

**INSURANCE DEPARTMENT OF THE STATE OF NEW YORK**  
**REGULATION NO. 174**  
**11 NYCRR 46**  
**UNEMPLOYMENT LAPSE PROTECTION BENEFIT FOR LIFE INSURANCE**

I, Howard Mills, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 1113, 3201 and 4525 of the Insurance Law of the State of New York, do hereby promulgate the following new Part 46 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 174), to take effect upon publication in the State Register, to read as follows:

(ALL MATERIAL IS NEW)

**§ 46.1 Purpose.**

This Part establishes minimum standards for benefit levels, benefits eligibility and exclusion, and premium levels relating to additional benefits authorized under section 1113(a)(1) of the Insurance Law for unemployment lapse protection benefits for life insurance. The unemployment lapse protection benefit includes waiver of premium benefits and waiver of charge benefits. This Part also provides advertising and disclosure requirements for unemployment lapse protection benefits for life insurance.

**§ 46.2 Applicability.**

This Part applies to every individual life insurance policy issued or delivered in this State, group life insurance policy issued or delivered in this State, and group life insurance certificate deemed to have been delivered in this State pursuant to section 3201(b)(1) of the Insurance Law, that provides unemployment lapse protection benefits.

**§ 46.3 Definitions.**

As used in this Part, the following terms shall have the following meanings:

(a) *Coverage delay period* means the amount of time from the effective date of coverage that unemployment is not covered.

(b) *Employment* means any service (i) for remuneration or wages; or (ii) under any contract of employment for hire, express or implied, written or oral; including service as a commissioned salesperson, service outside of this State including locations in a foreign country, agricultural labor, railroad service, and maritime service. The policy definition of employment may allow for any of the exclusions in section 511 of the Labor Law, other than the exclusions included in the Labor Law to prevent simultaneous payment of unemployment benefits from more than one governmental source.

(c) *Identifiable charge* means the amount the insurer collects from the policyholder and/or certificateholder specifically for an unemployment lapse protection benefit.

(d) *Noncontributory coverage* shall mean coverage where the premium is paid solely by the employer. Salary reduction contributions are regarded as employee contributions.

(e) *Policy* means an individual life insurance policy, group life insurance policy or certificate, fraternal benefit society certificate, or any rider/endorsement issued in connection with a policy or certificate.

(f) *Unemployment* means the lack of any employment or a reduction in hours of employment and/or income as specified in the policy and certificate form.

(g) *Waiting period* means the amount of time the insured is unemployed before benefits are payable.

(h) *Waiver of charges benefit* means a benefit that allows for the coverage to remain in force without the deduction from the policy's value of some or all of the required periodic charges.

(i) *Waiver of premium benefit* means a benefit that allows for the coverage to remain in force without otherwise required premiums being paid.

#### **§ 46.4 Filing and approval of forms.**

(a) No policy of life insurance, application, conditional receipt, temporary insurance agreement, notice of proposed insurance, or other form pertaining to, or providing a life insurance unemployment lapse protection benefit shall be delivered or issued for delivery in this State, unless the forms have been filed with and approved by the superintendent.

(b) If the unemployment lapse protection benefit is provided by rider or endorsement, the insurer shall in writing identify all policy forms with which the rider or endorsement is intended for use.

#### **§ 46.5 Advertising.**

In addition to complying with the provisions of Part 219 of this Title (Regulation 34-A), any advertisement for a life insurance unemployment lapse protection benefit that is intended for presentation, distribution or dissemination in this State, directly or indirectly, by or on behalf of any insurer, insurance agent or insurance broker shall be subject to the following:

(a) If eligibility is dependent on being eligible for state or federal unemployment benefits, as appropriate, the advertising material shall include a statement indicating the following:

Your eligibility for this unemployment lapse protection for life insurance benefit is dependent on your being eligible to receive state or federal [as appropriate] unemployment benefits. A change in your employment status may affect your eligibility for benefits. If you have any questions, you should contact your insurance company.

(b) Every advertisement shall include a statement that receipt of the unemployment lapse protection benefit may be considered taxable income.

(c) Every advertisement shall clearly describe the benefit as an unemployment waiver of premium/lapse protection benefit and not a benefit that provides payments in installment or lump sum to the insured in the event of unemployment.

(d) Every advertisement relating to individual life coverage or group life coverage paid in whole or in part by the policyholder shall clearly describe the following:

(1) the waiting period, if any, before the unemployment lapse protection benefit commences under the policy or certificate; and

(2) the premium/charge payment obligations of the policyholder and/or certificateholder during any such waiting period.

#### **§ 46.6 Optional individual and group life coverage, disclosure of cost.**

(a) In the case of an individual policy or a certificate issued under a group life insurance policy other than a noncontributory policy, the unemployment lapse protection benefit shall be offered only as an optional benefit.

(b) The identifiable charge for the unemployment lapse protection benefit shall be set forth separately from all other premiums/charges in the application and the policy and certificate schedule pages and, if applicable, the rider and endorsement forms.

(c) Where the unemployment lapse protection benefit is offered as a rider or endorsement to in-force coverage, the rider or endorsement or schedule shall set forth the effective date of the unemployment lapse protection benefit.

#### **§ 46.7 Provisions of policies and certificates of insurance.**

(a) No life insurance policy providing for unemployment lapse protection benefit shall be delivered or issued for delivery in this State, unless it contains a provision:

(1) that describes the types or causes of unemployment that are covered by the unemployment lapse protection benefit;

(2) that sets forth the conditions of eligibility for coverage. The conditions may include:

(i) a requirement that the insured be actively at work on a full-time basis on the date of application or issue, or prior to the date of application or issue for a minimum period not exceeding twelve months. The term "full-time" shall be defined in the policy to mean a minimum number of hours no greater than 30 hours per week;

(ii) a requirement that the insured has not received or been eligible to receive a state or federal unemployment benefit for a minimum period of time, not exceeding twelve months, prior to the application date or the issue date; and

(iii) a requirement that the insured be an eligible age on the date of application or issue, provided that the maximum age shall not be less than 65.

(3) indicating when, after commencement of involuntary unemployment, the life insurance coverage first becomes protected against lapse and, if applicable, that required premiums must be paid by the insured until that time;

(4) that describes where the notice of claim forms can be obtained or, if no claim form is required, the information required for such notice of claim, together with the address where such notice must be delivered;

(5) that specifies any documents or other information needed to serve as proof of unemployment;

(6) that describes the conditions or circumstances that must occur to make a claim under the policy for the unemployment lapse protection benefit. The conditions or circumstances may include the following:

(i) a requirement that the insured actually receive or be eligible to receive state or federal unemployment benefits for a minimum period specified in the form;

(ii) a requirement regarding the type or cause of the insured's unemployment to be a covered unemployment as set forth in the form;

(iii) a requirement that the life insurance coverage be in effect a minimum period of time before any payments are payable; provided that, if the minimum period of time exceeds one year, no identifiable charge for the unemployment lapse protection benefit may be collected until the expiry of this period;

(iv) a requirement that a notice of claim and proof of unemployment shall be provided to the insurer within a reasonable time after commencement of a period of unemployment; and

(v) a requirement that the insured be unemployed for a minimum specified period not to exceed 180 days.

(7) that describes the coverage to which the unemployment lapse protection benefit applies as well as the terms and conditions applicable to the benefit with regard to coverage in force prior to termination of employment. The description shall identify the specific benefits or coverages (e.g., basic life, supplemental life, accidental death and dismemberment, guaranteed insurance, waiver of premium for disability benefit, some specified portion of or all dependent coverage, etc.) to which the unemployment lapse protection benefit applies, if the unemployment lapse protection benefit does not apply to all coverages provided under the policy; and

(8) that describes each basis for excluding or denying a claim for an unemployment lapse protection benefit. Some of the bases for excluding or denying a claim for an unemployment lapse protection benefit are:

(i) voluntary separation from employment, without good cause (as such term is defined in section 593 of the Labor Law);

(ii) retirement;

(iii) loss of income due to disability caused by accident, sickness, disease or pregnancy;

(iv) loss of income due to termination of employment as the result of willful misconduct (as defined in the form), criminal misconduct or unlawful behavior as determined in judicial or administrative proceedings;

(v) strikes, lockouts, illegal walkouts, and industrial controversy (as such term is defined in section 592(1) of the Labor Law); and

(vi) normal or routine scheduled layoff or plant closing where the employee is expected to be rehired.

(b) Disclosure provisions:

(1) If eligibility for benefits is dependent on being eligible for a state or federal unemployment benefit, as appropriate, the policy must include a statement prominently displayed setting forth the following or its equivalent:

Your eligibility for this coverage is dependent on your being eligible to receive state or federal [as appropriate] unemployment benefits. A change in your employment may affect your eligibility for benefits. If you have any questions you should contact the insurance company.

(2) The policy and application therefor shall include prominent disclosure of the extent to which the receipt of the unemployment lapse protection benefit may be considered taxable income.

(3) The application shall include a question or statement corresponding to each unemployment lapse protection benefit eligibility condition.

(c) A policy may impose conditions under which an insured becomes re-eligible for the maximum unemployment lapse protection benefit after a period of receiving benefits. If re-eligibility conditions are required for full benefits for a subsequent period of unemployment, the conditions may not be more stringent than the initial eligibility conditions (with no more than a twelve-month actively at work requirement). If an insured has not satisfied the re-eligibility requirement at the time of a subsequent unemployment, such unemployment shall be considered a continuation of the prior unemployment with no waiting period, and with a maximum benefit period equal to the unused portion of the maximum benefit period for the prior unemployment.

(d) If a policy does not provide for the insured to become re-eligible for the maximum amount of unemployment lapse protection benefit after a period of receiving unemployment lapse protection benefits, then the policy shall provide for notification that benefits have ended and include with the notice a statement of whether any portion of the unemployment lapse protection benefit would be payable for a subsequent period of unemployment. If such benefit remains, then the notice shall provide the amount of the remaining benefits and the premium required to maintain the unemployment lapse protection benefit.

(e) Termination provisions:

(1) The policy shall set forth termination provisions for the unemployment lapse protection benefit. Some of the bases for termination of the unemployment lapse protection benefit, or some portion thereof, may include:

(i) the coverage continues as paid-up insurance;

(ii) the policy is terminated or cancelled prior to termination of employment;

(iii) the insured reaches a maximum age specified in the policy, which shall not be less than age 66;

(iv) the policy is surrendered or lapses; and

(v) the specified maximum unemployment lapse protection benefit has been paid.

(2) For group life insurance, termination of the group policy shall not cause the insured's certificate to terminate while the unemployment lapse protection benefit or waiting period is in effect. The unemployment lapse protection benefit shall provide that payment of the death benefit is unaffected by the termination of the group policy when life insurance coverage is being continued under a valid unemployment lapse protection benefits claim that occurred prior to the termination of the group policy..

(f) For renewable term policies, if the renewal date occurs while the unemployment lapse protection benefit or waiting period is in effect, policy renewal shall be automatic.

(g) Coordination of benefits: If a policy providing for a waiver of premium for unemployment also provides a waiver of premium or charges for disability benefit or other disability-related benefits, the policy shall specify how the benefits interact.

(h) Coverage of other policies: A policy that includes a lapse protection benefit in the event of the unemployment of the insured may also provide for protection against lapse due to the insured's unemployment on insurance provided in either the same policy or in additional policies on the insured's dependents, provided that for protection of additional policies:

(1) the policies insuring the dependents are identified in the insured's policy either by actually being listed or by description; and

(2) the effect, if any, of each policy being protected against lapse on the premium charge for this benefit be set forth in the insured's policy.

**§ 46.8 Premiums.**

(a) No policy of life insurance providing for the unemployment lapse protection benefit shall be issued or delivered in this State unless the premium rates have been filed with the superintendent.

(b) The following rates are considered deemed reasonable in relation to the benefits provided:

Monthly Premium Rates per \$100 of Monthly Benefit							
Plan		Maximum Months of Benefits per Period of Unemployment					
Waiting Period	Coverage Delay Period	6	12	24	36	48	60
60 days	None	2.05	3.08	4.58	5.63	6.26	6.49
90 days	None	1.72	2.69	4.15	5.17	5.76	5.95
180 days	None	1.20	2.04	3.39	4.30	4.79	4.90
60 days	6 Months	1.85	2.77	4.13	5.07	5.64	5.84
90 days	6 Months	1.55	2.42	3.76	4.65	5.18	5.35
180 days	6 Months	1.08	1.84	3.05	3.87	4.31	4.41
60 days	1 year	1.74	2.62	3.90	4.79	5.32	5.51
90 days	1 year	1.46	2.29	3.53	4.39	4.90	5.06
180 days	1 Year	1.02	1.74	2.88	3.65	4.07	4.16

(c) Rates for other waiting periods, coverage delay periods and maximum months of benefits per period of unemployment are deemed reasonable in relation to the benefits provided if they are the actuarial equivalent of the above rates.

(d) Alternative rates may be used subject to an annual benefit ratio of 60%. The benefit ratio shall be calculated as the incurred claims divided by the premiums earned. An Insurer using alternative rates pursuant to this subdivision shall file a report annually with the superintendent demonstrating compliance with this subdivision.

**§ 46.9 Policies with flexible premium payments.**

If the policy allows for flexible premium payments, then the maximum amount to be waived for a period may not exceed the greater of the smallest premium that will keep the policy from lapsing until the end of that period and the amount of premium needed to satisfy the no-lapse guarantee, if any, that expires next.

**§ 46.10 Special rules for group life insurance.**

(a) An unemployment lapse protection may not be written in conjunction with group life insurance if the continuation of the group life insurance is dependent on the employment of the insured, unless the group life coverage is reinstated once any waiting period is satisfied. As a condition of reinstatement the group policy may require the surrender of any conversion policy obtained by the insured based on the termination of the group life insurance.

(b) Notwithstanding any actively at work requirement contained in the group policy, a group policy may allow for the group life coverage to continue during the lapse protection benefit waiting period provided that the policy is clear regarding who (i.e. policyholder and/or certificateholder) is responsible for the payment of premiums during the waiting period.

I, Howard Mills, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is Part 46 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 74), entitled "Unemployment Lapse Protection Benefit for Life Insurance", promulgated by me on December 27, 2006, pursuant to the authority granted by Sections 201, 301, 1113, 3201 and 4525 of the Insurance Law of the State of New York, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed amendment was published in the State Register on October 18, 2006. No other publication or prior notice is required by statute.

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Howard Mills  
Superintendent of Insurance

December 27, 2006