

**GROUP VARIABLE UNIVERSAL
LIFE INSURANCE
(09/09/02)**

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**GROUP VARIABLE UNIVERSAL
LIFE INSURANCE
(09/09/02)**

I) Applicability

I.A) Scope:

A.1) Products Covered

This product outline covers the following:

- (a) Group variable universal life insurance policies and certificates delivered in the state of New York.
- (b) Group variable 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:
 - (i) The certificate evidences insurance on a resident of the state, and;
 - (ii) 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;
 - (iii) The master policies were lawfully issued outside of New York in a jurisdiction where the insurer was authorized to do an insurance business.

A.2) Product Characteristics

Group variable universal life insurance is characterized by flexibility in the amount and timing of premium payments, a life insurance amount or duration that varies with the investment experience of one or more separate accounts, 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.

I.B) Group Life Insurance Policies Covered Under Other Product Outlines

B.1) Group Term Life Insurance

B.2) Group Universal Life Insurance

B.3) Credit Insurance

I.C) Certificate/Policy

For purposes of this outline, requirements applicable to policy forms apply equally to group certificates, unless the context clearly indicates otherwise.

II) Filing Requirements

II.A) Overview

A.1) Prior Approval Requirement

- (a) 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).
- (b) Section 54.5 of Regulation No. 77 provides that the filing and approval requirements applicable to individual general account life insurance policies applies to the extent appropriate to individual variable life insurance policies.
 - (i) We have extended such filing and approval requirements to group variable life insurance policies as well.
 - (ii) The requirements and guidance in the group universal life insurance outline are applicable to the general account or fixed portion of a group variable universal life insurance policy.

A.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 §§2123, 3209, 4224, 4226, 4228(h), 4231, 4239.

A.3) 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

A.4) 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.

A.5) Qualification Under 11 NYCRR 54.2

An insurer must be qualified to issue variable life insurance policies in accordance with the requirements of 11 NYCRR 54.2. A Plan of Operations must be filed with the Life Bureau at the Department office in New York City. See Section VI.B of this outline.

A.6) No Filing Fee Required

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

Pursuant to Circular Letter No. 14 (1997), submissions that are incomplete or not drafted to conform to New York requirements will be rejected. Submissions that are poorly organized, difficult to understand or that contain several substantive omissions or objectionable provisions may be rejected.

A.8) Accidental Death (AD) And Accidental Death And Dismemberment (AD&D)

- (a) 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, and must be submitted to the Health Bureau of the Department, not to the Life Bureau.
- (b) An additional benefit in the event of death by accident (Accidental Death Benefits) under life insurance policies are defined to be life insurance under §1113(a)(1) of the Insurance Law and should be submitted to the Life Bureau. 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.

A.9) Exemption From Flesch Score Certification

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

A.10) Filing For Limited Modifications

- (a) For filings limited to the modifications in (b) or (c) 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.

A.11) Out-of-State Filings

- (a) Pursuant to §3201(b)(2), domestic insurers must file all policy forms intended for delivery outside of the state.

- (b) §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) File a single copy with an explanation on how the provisions and rates differ, if at all, from comparable forms approved for delivery in New York.
- (d) Note that certain certificates used in connection with out-of-state group variable universal life insurance policies are deemed delivered in this state pursuant to section 3201(b)(1) of the Insurance Law. See I.A.1.b of this outline.

A.12) Corporate Owned Life Insurance (COLI)

- (a) For group variable universal life insurance products sold in the §3205(d) corporate-owned life insurance market, the Corporate-Owned Life Insurance outline must be used in addition to this outline.
- (b) The specific guidance given in the COLI outline supercedes the corresponding guidance in this outline for insurance products sold in the §3205(d) COLI market.
 - (i) Note that the corporate-owned life insurance outline describes additional requirements and identifies exceptions applicable to life insurance policies sold in the corporate-owned life insurance markets.

A.13) Key Sources Of Guidance

- (a) Insurance Law Sections 3105, 3201 (Approval of Forms), 3203, 3204, 3205, 3206, 3210, 3214, 3220 (Standard Provisions), 3227, 4216, 4221(n-1) (Standard Non-Forfeiture General Account), 4228, 4222, 4240 (Separate Accounts).
- (b) Regulation 77 (11 NYCRR 54) (Variable Life Insurance), Regulation 123.
- (c) Key Circular Letters – CL4 (1963), CL6 (1963), CL1 (1964), CL16 (1993), CL14 (1997) (Submission and Approval Process), CL2 (1998), and CL8 (1999) (Submission Letters), CL27 (2000) (Certification)

II.B) Preparation of Submission

B.1) Preparation of Forms - Circular Letter No. 6 (1963)

References in this section, II.B.1, are to Circular Letter No 6 (1963).

- (a) Filings must be submitted in duplicate and signed by a representative of the company authorized to submit forms for the company. § I.G and I.E.7.
- (b) Form numbers must appear in lower left-hand corner, I.D.
- (c) Policy forms submitted for approval must be submitted in the form intended for actual issue. I.F.1.

- (d) All blank spaces for policy forms must be filled in and completed with hypothetical data to indicate the purpose and use of the form. I.E.1.
- (e) Any form that makes reference to the provisions of a previously issued form that did not require filing or approval must be accompanied by such previous form for reference purposes. I.E.3.
- (f) All incorporations by reference should be attached to or accompany the submission. See Section 3204.
- (g) The application to be use with the contract must be an approved form. The company must retain information in its records concerning which approved application is being used or has been used with the contract. Such information must be available upon Department request.
- (h) Any application that is used with a variable life policy must comply with 11NYCRR 54.10.

B.2) Explanation of Variable Material -- I.F.4.

- (a) Illustrative material as narrowly defined in Circular Letter No. 63-6 (§I.F.4) may be used for items which may vary from case to case such as names, dates, eligibility requirements, premiums and schedules for determining the amount of insurance for each person insured. The method of indicating variable material should be clearly stated in both the submission letter and the explanation of variable material.
- (b) Policy form provisions may be submitted as variable if suitably indicated by red ink, underlining, bracketing or otherwise and accompanied by an explanatory memorandum.
- (c) The explanatory memorandum must clearly indicate the nature and scope of variations. It may be indicated that variations will be made within the limits set out in the explanatory memorandum or that any one of several alternative provisions may be used or that a provision may be either included as submitted or else completely omitted.
 - (i) An explanation of variable material that the variations "will conform to law" or "as requested by the policyholder" is not acceptable.
 - (ii) The alternative language, if any, should be supplied in duplicate, independent of the insurer's letter. For alternative text, exact language is required.
- (d) Ranges for numerical items which may vary from case to case must be specified in the explanation. Include the minimum and maximum amounts, where applicable. Such items would include:
 - (i) Minimum guaranteed interest rate;

- (ii) Maximum charges;
- (iii) Alternative surrender charges.
- (e) Open-face riders or endorsements may be filed for general use in amending illustrative or variable material within the limitations of the preceding paragraphs.
- (f) Variable material used with impairment, waiver or exclusion riders should be submitted with the form for approval. All variable material should be submitted.

II.C) Submission Letter Contents - Circular Letters 1963-6, 1969-4 and 1999-8.

C.1) The “re” or Caption

- (a) 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).
- (b) Section 3201(b)(6) (“Deemer”) filings must be identified in the “re” or caption.
- (c) 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.

C.2) Identification of Insurer.

C.3) Listing of Form Numbers. C.L. 63-6 § I.G.1.

C.4) Table of Contents of All Material in the Filing.

C.5) Compliance With Circular Letter No. 6 (1963)

- (a) Provide a statement of the benefits/coverage, § I.G.2 and 7.
 - (i) Specify the type(s) of group policyholder, as defined in Section 4216(b). Specify the applicable paragraphs that describes the groups.
 - (ii) Specify the classes covered, as defined in §4216 if not all persons are eligible (i.e., conditions pertaining to employment or a combination of conditions pertaining to employment and family status),
 - (iii) State whether the contract is noncontributory, contributory or funded solely by employee or member contributions. If the policy is contributory for some insureds, or for some levels of insurance, or under some conditions, indicate what situations or conditions would permit or require contributions from the insureds.
 - (iv) Describe the type of employee benefit plan or other program funded by the policy.

- (b) Advise as to whether form is replacing a previously submitted form. If there have not been a substantial number of changes, submit a highlighted copy showing the material differences or changes made to the form. State whether the previously submitted form was approved, disapproved, withdrawn or otherwise disposed or is still pending approval (under review) with the Department and provide the form number, control number and submission date of the such form.
- (c) If a form submitted for approval had previously been submitted for preliminary review, a reference to the previous submission and a statement setting out either (a) that the formal filing agrees precisely with the previous submission or (b) the changes made in the form since the time of preliminary review. Submit a highlighted copy showing the differences or changes made to the form. A redlined copy is helpful. I.G.5.
- (d) If the policy form has been previously submitted to the Department and the file was closed, any resubmission of the policy form to the Department must reference the file number of the previously closed file and 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.
- (e) 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 approved 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 correct form being submitted. If, however, the form has been used, the insurer must place a new form number on the corrected form and need not return the previously approved form, I.G.9
- (f) 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), § I.G.8.
 - (i) Use of a matrix approach that identifies benefit provisions within a document with separate form numbers is not acceptable, Circular Letter No. 4 (1963) Guidelines for Examination of Group Life Forms § I.A.2.
- (g) 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, if for more general use describe the type or group of such forms, § I.G.6.

C.6) Unique Features And Special Markets

- (a) The submission letter should be as detailed as possible explaining any innovative or unique features and identifying any special market. e.g. Section 3205 (d) COLI market, mail –order, Section 403(b) etc. Innovative or unique is defined in Circular Letter No. 27 (2000).

- (b) Submission letter should indicate whether the policy has been filed with the Securities and Exchange Commission (“SEC”) and the current status of such filing.

C.7) Nonforfeiture Values

Indicate in the submission letter if nonforfeiture values less than the minimum under individual life standards in New York are possible.

C.8) Non-Compliance

If the policy does not comply with a specific product outline provision the submission letter should identify the provision and provide a complete explanation of the Company’s position on the issue.

C.9) Sex Distinct Or Unisex

The submission letter should indicate whether the forms are sex-distinct or unisex. If sex-distinct, confirm the forms will not be issued in any employer-employee situations subject to the Norris decision and/or Title VII of the Civil Rights Act of 1964.

C.10) Variable Material

The submission letter must describe the method of indicating variable material. See II.B.2 of this outline.

C.11) Illustrations

Advise as to whether or not the policy will be illustrated. A copy of the draft or final illustration should be available upon request. All illustrations must be in a form and content acceptable to the Superintendent, 11 NYCRR 54.10(d). See Section IV.E.6.o and IV.E.13.j of this outline as to when a portion of the illustration (draft or final) needs to be filed with the submission.

II.D) Attachments To Submission

D.1) Actuarial Nonforfeiture Certification and Memorandum

- (a) The non-forfeiture requirements for group insurance are at the discretion of the superintendent. (Section 3220(a)(11)). For group variable 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 variable universal life insurance.
- (b) If the forms’ nonforfeiture values meet the individual nonforfeiture standards a certification and memorandum are required.
 - (i) The certification must be signed and dated by an actuary who is a member in good standing of the American Academy of Actuaries or the Society of Actuaries. The certification must state that the policy forms and certificates are in compliance with the individual nonforfeiture requirements of New York Insurance Law and Regulation applicable to individual variable life insurance [under any application of the variable material submitted]. Included the bracketed wording if applicable. The certification must also indicate that the actuary has read the forms and supporting material submitted with the file.

- (ii) Provide a complete statement (memorandum) of the method of computation of cash surrender values and other nonforfeiture benefits. Such method shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that it complies with subdivision 54.7(a), 54.7(b)(i) or 54.7(b)(ii) of regulation 77. 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
- (c) 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.
- (d) Term riders are subject to Regulation 149 including the nonforfeiture requirements.

D.2) Letter Of Authorization

If the filing is being 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.

D.3) Prior Approval With Certification Submissions

- (a) Compliance with Circular Letter No. 27 (2000)
- (b) Certification of compliance signed by officer of company in the format provided by C.L. 27 (2000)
- (c) Completed product checklists

D.4) Section 3201(b)(6) ("Deemer") Submissions

- (a) Submit a 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.
- (b) 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.

D.5) Prospectus

Provide a copy of the prospectus in draft or final for the purpose of compliance with 11NYCRR 54.9.

D.6) Market Value Adjustment

For a market value adjustment policy, an actuarial opinion and memorandum (AOM) is provided as required by §3201 (c)(10) and §43.7 of Regulation 136

II.E) Assumption Of Risk Prior To Filing or Approval of Form(s)

E.1) Purpose.

Circular Letter 64-1 permits insurers to provide or assume risk for group life coverage prior to the filing or approval forms under specific conditions.

E.2) Conditions For Providing Coverage Prior To Form Approval.

- (a) Immediate coverage requested by policyholder to meet specific need of policyholder.
- (b) Insurer has reasonable expectation of approval or acceptance.
- (c) Confirmation letter sent to policyholder by insurer stating:
 - (i) The nature and extent of benefits or change in benefits.
 - (ii) 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
 - (iv) The effective date of coverage (Best Practice).
- (d) Department Notification.
 - (i) Insurers are advised to notify Department of coverage within 30 days (i.e., copy of confirmation letter) of coverage and submit forms within six months. (Best Practice).
 - (ii) Statement explaining circumstances and reasons for delay in submitting forms within nine months for group life.
 - (iii) Follow-up statement every six months thereafter 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.

III) Group Requirements

III.A) Recognized Groups Under 4216(b) (See Section 4216(b) for a full description).

A.1) Traditional Groups

- (a) Employer/Employee Group. §4216(b)(1)
- (b) Labor Union. §4216(b)(2)
- (c) Multiple Employer Trust. §4216(b)(4)
 - (i) Taft-Hartley Trust Cases (Collectively-Bargained Plans)
 - (ii) Programs “established by” the employer(s) or labor unions(s)
- (d) Trade Association Group §4216(b)(5)
 - (i) Programs established by employer members of the trade association.
- (e) Civil Service Employees Associations. §4216(b)(6)
- (f) Police & Firefighters. §4216(b)(7)
- (g) Municipal Corporation or Public Housing Authority. §4216 (b)(8).
- (h) Managerial or Confidential Employees of the State. §4216(b)(9).
- (i) Professional Association. §4216(b)(10).
- (j) National Guard. §4216(b)(11).

A.2) Newly Recognized Groups

- (a) Affinity Association Groups. §4216(b)(12).
- (b) Financial Institution Groups. §4216(b)(13).
- (c) Multiple Employer Trust. §4216(b)(4)

Employers not in the same industry

- (d) Discretionary Groups. Section 4216(b)(14).

Group approved by the superintendent upon a finding that:

- (i) There is a common enterprise or economic or social affinity or relationship;
- (ii) The premiums charged are reasonable in relation to the benefits provided; and
- (iii) The issuance of the policy would

- (I) result in economies of acquisition or administration,
- (II) be actuarially sound, and
- (III) not be contrary to the best interests of the public.

A.3) Non-Recognized Groups

- (a) Groups that fail to satisfy the definitional requirements in Section 4216(b) of the Insurance Law are not recognized groups.
- (b) Group life insurance policies cannot be delivered to groups in this state that are not recognized under Section 4216(b).

III.B) Jurisdiction and Review Implications

B.1) Eligible Group Requirement

- (a) Only groups that satisfy the definitional requirements of §4216(b) can have group life insurance policies delivered in this state.
- (b) Groups that fail to satisfy the definitional requirements in Section 4216(b) of the Insurance Law cannot purchase group life insurance in this state.

B.2) Extraterritorial Jurisdiction

- (a) Certificates covering New York residents that are used in conjunction with group life policies delivered out-of-state to newly recognized groups are deemed to be delivered in this State (subject to Department approval) pursuant to Section 3201(b)(1) and are subject to Regulation No. 123. See section VI.C of this outline.
- (b) Certificates covering New York residents that are used in conjunction with group life policies delivered out-of-state to groups that are not recognized in New York are deemed to be delivered in this State (subject to Department approval) pursuant to Section 3201(b)(1) and are subject to Regulation No. 123. See section VI.C of this outline.

IV) .Contract Provisions

IV.A) Explanatory Notes

A.1) General Account And Separate Account Funding.

A group variable universal life insurance policy with a fixed account option funded through the insurer's general account must also comply with the requirements applicable to group universal life insurance, at least with respect to such fixed account option.

A.2) Substantial Compliance With Individual Standards:

The Department has permitted group universal life insurance and group variable universal life insurance to be marketed in the state as long as the certificates covering New York residents substantially comply with the requirements applicable to individual products. See §§ 3203, 4221, 4232 and 4240 of the Insurance Law, Regulation No. 77 and Circular Letter Nos. 4 (1963) and 4 (1983). Of course, since the certificates are issued to insured individuals, the forms must comply with the group requirements in §§ 3220 and 4216. The rationale for “substantial compliance” standard is as follows:

- (a) Group universal life insurance is not specifically recognized in the Insurance Law. Chapter 627 of the Laws of 1982 which added § 216-b of the Insurance Law [recodified in 1984 as §4232(b)] and authorized insurers to write universal life insurance in New York and Circular Letter No. 4 (1983) refer only to individual life insurance policies. Regulation No. 77 also does not make any reference to group variable universal life insurance.
- (b) When universal life type policies were first authorized in New York by Chapter 627 of the Laws of 1982 and Circular Letter No. 4 (1983) group life insurance could not be funded solely by employee contributions. Since most group universal life insurance and group variable life insurance was funded by voluntary employee contributions, it was reasonable to require that all such certificates substantially comply with the requirements applicable to individual life insurance.
 - (i) Any other approach would have allowed insurers to circumvent the prohibition in New York law concerning employee (individual) pay-all group life coverage.
 - (ii) The Insurance Law required a similar approach with respect to group annuity contracts and certificates that were funded solely by employee contributions. See §§ 1101(b)(2), 3201, 3219(b) and 4223(b)(2) of the Insurance Law.
- (c) Although the eligible group provisions in §4216(b) of the Insurance Law were revised by Chapter 369 of the Laws of 1985 to permit employee pay-all group life insurance coverage, the Department has continued to apply the “substantial compliance” review standard primarily because the coverage was solely funded by employee or member contributions. Insurance programs that are funded solely by voluntary employee (or member) contributions are usually subject to individual review standards.
- (d) Although the Department generally applies a substantial compliance standard for group universal life insurance and group variable life insurance, the nature and source of contributions influences the review standards.
 - (i) Employers generally make all contributions for corporate owned life insurance. As such, certain individual safeguards are not required.

- (ii) Policyholders of employer/employee group life insurance policies generally exercise more control over their programs than association or financial institution groups first recognized in 1985. Such employer/employee programs often constitute employee benefit plans under ERISA.

A.3) Superintendent's Discretionary Authority – Nonforfeiture Values

- (a) Section 3220(a)(11) of the Insurance Law requires a nonforfeiture provision or provisions which in the opinion of the Superintendent is or are equitable to the insured persons and to the policyholder.
- (b) Section 3220(a)(11) expressly provides that this paragraph does not require that such group life policy contain the same nonforfeiture provisions as required for individual life insurance policies.

A.4) Excepted Provisions

- (a) Section 4240(d)(3) of the Insurance Law provides that the following provisions of the Insurance Law do not apply to variable life insurance, (except with respect to any policy providing benefits with respect to the amounts allocated to a separate account, if such benefits are guaranteed at any time to be not less than an amount equal to or greater than such allocated amounts accumulated to such time at 3% per annum):
 - (i) Section 3203(a)(1) – grace period provision;
 - (ii) Section 3203(a)(7) – provision specifying the mortality table, interest rate and method used in calculating cash surrender values and any paid-up nonforfeiture benefits under the policy;
 - (iii) Section 3203(a)(8) – loan provision;
 - (iv) Section 3203(a)(9) – table showing the amounts of installment or annuity payments if policy proceeds are so payable;
 - (v) Section 3203(a)(10) – reinstatement provision;
 - (vi) Section 4221 – standard nonforfeiture law;
 - (vii) Section 4232(b) – additional amounts.
- (b) However, §4240(d)(4) of the Insurance Law provides that contracts delivered or issued for delivery in this state for individual variable life insurance policies shall contain loan, grace, reinstatement and nonforfeiture provisions, and may provide for settlement options, under conditions acceptable to the superintendent.

IV.B) Cover Pages Of The Policy Or Certificate

B.1) Company's Name and Address

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

B.2) Regulation No. 77 Face Page Disclosure Statements

- (a) Include a prominent statement in the policy and certificate that the amount or duration of the death benefit may be variable or fixed under specified conditions and may increase or decrease. [11 NYCRR 54.6(b)(1)(i)].
- (b) Include a prominent statement in the policy and certificate that policy values may increase or decrease in accordance with the experience of the separate account, subject to any minimum guarantees. [11 NYCRR 54.6(b)(1)(ii)].
- (c) Include in the policy and certificate the method, or a reference to the policy/certificate provision that describes the method, for determining the amount payable at death. [11 NYCRR 54.6(b)(1)(iv)].

B.3) Free Look Provision

- (a) Certificate holder may return the variable life policy within 10 days of receipt and receive a full refund of all premium payments pursuant to 11 NYCRR 54.6(b)(1)(v).
- (b) A 30-day Free Look period is required for any certificate sold by mail order.
- (c) We have permitted Free Look provisions which provide for a refund of premium on the latest of 10 days after receiving the certificate or 45 days from the date Part I of the application was signed due to SEC requirements.
- (d) Note that Section 3203(a)(11) requires a free look provision. Such provision is not included in the list of inapplicable provisions in section 4240(d)(3). 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 policy 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.

B.4) Form Identification

A form identification number must appear on the lower left-hand corner of all policy and certificate forms in accordance with C.L. 63-6 § I.D.

B.5) Brief Description of Policy/Certificate

- (a) A description should indicate whether policy and certificate is participating or non-participating in accordance with C.L. 63-4 § II (F)(1). Also see IV.E.10 of this outline.
- (b) Description of group variable universal life policy and certificate must also address the flexibility of premiums, benefits or period of coverage. See §§ 3203(a)(4) and 3204.
- (c) Include generic name of the product (e.g., Group Flexible Premium Variable Universal Life Insurance) in the policy and certificate.

B.6) Officer's Signatures

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

IV.C) Specifications Page

C.1) Complete With Hypothetical Data. C.L. No. 6 (1963) § I.E.1.

C.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. Based on 11NYCRR 54.6(a)(1).

C.3) Investment Options

If a listing of the investment options is included, they should be bracketed for future changes.

C.4) 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

- (i) lower dividend cash values than were illustrated, or
- (ii) if applicable, require more premium to be paid than illustrated.

C.5) Section 3203(a)(16) Compliance For Policies Subject To §4232(b)

The data page or the specification page must state, to the extent applicable,

- (a) that 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 which may
 - (i) require more premium to be paid than was illustrated, or
 - (ii) the cash values may be less than those illustrated.

C.6) 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.

C.7) 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).

C.8) Surrender Charges And Withdrawal Fees

Any partial withdrawal fees or surrender charges must be set forth on the specifications page. NYCRR 54.6(b)(9), 11 NYCRR 54.7, and Section 4221(a)(5-a).

C.9) 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).

C.10) Planned Premium

For a variable 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).

C.11) 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. See IV.F.7 of this outline.

C.12) 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).

IV.D) Table of Contents

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

IV.E) Standard Provisions: Sections 3203, 3220 and 4240

Group life policies (and certificates) 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.

E.1) Entire Contract – §§ 3203(a)(4), 3204 and 3220(a)(2) of the Insurance Law.

- (a) Section 3204(a) requires that the policy contain the entire contract between the parties.
 - (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 signed by a person specified by the insurer in such policy.
 - (iv) All statements made by, or by the authority of, the applicant for the issuance, reinstatement or renewal of any such policy shall be deemed to be representations and not warranties. See also §3105.
 - (v) No insertion in 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 clearly that the insertions are not to be ascribed to the applicant.
 - (vi) Note that 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 §3204(a).

- (b) Section 3220(a)(2) requires a provision to the effect that the rights of any policyholder, insured or beneficiary shall not be affected by any provision not contained in the policy, riders, endorsements or amendments thereto signed by the policyholder and the insurer, or in the copy of the policyholder's application attached to the policy, or in any individual statements, if any, submitted in connection therewith. §3220(a)(2)
- (c) Pursuant to C.L. 63-4 § 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.
- (d) The Guidelines For Examination Of Group Life Forms in Circular Letter No. 4 (1963) provide that incorporation by reference is governed by § 3204(a).
 - (i) References to other sources to determine factual situations, such as the facts of employee status, membership in a collective bargaining unit or 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.
- (e) For group variable universal life insurance, the entire contract provision should include reference to the certificate. We object to language stating that the certificate merely summarizes the terms of the group policy or that the terms of the group policy control in the event of a conflict between the policy and certificate.
- (f) Circular Letter No. 4. (1963) § III.1 of the Guidelines For Examination Of Group Life Forms provides that, 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 the date of issue and which reduce or eliminate coverage in the policy should provide for signed acceptance by the policyholder. For group variable universal life insurance, the certificate holder must also consent to any such change.
- (g) The application must be attached to the policy if it is to be part of the entire contract. Section 3203(a)(4).

E.2) Certificate Issuance and Validity – §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 the person whose life is insured under such policy containing a statement of the insurance protection to which 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.

- (b) Paragraphs (1), (2), (6) (7) (10) (11), (12) and (13) of Section 4216(b) of the Insurance Law provides that the policy shall provide for the issuance of a certificate to the policyholder for delivery to the person insured or to such beneficiary, as evidence of such insurance.
- (c) The certificate must include, in substance, all provisions required for individual variable universal life insurance. See § 3204.
- (d) In addition, a statement is required that nothing in the group policy invalidates or impairs any rights granted to the certificate holder by the certificate. See §3201(c)(1)

E.3) Grace Period

- (a) Section 54.6(b)(3)(i) of Regulation No. 77 requires a grace period that end on a date not less than 61 days after the policy processing day on which the insurer determined that an insufficiency had occurred (i.e., the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the net cash surrender value under the policy to pay such charges). Section 4240(d)(4) provides that variable life insurance shall contain grace period provisions acceptable to the Superintendent.
- (b) The death benefit payable during grace period will equal the death benefit in effect immediately prior to such period less overdue charges. See 11 NYCRR § 54.6(b)(3)(ii) of Regulation No. 77.
- (c) If the policy processing day occurs monthly, the insurer may require the payment of a premium sufficient to keep the policy in force for three months beginning with the policy processing day on which, unless otherwise provided in the policy, the net cash surrender value under the policy was insufficient to pay all the charges authorized by the policy that are necessary to keep the policy in force until the next policy processing date. See 11 NYCRR §54.6(b)(3)(ii) of Regulation No. 77.
- (d) The grace period provision must include language that a report will be sent to the policyholder (certificateholder) if, unless otherwise provided in the policy (certificate), the net cash surrender value under the policy (certificate) on any policy (certificate) processing day to pay the charges authorized by the policy (certificate) is less than the amount necessary to keep the policy (certificate) in force until the next following policy (certificate) processing day. The grace period provision must indicate that the report shall be mailed no earlier than, and within 30 days after, the policy processing date on which the insurer determined that an insufficiency had occurred, and indicate the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of such amount. 11NYCRR §§ 54.6(b)(3)(i) and 54.11 (c) of Regulation No. 77.

E.4) Incontestability – §§ 3203(a)(3), 3220(a)(1) and §54.6(b)(13) of Regulation No.77

- (a) Section 3220(a)(1) requires a provision stating that

- (i) the policy is incontestable after two years from its date of issue, except for non-payment of premiums by the policyholder; and
 - (ii) 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 beneficiary. [Giving the written instrument to the beneficiary may not preserve the insurer's rights. Giving the written instrument to the insured person allows the person to correct inadvertent errors.]
- (b) Section 3203(a)(3) of the Insurance Law and §54.6(b)(13) of Regulation No. 77 add 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.
 - (c) 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.
 - (d) Section 3203(a)(3) permits insurers to except benefits for total and permanent disability and additional benefits for accidental death from the incontestability provision.
 - (e) Note that incontestability cuts off a claim of fraud in the application.
 - (f) Must be based on "material misrepresentations" in accordance with Section 3105.
 - (g) Any policy or certificate issued as a result of a conversion option 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 policy was issued. See Circular Letter No. 4 (1963) § II.H.6.

E.5) Reinstatement

- (a) Such provision should generally be in compliance with §54.6(b)(4) of Regulation No. 77.
- (b) The policy must explain how the account value and surrender charges 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.

E.6) 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 3203(b)(1)(B) and §54.6(c)(4). 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 § III.E.4 of Circular Letter 63-4.
- (c) The phrase “while sane or insane” is prohibited. Section II.I.1 of Circular Letter No. 4 (1963).
- (d) The suicide exclusion cannot begin again upon reinstatement. Section 3210 applies only to the incontestability provision.
- (e) Any policy issued as a result of a conversion option must indicate that the suicide period does not start anew, but is effective as of the date the original coverage. Section II. H.6 of Circular Letter No. 4 (1963).

E.7) Policy Loans

- (a) Required after three years and loan value must be at least 75% of cash surrender value 11 NYCRR 54.6(b)(10). Department has interpreted this as applying to the entire policy (i.e., both the variable sub-accounts and the fixed account).
- (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. Sections 3203 and 3206.
- (c) For the fixed account, 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
 - (I) Published Monthly Average for the calendar month ending two months previous
 - (II) Cash Surrender Value rate plus 1%

- (ii) Adjustments made on regular intervals
 - (I) may be increased when rate increases by ½% or more
 - (II) must be decreased when rate declines by ½% or more
- (iii) The published monthly average is the Moody's Corporate Bond Yield Averages – Monthly Average Corporates.
- (iv) The loan provision for policies providing for an adjustable rate must indicate that the policy cannot lapse as a result of a change in the policy loan interest rate. Section 3206 (e).
- (e) Any indebtedness shall be deducted from proceeds payable on death. 11 NYCRR 54.6(b)(10)(iii).
- (f) Any indebtedness shall be deducted from the cash surrender value upon surrender or in determining any nonforfeiture benefit.
- (g) For the fixed account, policy must state that insurer reserves right to defer payment of loan value, except to pay premiums, for 6 months (Section 4222).
- (h) The policy may include a provision that if at any time, so long as the policy is in force on a premium-paying basis, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding 110 percent of the corresponding increase in policy value and by furnishing such evidence of insurability as the insurer may request. 11 NYCRR 54.6(b)(10)(vi).
- (i) The policy may specify a reasonable minimum amount that may be borrowed at any time, but such minimum shall not apply to any automatic premium loan provision. 11 NYCRR 54.6(b)(10)(vii).
- (j) No policy loan provision is required if the policy is under the extended insurance nonforfeiture option, 11NYCRR 65.6(b)(10)(vi).
- (k) The policy loan provision shall be so construed that variable life insurance policyholders who have not exercised the loan provision are not disadvantaged by the exercise thereof. 11 NYCRR 54.6(b)(10)(ix).
- (l) Amounts paid to the policyholders upon the exercise of any policy loan provision may be withdrawn from the separate account and may be returned to the separate account upon repayment, except that a stock insurer may provide the amount for policy loans from the general account. 11 NYCRR 54.6(b)(10)(x).
- (m) The policy shall describe how loans are charged against separate accounts and the effect on such accounts when a loan is made or repaid. 11 NYCRR 54.6(b)(10)(xi).

- (n) An insurer must credit on the loaned amount at a rate at least equal to the loan interest rate less two- percent, unless the Superintendent allows the crediting of a lower rate of interest upon an insurer demonstrating a justification for such lower rate. 11 NYCRR 54.6(b)(10)(xii).
- (o) If a future reduction in the loan spread is illustrated or otherwise disclosed, it can be guaranteed in the policy. If not guaranteed in the policy, the illustration must clearly address the non-guaranteed nature of the reduction in a manner acceptable to the Superintendent (11 NYCRR 54.10(d)). The portion of the illustration which relates to the future reduction and the non-guaranteed nature of the reduction then must be included in the submission package.
- (p) It is permissible to have a provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans. 11 NYCRR 54.6(c)(3).
- (q) The policy must state how a deposit not designated as a premium or loan repayment will be treated if a loan is outstanding.

E.8) Separate Account(s)

- (a) Section 54.6(b)(6) of Regulation No. 77 requires a provision designating the separate account to be used and stating that the assets of such separate account shall be valued at least as often as any policy benefits vary, but at least monthly.
 - (i) Pursuant to §4240(a)(7) of the Insurance Law, the contract should specify the dates on which the assets of the separate account will be valued and if there is no readily available market for assets in the separate account the agreements should specify how such assets will be valued.
 - (ii) Separate account assets should be valued at least as often as variable benefits are determined, but in any event at least monthly. §54.3(b) of Regulation No. 77. Policy value and cash surrender value must be determined at least monthly. §54.7 of Regulation No. 77.
 - (iii) Pursuant to §54.6(a)(7) of Regulation No. 77, the computation of values required for each variable life insurance policy may be based upon such reasonable and necessary approximations as are acceptable to the superintendent.
- (b) The policy benefits shall reflect the investment experience of one or more separate accounts established and maintained by the insurer. 11 NYCRR 54.6(a)(3). See also §4240(a)(11)(A), (B) and (C).
- (c) Income, gains and losses, whether or not realized, from assets allocated to a separate account shall, in accordance with the applicable agreement or agreements, be credited to or charged against such account without regard to other income, gains or losses of the insurer. Section 4240(a)(1).

- (d) To the extent applicable, there must be a statement that assets in the Separate Account shall not be chargeable with liabilities arising out of any other business of the Company. Section 4240(a)(12).
- (e) There may be no guarantee of the value of the assets allocated to a Separate Account, except as permitted under Section 4240(a)(5).

E.9) Guaranteed Interest Account

Describe any such account, if made available under the policy, any minimum guarantees of interest, and the method of crediting interest. Based on Section 11 NYCRR 54.7(b)(5)(i) and 54.6(b)(5).

E.10) Death Benefit

- (a) Describe the amount and/or calculation of the death benefit; may be variable or fixed and may include incidental insurance benefits. See 11 NYCRR 54.1 (f - h). *Variable death benefit* means the amount of the death benefit, other than incidental insurance benefits, payable under a variable life insurance policy, dependent on the investment experience of the separate account, and, at the option of the insurer, dependent upon the charging of more favorable mortality and expense charges, if any, than as guaranteed in the contract, which the insurer would have to pay in the absence of any minimum death benefit. §54.1(f) of Regulation No. 77.
- (b) Any changes in variable death benefits of each variable life insurance policy shall be determined at least annually. 11 NYCRR 54.6(a)(5).
- (c) The policy may offer a minimum death benefit. A minimum death benefit means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment experience of the Separate Account if there are no outstanding policy loans, partial withdrawals or partial surrenders. 11 NYCRR 54.1(g). See Section IV.F.7 of this outline.

E.11) Participating In Surplus

- (a) Section 3203(a)(6) requires that the insurer annually ascertain and apportion any divisible surplus accruing on the policy.
- (b) Must be in compliance with Section 4231 if a participating policy.
 - (i) Generally, §4231(b)(1) of the Insurance Law requires that all four dividend options (i.e. cash, reduction in premium payments, purchase of paid-up additions, and accumulation at interest) be made available to the policyholder- plus any other options as defined in 11 NYCRR 54.6(c)(1). The automatic dividend option when none is elected is paid-up additions, pursuant to §4231(b)(4). The Department has determined that flexible premium policies do not have to offer the reduction in premium option.

- (ii) 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.
- (c) 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. For group universal life insurance, the insurer must explain why any of the four dividend options will not be available at the employee or member level; and the employee or member is not allowed to elect the dividend option. 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.
- (d) The automatic dividend option when none is elected is paid-up additions. Section 4231(b)(4).
- (e) Whenever one year term insurance is purchased by dividends in connection with the policy, it shall provide for an equitable adjustment in the event of termination of the policy (other than by death) prior to the expiration of such one year term insurance. Section II(F)(2) of Circular Letter No. 4 (1963).
- (f) Any additional supplemental benefits attached to a participating policy, whether or not considered in determining surplus earnings, “may not” be specially labeled or described as non-participating. Section II(F)(3) of Circular Letter No. 4 (1963).
- (g) If the policy is participating but dividends are not expected to be paid the policy should so state.
- (h) In addition to the dividend options required by Section 4231 the amount of dividend may also be applied as set forth in 11 NYCRR 54.6(c)(1).

E.12) Misstatement of Age

- (a) Section 3220(a)(3) requires a provision that provides for the equitable adjustment of the premium or if the amount of insurance depends upon 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.

- (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 § II.H.8 of Circular Letter No. 4 (1963).

E.13) 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) and §54.6(b)(11) of Regulation No. 77.
- (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. For 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 must be identified in the policy for disclosure purposes. Based on Section 3203(a)(9) and 11 NYCRR 54.6(b)(11) as well as Section 3203(a)(4) and Section 3204(a)(1).
- (d) The policy language should not make reference to the placement of death proceeds in a checking account or other type of account, since this would relate only to the manner of distribution of benefits. Section 3201(a).

E.14) Policy (Certificate) Account Value (“Benefit Base”)

- (a) The policy must provide a full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy. 11 NYCRR § 54.6(b)(5). *Benefit base* means the amount, specified by the terms of the variable life insurance policy, which is equal to the policy value, and to which the net investment return is applied to determine policy benefits. §54.1(i) of Regulation No. 77.
 - (i) The procedure for the crediting of variable returns to the account value must be unambiguous.
 - (ii) The order of application of charges and credits must be described.
 - (iii) All related terms must be fully defined (e.g., net asset value).
- (b) Policy shall contain a statement of the essential features of the procedures used to determine the dollar amount of the variable elements. Section 4240(a)(11)(A).
- (c) Policy must provide a summary of the method used to compute the policy value and cash surrender value on any given date, 11 NYCRR 54.6(b)(9).

- (d) Policy value and cash surrender value must be determined at least monthly, 11 NYCRR 54.7.
- (e) Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base, 11 NYCRR 54.6(a)(4).
- (f) Mortality and expense risks shall be borne by the insurer, 11 NYCRR 54.6(a)(1).
- (g) Additional amounts (mortality or expense charges or interest credits more favorable than guaranteed) must be credited to the policy not less frequently than annually, 11 NYCRR 54.6(a)(1) and, if applicable, Section 3203(a)(14).
- (h) Policy must clearly indicate which cost factors are subject to adjustment. Based on 11 NYCRR 54.6(b)(5) as well as Section 3203(a)(4) and Section 3204(a)(1)
- (i) Policy must specify the guaranteed factors of interest, mortality and expense. At least the interest and expense factors should be on the specifications page. In addition to a table of mortality charges (COI rates), the basis of such table should be stated, 11 NYCRR 54.7, 54.6(a)(1) and 54.6(b)(5).
- (j) Any reductions in current expense, mortality or risk charges and any additional credits scheduled to take effect after the first policy year can be illustrated if guaranteed in the policy. If not guaranteed in the policy, the illustration must clearly address the non-guaranteed nature of the reduction or credits in a manner acceptable to the Superintendent (11 NYCRR 54.10(d)). The portion of the illustration that relates to the reductions and the non-guaranteed nature of the reductions must be included in the submission package.
- (k) For policies with a fixed account, the policy shall specify a guaranteed rate of interest for the portion of the fund accumulated in the fixed account, 11 NYCRR 54.7(b)(5)(i).
- (l) The policy must provide that additional amounts are nonforfeitable after the effective date of their crediting, except for any charges imposed under the policy which are not greater than those allowed under 11 NYCRR 54.7 or any market value adjustment made pursuant to 4221(n-2). Application of 11 NYCRR 54.5 to Section 3203(a)(13).
- (m) For policies with a fixed account, 11 NYCRR 54.7(b)(5)(ii), which permits forfeiture, upon surrender, of additional amounts associated with the fixed account that were credited in the last 12 months, has been superseded by section 3203(a)(13) which does not permit such forfeiture.

- (n) If there is a possibility that 2 or more different rate classes could apply at the same time (e.g., due to a change in class prior to a face amount increase), the policy form or submission materials (e.g., nonforfeiture statement) must describe how the net amount at risk for COI calculation purposes is allocated. Similarly, if there are 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, 11 NYCRR 54.6(b)(5), Section 3203(a)(4) and Section 3204

E.15) Nonforfeiture Provisions

- (a) See section II.D.1 above. The remainder of this section presumes the insurer has chosen to comply with the individual standards.
- (b) Nonforfeiture values must comply with Section 54.7 of regulation 77. The general account portion of the policy (or certificate) is subject to Section 4221.
- (c) Policy and certificate must describe a summary of the method of computation of cash surrender values and other nonforfeiture benefits, 11 NYCRR 54.7
- (d) Policy and certificate must explain how nonforfeiture benefits are affected by loans. 11 NYCRR 54.6(b)(10)(iv).

NOTE: THE REMAINDER OF THIS ITEM, 15, FOCUSES ON VARIABLE UNIVERSAL LIFE POLICIES.

- (e) Calculation Method: The policy (and certificate) must include a provision that states the guaranteed factors of mortality, expense and interest, and a statement of the method used by the insurer in calculating actual policy values §3203(a)(12).
- (f) The policy must have a table of or description of any surrender charges, 11 NYCRR 54.6(b)(9).
- (g) 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, 11 NYCRR 54.7 and 54.6(b)(5).
- (h) For policies with a fixed account, the policy shall specify that at least once each year, the insured has the option to transfer all separate account funds to the fixed account and apply her or his cash surrender value to purchase a guaranteed fixed paid-up benefit. 11 NYCRR 54.7(b)(5)(iii). In such case, any amount of paid-up whole life insurance provided shall be at least as great as that computed using the mortality table on which the maximum mortality charges have been calculated and the interest rate guaranteed in the policy. Also, any period of extended term insurance provided shall be at least as long as that using an extended term insurance mortality table appropriate to the mortality table for the maximum mortality charges and the interest rate guaranteed in the policy. 11 NYCRR 54.7(b)(5)(iv).

E.16) Nonforfeiture Provisions for General Account Portion

- (a) Assumptions and Methods Specified: The policy and certificate must specify the mortality table, interest rate and method used in calculating cash surrender value and any paid-up nonforfeiture benefits available under the policy. See §§ 3203(a)(7)(A) and 4221(a)(5).
- (b) Method of Computation of Values And Benefits: The policy (and certificate) must either provide a detailed statement of the method used by the insurer in calculating any cash surrender value and any paid-up nonforfeiture benefit or contain a statement that such method of computation has been filed with the Department (Sections 3201(c)(5) and 4221(a)(6)).
- (c) 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 anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy form, Section 3201(c)(5).
- (d) Minimum Benefits Statement: The policy and certificate must state that the cash surrender values and 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).
- (e) Effect of Loans: The policy and certificate must explain how cash surrender values and paid-up nonforfeiture benefits are altered any paid-up additions credited to the policy or any loans. §4221(a)(6).
- (f) Annual Report: 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).
- (g) Six Month Deferral Provision:
 - (i) The policy and certificate must state that insurer reserves right to defer payment of any cash surrender values for six months from date of request, §4221(a)(9).
 - (ii) The policy and certificate must reserve the right to defer any loan, except when made to pay premium, for six months after receipt of the loan application, §4222(b).
- (h) Cash Surrender Value: 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.
- (i) 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).
- (j) 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).
- (k) 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).
- (l) Surrender Charge Statement: Section 4221(a)(5-a) requires a statement as to any charges that will be imposed upon the surrender of the policy (and certificate).

E.17) Exchange Provision

- (a) A provision that at any time during the first 18 policy months, so long as the policy (certificate) is in force on a premium paying basis, the owner may exchange the policy without evidence of insurability for a substantially comparable general account life insurance policy (certificate) on the life of the insured for the same amount of insurance as the initial face amount of the variable life insurance policy and on a plan of insurance specified in the policy in accordance with the requirements set forth in 11 NYCRR 54.6(b)(7)(i) through (iv).
- (b) If a fixed account is offered in the policy to which all separate account funds can be transferred without restriction, the Department has not required the exchange to a general account product provided the insurer can demonstrate that this approach is more favorable to the policyholder (e.g., the fixed account is competitively priced in relation to such other general account products). See “more favorable” language in first sentence of 11 NYCRR 54.6(b).

E.18) Conversion Provision for Material Change

- (a) A provision that in the event of a material change in the investment policy of a separate account, any policyholder (certificate holder) objecting to such change shall have the option to convert without evidence of insurability, to a substantially comparable general account policy within 60 days after the effective date of the change or the receipt of the notice of the options available, whichever is later. 11 NYCRR 54.4(c) and 54.6(b)(12).

- (b) If a fixed account is offered in the policy to which all separate account funds can be transferred without restriction, the Department has not required the exchange to a general account product provided the insurer can demonstrate that this approach is more favorable to the policyholder (e.g., the fixed account is competitively priced in relation to such other general account products). See “more favorable” language in first sentence of 11 NYCRR 54.6(b).

E.19) Deferral Provisions

- (a) The policy must contain a provision that if no premium is in default or if the policy is being continued under a variable nonforfeiture benefit, payment of variable death benefits in excess of any minimum death benefits, cash surrender values, policy loans or partial withdrawals (except when used to pay premiums) or partial surrenders maybe deferred for any period during which the New York Stock Exchange is closed for trading (except normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical. 11 NYCRR 54.6(b)(8)(i).
- (b) The policy must contain a provision that if the policy is being continued under a fixed nonforfeiture benefit or to the extent benefits are being paid from the general account, payment of any cash surrender value or loan may be deferred up to six months. 11 NYCRR 54.6(b)(8)(ii).

IV.F) Other Provisions

F.1) 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.

F.2) Interest on Death Proceeds must comply with Section 3214.

If the policy provides for interest to be credited during any deferral of death benefit payments, the interest rate credited must comply with the interest crediting provisions of §3214.

F.3) Beneficiary and Facility of Payment

- (a) 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
 - (i) Where the policy contains conditions pertaining to family status, the beneficiary may be the family member specified in the policy.
 - (ii) See C.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.

- (b) In the absence of designated or specified beneficiary as to all or part of the insurance payable at the death of the insured, then such amount of insurance shall be payable to estate of the insured, or at insurer option, one of the following surviving relatives: wife, husband, mother, father, child or children, brothers or sisters.
- (c) 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.
- (d) Note that Section 4216(b) generally provides that, except as provided in Section 4231(b) and Section 3220(a)(5), the policy (certificate) must provide for payment of all benefits thereunder, to the person insured or to some beneficiary or beneficiaries other than the employer/policyholder.
 - (i) See exception in §4216(i)(2) for corporate-owned life insurance described in §3205(d).
- (e) Additional Requirements
 - (i) Must describe how primary and secondary beneficiary designations operate if being made available. Must describe how multiple beneficiary designations are handled. Required for disclosure purposes. Based on Section 3203(a)(4) and Section 3204.
 - (ii) 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.
 - (iii) Any change in the owner or beneficiary designation should take effect on the date the notice of change is signed subject to any actions taken by the insurer prior to receipt of this notice by the insurer. The change should not take effect only when recorded by the insurer since there could be substantial delays. Based on case law.
 - (iv) 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. Required for disclosure purposes. Based on Section 3203 (a)(4) and Section 3204.

F.4) 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. See §3220(c).

- (i) Life insurance policies are freely assignable unless otherwise restricted under the contract, except as modified by §7809 noted below.
 - (ii) Insurer's procedures on assignments (i.e. must be in writing, filed with company etc) should be fully described.
- (b) No group life policy that permits assignment of a covered person's rights shall restrict the covered persons from making assignment other than by gift. See §7809 of the Insurance Law.

F.5) Claims Of Creditors

- (a) If the policy and certificate has language regarding 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).

F.6) Proof Of Loss

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 (i.e. copy of death certificate etc.) may be provided if the insurer so chooses.

F.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 a guarantee of a minimal return on variable funds, 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 11 NYCRR 54.6(a)(5), 54.6(a)(9), and 54.7)
- (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. (Based on 11 NYCRR 54.11(d))
- (e) If the secondary guarantee is provided by rider, there may be additional nonforfeiture requirements. (Based on 11 NYCRR 54.7)
- (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.
- (h) Section 4240(d)(3) excludes application of some provisions of the law (e.g., section 4221 on nonforfeiture) to variable life policies. However 4240(d)(3) does not apply to “any policy providing benefits with respect to the amounts so allocated, if such benefits are guaranteed at any time to be not less than an amount equal to or greater than such allocated amounts accumulated to such time at three percent per annum”. A secondary guarantee may require the form to comply with sections of the law that would otherwise not apply.

F.8) Partial Withdrawals

- (a) If the policy (certificate) 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. (Based on 11 NYCRR 54.7)
- (b) Policy (certificate) language must ensure that a policyholder (certificate holder) can not 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))

F.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.

- (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 11 NYCRR 54.7(b)(1)(iii, iv and viii) 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.

F.10) Annual Report

Annual reports must be in compliance with 11NCRR 54.11

F.11) 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)

F.12) Transfers Between Accounts

- (a) Any restrictions on the number of transfers permitted, number of transfers without charges, monetary limitations, charges for such transfers, timing of transfers, etc., must be disclosed in the policy and certificate and are subject to Department review. (Based on section 3204).
- (b) The Department recommends that protection against disintermediation attributable to transfers from the general account should be included in the policy. An equity wash, right to delay transfers for e.g., 6 months, or other provision may be prudent.

F.13) Arbitration

Binding mandatory arbitration provisions are not permitted.

F.14) Waiver of Surrender Charges or Reduction in Fees

- (a) Permitted if based upon total and permanent disability in accordance with Section 3215 of the Insurance Law or provisions more favorable to the policyowner.
- (b) Permissible if based 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. A life insurance policy with this feature cannot be marketed, advertised or sold as long term care coverage or as an alternative to long term care insurance.

IV.G) Permissible Exclusions and Restrictions Other Than For Suicide

G.1) General Note.

Exclusions from paying the death benefit due to terrorism are not permitted. Section 3203(b) and (c) of the Insurance Law identifies the only permissible death benefit exclusions and restrictions of liability. Note that the exclusions and restrictions cannot apply to any additional benefits in the event of accidental death.

G.2) Specified Country Exclusion

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.

G.3) 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 No. 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.

G.4) 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 §52.2(i) of Regulation No. 62 to mean aviation and related activities, such as sky diving and parachuting, and participation as a professional in athletics or sports.

G.5) 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 months after the 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 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 months after the insured's return to the home area.
- (b) The war exclusion is not to be construed as 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 which are common to the civilian population and are not attributable to special hazards to which a person serving in such forces or units is 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) See also §§ 336 and 3201(c)(4).

IV.H)Other Group Requirements

H.1) Eligibility Requirements

(a) New Insureds

- (i) 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.
- (ii) Classes are determined by conditions pertaining to employment, or a combination of conditions pertaining to employment and conditions pertaining to family status.

(b) Employment Conditions

Conditions pertaining to employment include geographic situs of employment, earnings, method of compensation, hours and occupational duties. See C.L. 63-4 §I.B.2 of the Guidelines For Examination Of Group Life Forms, also 52.18(f) of Regulation No. 62.

(c) Age

Please note that age may not be the sole condition of eligibility for insurance. See C.L. 63-4 §I.B.1 of the Guidelines For Examination Of Group Life Forms.

H.2) 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.
- (b) 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.
- (c) 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; (Department Interpretation).
 - (iii) Adopted children can be covered;
 - (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. (Department Interpretation).
- (d) 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.
- (e) We will permit an eligibility provision which delays coverage for spouse and children who are hospital confined or commences 14 days after birth.

H.3) Amounts Of Insurance Preclude Individual Selection – Section 4216(b)(1).

- (a) 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.
- (b) A limited number of selections by employees 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. We have interpreted “limited number of selections” to be no more than 15, unless the plan is fully underwritten.
- (c) Fully underwritten plans can offer an unlimited number of selections.

H.4) 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 insured 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.

H.5) 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) 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.

IV.I) Conversion, Continuation and Portability Provisions.

I.1) Conversion Privilege - Section 3220(a)(6).

- (a) Triggering Events – Employee’s or member’s group life insurance coverage:
- (i) Ceases because of termination of:
 - (I) employment or membership in the class or classes eligible for coverage;
 - (II) the policy - (See replacement or reinstatement of such group policy); (II) 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; or
 - (ii) 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.
- (iii) The right to make premium contributions is stopped, except to the extent this is to maintain the qualification of the certificate as life insurance under the Internal Revenue Code.
- (b) Conversion Right - Employee or member shall be entitled to have issued to him or her by the insurer a policy of life insurance 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, unless otherwise extended as noted below. But see "Notice of Conversion" below.
 - (iii) upon payment of premium applicable to
 - (I) the class of risk to which he/she belongs, and
 - (II) 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. The insured should make the choice among "any one of the forms" customarily issued" by the insurer. If the availability of the conversion right was due to the total and permanent disablement of the insured then all forms (including term insurance) customarily issued by the insurer must be available.
 - (v) the amount of protection equals the amount of protection under the group policy at the time of such termination or reduction, less any amount of life insurance remaining in force, except;
 - (I) in the case of a reduction in IV.H.1.a.ii.II above (Section 3220(a)(6)(B)(ii)), in an amount equal to 80% of his/her coverage under such group policy immediately prior to such coverage,

(II) See replacement coverage below.

- (c) Replacement Coverage - The group policy may 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.
- (d) 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:
 - (i) preceded by term insurance for a period of one year,
 - (ii) with the premium payable, at the option of the employee or member, in any mode customarily offered by the insurer.
- (e) Extension of Benefits
 - (i) Death benefit payable if death occurs within 31-day period 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. The period extends to as long as 134 days. Further, insurance coverage must be extended throughout the entire conversion period, whether extended or not. Please see *Payne v Equitable Life Assur.*, 14 AD2d 266 (1 st Dept 1961), aff'd 11 NY2d 1006. The company would have the right to deduct from such payment the amount of premiums that would have been owed.
 - (ii) 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.
- (f) Individual Conversion Policy

- (i) 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.
 - (ii) 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.
- (g) Unaffiliated Insurer
- (i) We have permitted the use of both affiliated and unaffiliated insurers to provide individual conversion policy where the group life insurer does not offer any individual policies under limited circumstances.
 - (ii) There is a contractual agreement between the two insurers;
 - (iii) The subsidy or charge made against group life carrier must be reviewed;
 - (iv) The rate class under individual conversion policy must be reviewed.

I.2) 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 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.
 - (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 be any one of 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) See Section 3215 for definitions of total and permanent disability.
 - (e) This benefit may result in a greater use of waiver of premium benefits.
- I.3) Conversion For Dependents - Section 3220(a)(7).
 - (a) Employee/member has option of covering dependents under a converted policy if such dependents were insured under the group policy.
 - (b) Conversion privilege 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.
- I.4) Notice of Conversion - Section 3220(a)(8), 4216(d).
 - (a) 31-Day Application Period - Certificateholder 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 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 privilege expires at the end of 90 days.
 - (d) Full Compliance with Notice requirements by
 - (i) written notice by policyholder (I) given to the certificate holder or (II) mailed to the certificate holder at the last known address; or
 - (ii) written notice by insurer mailed to the certificate holder at last address furnished to the insurer by the policyholder.

- (e) Note that §3220(a)(8) of the Insurance Law makes the notice of conversion a required policy and certificate provision; whereas §4216(d) makes the notice of conversion a statutory requirement. With respect to the statutory requirement in §4216(d) there is an issue of preemption of state law under ERISA. See *Howard v. Gleason Corp.*, C.A.2 (N.Y.) 1990, 901F.2d 1154.

I.5) Group Life Continuation And Portability - Circular Letter No. 3 (1996).

- (a) Note that § I.B.4. of C.L. 63-4 provides that the policy must state specifically and clearly all reasons for individual termination of coverage.
- (b) The continuation or portability option is in addition to conversion option. However, this option is not usually associated with reduction in coverage. Continuation provided under either (c) or (d) below.
- (c) 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) If rates become excessive, we will require conversion option.
- (d) Existing group life insurance policy, but the terminated employee or member must be allowed to exercise the statutory conversion right at any time.
- (e) The rates for either portable coverage or continued coverage must be both adequate and not misleading. The adequacy of these rates may include some dependence on some combination of an on-going subsidy from the active lives or a one-time charge at the time of continuation or porting. Rates would be considered misleading if the rate level cannot be expected to be maintained into the future even if the actual claims track the expected claims.
- (f) Notice Periods taken from Section 3220(a)(6) and (8).

IV.J) Other Provisions

J.1) 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.

- (b) The term rider is subject to Regulation 149 treating the sum of any charges (usually there is just a COI charge) as the premium. A certification of compliance with Regulation 149 should be filed if the charges are level for more than 5 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. (Based on section 11 NYCRR 54.6(a))

J.2) Dividend Recognition Issues

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)).

J.3) 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).

J.4) 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 using a table in compliance with 11 NYCRR 54.7(b)(4).

J.5) Variable Material

The variable funds in the Separate Account should be set forth in the policy on either the policy specification page or the application to be attached to and made part of the policy. The funds should be bracketed to denote variable material. When funds are added or deleted or changed, the Company should send in the updated specifications page or application (the form number does not need to be changed) which reflect the changes made. The filing is to be made for informational purposes. A copy of the approval letter from the Department’s Life Bureau in New York City for the amended Plan of Operations or if such approval has not been received a copy of the Department’s acknowledgement letter for that filing should accompany the updated informational filing. Please note that the new funds cannot be utilized until the Life Bureau in New York City has approved the Plan of Operations.

V) Additional Benefits

V.A) Disability Benefits

A.1) Types Of Benefits

- (a) Waiver of Monthly Deduction
- (b) Disability Income of a specified amount
- (c) Extended Death Benefit
- (d) Maturity Value Benefit
- (e) Continued eligibility under the group policy. See also new conversion benefit.

A.2) Review Standards

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

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

A.3) Terms And Conditions

- (a) The disability must commence while the employee is insured under the group policy;
- (b) This must commence prior to a specified age, usually age 60;
- (c) Waiver of monthly deduction, disability income of a specified amount and extended death benefit continue even if group policy terminates.
- (d) If a certificate is receiving either a waiver of monthly deduction benefit or a disability income benefit then the benefit must be such the certificate (in the absence of any changes to the certificate by the owner) will not lapse because it runs out of value.

V.B) Seat Belt Benefit

B.1) Definition

This benefit provides for an additional death benefit if the insured dies as a result of accidental bodily injuries sustained in a motor vehicle accident while wearing a seat belt. This is a special public policy exception to the general rule that both health and life insurance coverages must be broad-based and not dependent on the manner in which a disease, injury or death occurs.

B.2) Coverage

The amount of coverage is limited to 10% of death benefit in a group life policy.

V.C) Additional Death Benefits

We have not permitted the payment of additional death benefits in the following instances because they are too limited:

- (a) Felonious Assault Benefit.
- (b) Day Care Benefit.
- (c) Education Benefit

V.D) Accidental Death and Dismemberment

AD&D benefits are accident and health insurance under Section 1113(a)(3) of the Insurance Law and Section 52.9 of Regulation 62, and must be submitted to the Health Bureau of the Department in accordance with (II)(A.8) 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 provides for the only permissible accidental death and dismemberment exclusions.

V.E) 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 if provided 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 Reg. 62. Exclusions from paying accidental death benefits due to terrorism are not permitted. Section 52.16(c).

VI) Related Filings

VI.A) Compensation Filings - Section 4216(e)

A.1) Applicability

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

A.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.

A.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.

A.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.

A.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.

VI.B) Filing Requirements For Separate Account Plans Of Operation

Domiciled and foreign insurers must file and gain approval for their plan of operation or amendment to an approved plan of operation of separate accounts or investment policies offered under the contract. (Section 4240(e)). A policy form cannot be marketed or issued until the Plan of Operations has been approved. A policy form however can be approved contingent upon the Company's receipt of the approval of the Plan of Operations. The Company should forward a copy of that letter to be added to the file.

All Plan of Operation filings should be made directly to Mr. Peter Kreuter, Chief Life Actuary 3, NYS Insurance Department, Life Bureau, 25 Beaver Street, New York, New York.

VI.C) Regulation 123

C.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..

C.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:
 - (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) 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.