the time of option change, the net amount at risk is increased. Otherwise, a change in death benefit option should 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 that are specified by amount in the policy or tied to an index must not be subject to evidence of insurability, based on 3201(c)(2). Increases tied to salary increases may be subject to evidence of insurability as long as insurability requirements are not unfairly discriminatory.
- (c) For a policy change being requested by the policy owner including payment of additional premium or an increase in the planned premium that results in an increase in the net amount at risk, the Company must reserve the right to request evidence of insurability and/or reserve the right to refuse the premium. Based on 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 section 3201(c)(2).
- (e) Any limitations on policy changes must be specified in the policy (e.g., the minimum and maximum amount of face amount increases as well as the number of increases allowed). Based on section 3204.

11. Waiver of Surrender Charges or Reduction in Fees

- (a) The policy may provide for the waiver of a surrender charge upon total and permanent disability in accordance with Section 3215 of the Insurance Law or provisions more favorable to the policyowner.
- (b) The policy may provide for the waiver of a surrender charge upon terminal illness, nursing home confinement or the provision of long term care either at home or in a nursing home. Such waivers will be reviewed on a case by case basis. An annuity with this feature cannot be marketed, advertised or sold as long term care insurance or as an alternative to long term care insurance.

12. Policies For The Section 403(b) Market

- (a) Compliance with Circular Letter No. 16 (1993).
- (b) Compliance with Section 3203(a)(8)(J) and Section 4221(q).
- (c) Policy loan provisions should “not” be deleted but revised to comply with Section 72(p) of the Internal Revenue Code.
- (d) Disclosure form required by Section 3209(j).

13. Policies With All Charges Expressed As A Percent Of The Account Value

- (a) Partial Withdrawals. 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 should justify any adjustment other than a prorata reduction. Please note that since this is a solvency issue, this requirement is extraterritorial. Based on section 3201(c)(2).

- (b) Mortality Charges. The maximum mortality charges must be based on a traditional net amount at risk formula.

L. Additional Benefits

1. Accelerated Payment of Benefit

See Accelerated Payment of Death Benefit outline on Department's website and Regulation 143 (11 NYCRR 41), Section 3230, Section 3201(c)(12)(A), and Section 1113(a)(1)(A)-(D).

2. Term Life Riders On The Life Of The Same Insured As The Base Policy

- (a) If the rider accrues policy values, it will be treated separately from the base policy and will be treated as if it were a separate policy for nonforfeiture compliance purposes. Section 4221(c)(2).
- (b) The term rider is subject to Regulation 149 treating the sum of any charges (usually there is just a cost of insurance charge) as the premium. A certification of compliance with Regulation 149 should be filed if the charges are level for more than five years.
- (c) The term 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).

3. Disability Benefits

(a) Types of Benefits

- (i) Waiver of Premium
- (ii) Extended Death Benefit
- (iii) Maturity Value Benefit

(b) Review Standards:

Notwithstanding Section 3215(g), we rely on Section 3215 for:

- (i) Definition of total and permanent disability.
- (ii) Notice of Claim and Proof of Claim Requirements.
- (iii) Permissible exclusions. Exclusions from paying disability benefits due to terrorism are not permitted. Section 3215(b) sets forth the only permissible disability benefit exclusions.

(c) Terms and Conditions

- (i) The disability must commence while the employee is insured under the group policy.
- (ii) This must commence prior to a specified age, usually age 60.
- (iii) Waiver of premium and extended death benefit must continue even if group policy terminates. Circular Letter 1963-4 Guidelines for Examination of Group Life Forms § I.B.9.

- (iv) The waiver of premium rider does not operate to guarantee that the policy will not lapse and a disclosure form to be signed by the applicant to that effect is attached as part of the submission. In addition, the submission letter advises that the insurer will notify the policyholder by letter or notice at time of disability that the rider does not guarantee the policy will not lapse.
- (v) A waiver of premium rider which does not guarantee the policy will not lapse will only be sold in conjunction with the waiver of monthly deduction rider (therefore the disclosure above is not required).

4. Accidental Death

Accidental death (AD) benefits are an additional benefit under life insurance policies pursuant to Section 1113(a)(1) of the Insurance Law and may be submitted to the Life Bureau as an additional benefit under a life insurance policy. This contract feature will be reviewed for compliance with Regulation 62. See especially, Sections 52.9, 52.16, and 52.18 of Regulation No. 62. Exclusions from paying accidental death benefits due to terrorism are not permitted. Section 52.16(c).

5. Accidental Death and Dismemberment

AD&D benefits are accident and health insurance under Section 1113(a)(3) of the Insurance Law and must be submitted to the Health Bureau of the Department in accordance with (II)(C)(1)(c)(i) above. This type of accident and health insurance benefit is subject to Section 3221 and Reg. 62. See especially Sections 52.9, 52.16, and 52.18 of Reg. 62. Exclusions from paying accidental death and dismemberment benefits due to terrorism are not permitted. Section 52.16(c) of Reg. 62 sets forth the only permissible accidental death and dismemberment exclusions.

IV. Group Requirements

A. Eligible Groups

1. Insurer Responsibilities

- (a) It is the insurer's responsibility to determine whether the definitional requirements in Section 4216(b) for an eligible group are satisfied at the time of issue and thereafter.
- (b) The insurer should determine the whether
 - (i) All employees or members eligible are covered;
 - (ii) Classifications of employees or members is by conditions pertaining to employment, family status, membership in the association or union;
 - (iii) Individual selection is precluded or limited number of selections is reasonable;
 - (iv) Minimum number and minimum participation requirements are satisfied;
 - (v) The policyholder is not the beneficiary, except in §3205(d) cases or with respect to dividends;
 - (vi) Trust requirements satisfied, where applicable, including "established by" or "participated in" requirement.

- (vii) Seasoning and purpose requirements. Typically, the group must have been in existence for at least two years and formed for purposes principally other than obtaining insurance.
- (viii) With respect to newly recognized groups and out-of-state nonrecognized groups, the premiums charged must be reasonable in relation to the benefits provided.
- (ix) See comparative bid requirement applicable to multiple employer trust groups with respect to union.
- (x) See Circular Letter No. 4 (1957) Code of Ethical Practices With Respect to the Insuring of the Benefits of Union or Union-Management Welfare and Pension Funds

2. Recognized Groups

- (a) Employer/Employee Group – Section 4216(b)(1)
- (b) Labor Union -- Section 4216(b)(2)
- (c) Creditor/Vendor Group – Section 4216(b)(3)
- (d) Multiple Employer Trust -- Section 4216(b)(4)
- (e) Trade Association Group -- Section 4216(b)(5)
- (f) CSEA -- Section 4216(b)(6)
- (g) Police & Firefighters -- Section 4216(b)(7)
- (h) Municipal corporation or public housing authority -- Section 4216(b)(8)
- (i) Managerial or Confidential Employees -- Section 4216(b)(9)
- (j) Professional Association -- Section 4216(b)(10)
- (k) National Guard -- Section 4216(b)(11)
- (l) Newly Recognized Association Group -- Section 4216(b)(12)
- (m) Newly Recognized Financial Institution Groups -- Section 4216(b)(13)
- (n) Newly Recognized Discretionary Groups -- Section 4216(b)(14):

B. Non-Recognized Groups

Groups that fail to satisfy the definitional requirements in Section 4216(b) of the Insurance Law are not recognized groups under the Insurance Law. Such group life policies cannot be delivered in this state. However, certificates covering New York used under such group policies will be deemed to be delivered in this State pursuant to Section 3201(b)(1) and are subject to the requirements of Regulation 123. (11 NYCRR 59).

C. Extraterritorial Jurisdiction

1. Group Life Certificates Deemed to be Delivered in New York

- (a) Pursuant to Section 3201(b)(1), certificates evidencing insurance coverage on a resident of this state are deemed to be delivered in this state, regardless of the actual place of delivery, where the master policies or contracts were lawfully issued without this state

in a jurisdiction where the insurer was authorized to do an insurance business, if the insured group is one of the following:

- (i) Different-Industry Multiple Employer Trust Groups-Section 4216(b)(4). The use of the one- or two-digit Standard Industrial Classification (SIC) Manual Codes is inappropriate to determine “same industry.”
 - (ii) Newly Recognized Association Groups-Section 4216(b)(12)
 - (iii) Financial Institution Groups-Section 4216(b)(13))
 - (iv) Discretionary Groups-Section 4216(b)(14)
 - (v) Group Not Specifically Described in Section 4216(b).
- (b) Purpose of the Deemer Provision - The purpose of the approval procedure is to extend the basic protection of New York law and regulations to residents of the state when they purchase insurance coverage through out-of-state group arrangements where the individual insured has no close association or affiliation with the group policyholder.
- (c) Recognized Group Certificates. Pursuant to §59.4(a) of Regulation No. 123, certificates evidencing coverage under a policy delivered outside of New York to a group recognized under New York law must “afford insureds protections substantially similar” to those provided by group policies and certificates actually delivered in New York. Certificates must include or satisfy:
- (i) all mandated coverages at reasonable levels, not necessarily at the same level prescribed by law;
 - (ii) conversion and continuation rights;
 - (iii) cannot include a prohibited provision or benefit;
 - (iv) minimum benefit ratio standards.
- (d) Non-Recognized Group Certificates. Pursuant to §59.4(a) of Regulation No. 123, certificates evidencing coverage under a policy delivered outside of New York to a group not recognized under New York laws must comply with the contract and loss or benefit ratio requirements of individual or group insurance whichever affords the certificateholder the greatest protection. The contract standards and loss or benefit ratio standards may not be the same.
- (e) Group Life Insurance Benefit Ratio for Contributory Coverage. Section 59.5 of Regulation No. 123 generally requires a 60% minimum benefit ratio for term life insurance and an actuarial memorandum demonstrating that the minimum benefit ratio will be met for a period of 10 years must be filed. The minimum benefit ratio will be 5% higher or lower depending on the expected average annual premium.
- (f) Monitoring Requirement - Detailed reporting and monitoring standards are provided to ensure compliance with the rate regulation. The insurer is expected to cure any deviation from the minimum ratios by corrective plan of rate reductions, benefit increases or refunds to insureds. Section 59.7 of Regulation No. 123.
- (g) The benefit ratio and monitoring requirements in Section 59.5 and Section 59.7 apply to certificates delivered in New York under groups described in Section 4216(b)(12), (13) and (14) as well as certificates deemed to be delivered in this State.

2. Out-of-State Group Insurance Business of Insurers

(a) Domestic Insurers

- (i) **Filing Requirement.** Section 3201(b)(2) provides that no policy form shall be issued by a domestic insurer for delivery outside the state unless it has been filed with the superintendent.
- (ii) **Disapproval Standards.** Section 3201(c)(6) provides that the superintendent may disapprove any policy form issued by a domestic life insurer or fraternal benefit society for delivery outside the state if its issuance would be prejudicial to the interest of its policyholders or members

(b) Foreign Licensed Insurers

- (i) Generally, we do not review the out-of-state group insurance business of foreign licensed insurers, especially if no New York residents are covered. However, such coverage may be subject to Section 1106 constraints if the coverage is prejudicial to the interests of policyholders. The requirement of Section 4216(c) that each group policy issued be expected to be self-supporting would apply.
- (ii) We generally apply comity principles and follow the group exception to the mail order prohibition with respect to out-of-state group business which covers New York residents, except as modified by §3201(b)(1).

(c) Unauthorized Insurers

- (i) In general, unauthorized insurers are prohibited from conducting an insurance business through the mail in this State by virtue of Section 1101(b)(1).
- (ii) **Group Exception to the Mail Order Prohibition.** An unauthorized insurer will not be doing an insurance business in this State if it transacts insurance by mail with New York residents through an out-of-state group policy if the group is specified in Section 1101(b)(2)(B), and the master policy is lawfully issued without the state in a jurisdiction where the insurer is authorized to do an insurance business, except that credit transaction must conform to applicable requirements in Sections 3201, 3220, 3221, 4216 and 4235.

V. Related Filings

A. Compensation Filings - Section 4216(e)

1. Applicability

Filings are required by all licensed insurers for all group life insurance transactions within and without the state.

2. General Contents

- (a) **Agent Compensation.** Schedule of rates, commission, compensation and other fees or allowances to agents pertaining to the solicitation or sale of group life insurance.
- (b) **Service/Administration Expense.** Schedule of any fees, or allowances to any individuals, firms or corporations pertaining to the service or administration of group

life insurance, exclusive of amounts payable to regular employees of the insurer other than agents.

(c) Revised schedules must be filed.

3. Limitations

Payments to an agent for services provided cannot exceed schedules filed with the Department, but computation of dividends or experience rating credits will not be affected.

4. Schedules Or Independent Commission Manual

Schedules or Independent Commission Manual shall contain the following §III.B. of Circular Letter 1963-6.

- (a) The schedule of rates payable.
- (b) The factors to which they are applicable, clearly stated, (e.g. a percentage of the annual premium or a dollar amount per certificate, or a dollar amount per \$100 of weekly indemnity).
- (c) Where rates are applicable to premiums, the filing shall state the premiums to which they apply, as for instance, monthly, yearly, first year or renewal.
- (d) Where different rates are payable for different types of coverage, agents, and areas, etc., the filing shall clearly indicate the nature of such classes.
- (e) The nature of administrative services shall be set forth, together with the allowances therefor.
- (f) Where rates are varied by policy year, the filing shall explicitly state the rates and policy years. Where such rates can be payable under an alternate scale, the formula for converting to such alternative scales shall be stated or the alternate scale included.
- (g) Where rates are graded, the complete scale shall be included or the nature and factors of the graduation shall be stated.

5. Filing Requirements

Schedules of rates of commissions and compensation and other fees or allowances required to be filed in triplicate separate from the cover letter, also in triplicate – Circular Letter 1963-6; Circular Letter 1969-4. Contents of filing letter:

- (a) A specific reference to the section, page numbers and edition dates being submitted.
- (b) The area and nature of any revisions, the pages on file being replaced, and the new pages being submitted.
- (c) The filing should be separate from all other material not pertaining directly to the compensation payable including the transmittal letter.

- (d) The Company's name should appear on each and every page of the filing.
- (e) The product the filing is to be used with should be clearly indicated.
- (f) If compensation is to vary by year, then the meaning of year should be clear. In the group setting year could mean Group Policy Year, Certificate Year, Year of Participating in a Trust or possibly some other meaning.
- (g) The actual level of compensation to be paid should be filed and not just some possible maximum.
- (h) Adequate description and information should be presented in the filing that the amount of compensation payable is reasonably determined.

B. Regulation 123

1. Applicability

- (a) Regulation 123 is applicable to group certificates deemed to have been delivered in New York under section 3201(b)(1). See I.A.3 of this outline.
- (b) The minimum benefit ratio requirements of Sections 59.5 and 59.7 are applicable to group life certificates on New York residents covered under a section 4216(b)(4)-(employers not in the same industry), (12), (13), or (14) group regardless of where the group policy is delivered..

2. Filing Requirements – Separate From Form Filings

- (a) Minimum Standards for Form, Content and Sale
 - (i) Certificates evidencing coverage under a policy delivered outside of New York to a group recognized under New York law must “afford insureds protections substantially similar” to those provided by group policies and certificates actually delivered in New York. Certificates must include or satisfy:
 - (ii) all mandated coverages at reasonable levels, not necessarily at the same level prescribed by law;
 - (iii) conversion and continuation rights;
 - (iv) cannot include a prohibited provision or benefit;
 - (v) the minimum benefit ratio standards.
- (b) Certificates deemed delivered to New York residents evidencing coverage under a policy delivered outside of New York to a group not recognized under New York laws must comply with the contract and loss or benefit ratio requirements of individual or group insurance whichever affords the certificateholder the greatest protection. The contract standards and loss or benefit ratio standards may not be the same. See section III of this outline for groups recognition under New York Law.
- (c) Actuarial memorandum demonstrating that the minimum benefit ratio standard in Section 59.5(a) is expected to be met over a period of 10 years or longer. For this

product it is generally expected that a period longer than 10 years will be used. The cash surrender value at the end of the projection period should be treated as an endowment.

- (d) **Monitoring Requirement:** The Superintendent must approve the plan for monitoring the experience of the certificates. Section 59.7 of Regulation No. 123.
 - (i) The monitoring plan must include provisions for combining experience of similar certificates and for demonstrating compliance with the minimum benefit ratio standards.
 - (ii) Corrective action may be required if the minimum benefit ration may not be met or where premiums are not reasonable in relation to benefits. This can result in the distribution of past gains if the required benefit ratio has not been met.

C. Special Filing Situations

1. Interest Rates

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 this Outline. If this is the only change to the policy, then only the pages affected should be submitted for approval. The new pages should have a distinguishing form identification number such as “Rev.” or the date.

2. Changes to Other Policy Cost Factors and Other Changes

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 this Outline. If this is the only change to the policy, then only the pages affected should be submitted for approval. The new pages should have a distinguishing form identification number such as “Rev.” or the date.