

Guaranteed Interest Contracts Product Outline

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Guaranteed Interest Contracts Product Outline

I. Applicability

- A. Scope: This product outline covers all unallocated guaranteed interest contracts delivered in this state issued through an insurer's general account.
1. Unfortunately, there is no commonly accepted definition of a guaranteed interest contract in the industry or in the Insurance Law.
 - a) Regulation 139, Regulation 127, Proposed Regulation 151 (former §95.11(d)(2)(iv) of Regulation 126), §§4217 and 6901(a)(2)(G) of the Insurance Law define and /or refer to different types of guaranteed interest contracts.
 - b) In addition, federal law, especially the Employee Retirement Income Security Act ("ERISA"), makes provision for guaranteed interest contracts, guaranteed investment contracts and guaranteed benefit policies.
 2. For purposes of this outline, we rely on the definitions in Regulation 139.

B. Definitions

1. *GIC-1* or *GIC* means a contract which guarantees principal and provides a specified rate of interest on amounts deposited with an unqualified right to withdraw the accumulation fund upon the expiration of the time period for which the amount deposited and the specified rate of interest are guaranteed under the contract, either in lump sum or in installments over a period less than five years with the amount and timing of such installments specified in the contract. § 40.2(j)(1) of Regulation 139.
 - a) This definition was taken from §4217(c)(4)(D)(iii)(V)—Plan Type B and Prohibited Transaction Exemption 81-82 "guaranteed investment contract". This product outline applies primarily to GIC-1 contracts.
 - (1) Plan Type B: The policyholder may not withdraw funds before the expiration of the interest rate guarantee or, if withdrawals are permitted before the expiration of such guarantee, may withdraw funds only (i) with an adjustment to reflect changes in interest rates or asset values since the receipt of the funds by the insurance company, or (ii) without such adjustment but in installments over five years or more. At the end of the interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or in installments over less than five years.
 - (2) Prohibited Transaction Exemption 81-82: A "guaranteed investment contract" is defined as a contract issued to an employee pension benefit plan, or to a fiduciary for the benefit of such a plan, by a life insurance company, under which:

- (a) The life insurance company issuing the contract guarantees the amounts deposited by the plan pursuant to such contract and guarantees a specified rate of interest on such amounts for a stated period of time;
 - (b) The amounts received by, or credited to, a plan under such contract, and any charges made under such contract, are not, in any circumstances, affected by the investment performance of assets held in any separate account or other investment fund;
 - (c) The plan has an unqualified right to withdraw the amounts deposited and the interest accrued thereon upon the expiration of the period for which the amounts deposited, and a specified rate of interest, are guaranteed under such contract; and
 - (d) The plan's right to recover any amount payable under such contract from the life insurance company issuing the contract, and the plan's claim against the general assets of such life insurance company for any amount payable under such contract, whether on insolvency or liquidation of the life insurance company or otherwise, would not be adversely affected by the allocation by the insurance company to a separate account of amounts received under such contract.
- b) The primary reason for the definition in Regulation 139 is to limit the applicability of the termination rules in §40.5. Since GIC-1 contracts have a fixed maturity date specified in the contract at which time an unadjusted payment will be made either in lump sum or in installments, the termination rules are not necessary.
- (1) With respect to the fixed maturity date specified in the contract, we have approved call provisions during the accumulation phase and payout phase that would shorten the term of the contract.
- c) *Specified interest rate* means the rate of interest, which, at the time set or established under the contract, is likely to result in the crediting of no more than a minimal rate of additional interest to the accumulation fund on an annual or more frequent basis. §40.2(u) of Regulation 139.
- (1) The guaranteed interest rate on GICs is closely related to current, or "spot" long term interest rates.
 - (2) Typically, the contract does not provide for any participation if the actual earnings rate on supporting assets exceed the rate guaranteed.
 - (3) We have permitted the specified interest rate to be derived from an agreed upon index, such as LIBOR. We have permitted the use of interest rate swaps to support floating rate GICs. Domestic insurers must submit a hedging program for approval pursuant to Regulation 111. Any use of swaps must be covered as part of the hedging program.
2. *GIC-2* means a contract which guarantees principal and provides an indeterminate rate of interest for an indefinite period with an unqualified right to withdraw the accumulation fund at least once a year in either a lump sum, subject to a surrender charge no greater

than seven percent, or in substantially equal periodic, at least annual, installments over a period less than five years which does not reflect investment experience of the underlying assets. § 40.2(j)(2) of Regulation 139

- a) This definition was taken from §4217(c)(4)(D)(iii)(V)---Plan Type C
 - (1) Plan Type C: The policyholder may withdraw funds before the expiration of the interest rate guarantee in a single sum or installments over less than five years either (i) without adjustment to reflect changes in interest rates or asset values since the receipt of funds by the insurance company, or (ii) subject to only a fixed surrender charge stipulated in the contract as a percentage of the fund.
 - b) The GIC-2 definition exempted plan type C contracts from the termination rules in §40.5 of Regulation 139.
 - c) Except for the installment payout, Plan Type C contracts are traditional allocated annuity contracts, usually subject to the nonforfeiture law for annuities.
 - d) These contracts typically only provide for lump sum withdrawals. Prior to promulgating Regulation 139, the five year installment option was not available. We have required the lump sum option in any GIC-2 contract offering an installment option.
3. *Unallocated Contract* means a contract in which deposits are credited to an accumulation fund without reference to any plan participant or beneficiary (i.e., deposits are not allocated to participant accounts under the contract). See §3223(d).
- a) This definition is similar to the definition of “unallocated amounts” in §40.2(z). Unallocated amounts means any funds credited to the accumulation fund which the insurer is not currently irrevocably committed to apply under the terms of the contract to the payment of benefits by it to specific plan participants or beneficiaries or to the purchase of annuities for specific plan participants, adjusted for any accrued experience rating charges or credits, including expenses and administrative, sales and surrender charges provided for under the contract.
 - (1) Note that in most unallocated GIC contracts, the insurer permits the contractholder to purchase annuities for plan participants upon termination of employment.
 - b) This definition also may need to be coordinated with the limitation of liability of The Life Insurance Guaranty Corporation of New York in §7708 of the Insurance Law in the event of an Article 74 proceeding.
 - (1) \$500,000 limit for all benefits, including cash values, with respect to any one life under a covered policy
 - (2) \$1,000,000 limit for all benefits, including cash values, with respect to a group annuity contract (or portion of any such contract) that does not guarantee annuity benefits with respect to any specific individual identified in the contract.

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

C. Excluded Contracts

1. List of Excluded Contracts

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

2. Special Note : The term *guaranteed interest contract* has been broadly defined to include all open-ended participating contracts, including immediate participation guarantee contracts and deposit administration contracts, as well as nonparticipating contracts including funding agreements and fixed rate / fixed maturity GIC contracts. See Proposed Regulation 151 (former §95.11(d)(2)(iv) of Regulation 126). **Except as noted herein, this product outline is not intended to apply to open-ended (evergreen contracts) which fall within the definition of Plan Type A contracts.**

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

II. Filing Requirements

A. Overview

1. Statutory Requirement : Section 3201(b)(1) provides that no policy form shall be delivered or issued for delivery in this state unless it has been filed with and approved by the superintendent as conforming to the requirements of the Insurance Law and not inconsistent with law.
2. “Conforming to” Requirement of the Insurance Law
 - a) Standard Provisions Applicable to Group Annuity Contracts. Sections 3223, 4238, Regulation 139
 - b) Generally Applicable Provisions : Including, but not limited to, §§3204 (Entire Contract), 3205 (Insurable Interest), 4224 (Unfair Discrimination, Rebates and Tie-Ins)
3. “Not Inconsistent With Law” Requirement
 - a) Federal Law, Including, but not limited to, the Employee Retirement Income Security Act, Securities Laws, Internal Revenue Code, Age Discrimination In Employment Act, Civil Rights Act (Title VII), Americans With Disabilities Act.
 - b) Other State Laws, Including, but not limited to, Human Rights Law - Section 296 Executive Law, Statute of Frauds - Section 5-701 General Obligations Law, Fair Credit Reporting Act - Section 380 General Business Law.
4. Discretionary Authority For Disapproval
 - a) Misleading or Deceptive Provisions. Section 3201(c)(1) and (3). See also Sections 4226, 2123, 3209.
 - b) Prejudicial to the Interests of Policyholders or Members. Section 3201(c)(2). See also Section 4238(e) with respect to self-support.
 - c) Unjust, Unfair, Inequitable Provisions. Section 3201(c)(2) and (3). See also Sections 4224, 4231, 4239, 2403
 - d) Contrary to Law or Public Policy. Section 3201(c)(3). See also Sections 3207, 3208, 4213, 4214, 2611, 2612
 - e) Premium Unreasonable In Relation to Benefits. See Sections 3201(b)(1)

B. Policy Form Submission Rules

1. Preparation of Forms For Submission. Basic Rules - See Circular Letters 1963-6 and 1969-4.
 - a) Each policy form should be designated with form number on lower left-hand corner of face page.
 - (1) Distinguishes the form from all others of the insurer.
 - (2) We now object to a company’s use of the matrix approach, which identifies benefit provisions within a document with separate form numbers. Circular Letter 63-6 only permits the use of insert pages, when accompanied by a

statement identifying the pages which must always be included in the policy form and a list of optional pages, together with an explanation of the use thereof.

- b) New policy forms should be submitted without amendatory riders or endorsements, unless:
 - (1) changes are necessitated by distinctive New York requirements.
 - (2) riders are expressly permitted.
 - (3) riders permitted to conform policy to change in law, rules or regulations, unless resulting policy would have tendency to confuse or mislead.
- c) Submit duplicate copies of forms
- d) Printed forms should be used unless its use is too limited to justify printing. The form should be clear, legible and reasonably permanent. Computer generated forms are acceptable. See also readability provision Section 3102.
- e) Blank spaces in form should be filled in and completed with hypothetical data to indicate purpose and use of forms. Alternatively, the submission letter can also explain purpose and use of the form.
- f) All incorporations by reference should be attached to or accompany the submission. See also Section 3204.
- g) If application (or enrollment form) will be attached to policy, it should be submitted. If previously approved, the form or submission letter should so indicate.
- h) All endorsements to be applied by stamp should be submitted on company letterhead.
- i) Variable material used with impairment, waiver or exclusion riders should be submitted with the form for approval.
- j) Illustrative material may be used for items that vary from case to case, such as names, dates, eligibility requirements.

2. Explanation of Variable Material

- a) Illustrative material 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.
- b) If an explanatory memorandum accompanying a cover letter or appropriate reference to material filed with schedules of premium rates (in duplicate) clearly indicates the nature and scope of the variations to be used, portions of other provisions such as insuring clauses, benefit provisions, restrictions, and termination of coverage provisions may be submitted as variable, if suitably indicated by red ink, underlining, bracketing or otherwise.
 - (1) For example, 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.
 - (2) An explanation of variable material that the variations "will conform to law" or "as requested by the policyholder" is not acceptable.
- c) The alternative language, if any, should be supplied in duplicate, independent of the insurer's letter.
- d) Open-face riders or endorsements may be filed for general use in amending illustrative or variable material within the limitations of the preceding paragraph

3. Submission Letters - Circular Letter 1963-6; Circular Letter 1969-4.
 - a) In duplicate, signed by a representative of the company authorized to submit forms filing or approval. Rules I.G.
 - b) Identification of Insurer
 - c) Listing of form numbers. Rule I.G.1.
 - d) Table of Contents of all material in the filing
 - e) When the policy form is designed as an insert page form, the insurer must submit a statement of the mandatory pages which must always be included in the policy form, and a list of all optional pages, if any, including application forms, together with an explanation of how the form will be used (previously approved forms should be identified by form number and approval date). Rule I.G.8.
 - f) Description of the benefits/coverage provided. Rule I.G.2, 7.
 - g) Type of group, as defined in Section 4238(b). Specify each paragraph.
 - h) Classes covered, if not all persons are eligible
 - i) Statement as to whether the contract is noncontributory, contributory or funded solely by employee 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.
 - j) Statement as to whether the form is new or is intended to replace a previously approved form. Rule I.G.3,4,5,6,8
 - (1) If the form is intended to supersede another approved or filed form, the form number of the form approved or filed by the Department, together with a statement, of the material changes made; if the previous form is still in process, the form number, control number and submission date. A redlined copy is helpful.
 - (2) If a form being filed for formal approval had previously been submitted for preliminary review, a reference to the previous submission and a statement setting out either (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. A redlined copy is helpful.
 - (3) 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.
 - (4) 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 corrected form being submitted. If, however, the form has been issued, the insurer must place a new form number on the corrected form and need not return the previously approved form.
 - k) Statement as to how the form will be used and how it will be marketed, as described in Circular Letter 1976-12
 - l) Caption of Submission Letter should identify all forms submitted for approval or acceptance for filing and identify the type of insurance and type of form. See Circular Letter No. 8 (1999)

- m) Statement describing the type of plan (i.e., defined contribution or defined benefit) and identifying the applicable Code reference, such as IRC §§401(a), 401(k), 403(b), 408(b), 457, etc.
 - n) Completed checklist (attached hereto), in lieu of a completed summary sheet.
4. Readability Requirement - Flesch Score Certification - Section 3102(b) excludes any group annuity contract which serves as a funding vehicle for pension, profit sharing or deferred compensation plans. However, group annuity certificates are not exempt.
 5. Procedural Changes
 - a) See Circular Letter No. 14 (1997) Make certain that submissions have been drafted to comply with New York law and regulations. Do not submit a national version of the forms or NAIC model forms or actuarial data.
 - b) Caption of Submission Letter should identify all forms submitted for approval or acceptance.
 - c) Provide a single contact person to coordinate and prioritize all filings or at least all filings of a given block of business.
 - d) Out of state forms submitted by domestic insurers must include a self-support statement. See §4228(h).

C. Types of Filings

1. Traditional Prior Approval - Section 3201(b)(1).
2. Alternative Approval Procedure - Section 3201(b)(6), Circular Letter No. 2 (1998).
 - a) Expedited Approval Procedure Prevents Delays By Deeming Forms to be approved or denied if the Department or insurer fail to act in a timely manner.
 - b) Expedited Approval Requirements.
 - (1) Submit complete filing package, including the proposed policy forms, actuarial material and all necessary supporting material required by rule. The caption of the submission letter should identify the submission as a "Section 3201(b)(6) Deemer Submission".
 - (2) Submit certification of compliance signed by officer of insurer who is knowledgeable of the law and regulation applicable to the type of policy form. The certification should state that the form complies with applicable laws and regulations and make reference to any law, regulation or circular letter that specifically applies or is unique to the type of form or rates.
 - c) Time Constraints Applicable to the Department.
 - (1) Return incomplete submissions within sixty days with notice stating that no action is being taken by the Superintendent and that the time period for substantive review has not commenced, if the submission does not include all necessary form, rate or supporting material or fails to comply with applicable statutory or regulatory requirements.
 - (2) Superintendent notifies the insurer in writing within ninety days of receipt of the submission that the form has been approved, request additional information or denies such filing stating the reasons for such disapproval.
 - (3) The form is deemed approved if no comment letter is provided within ninety (90) days of receipt of initial submission or within 45 days of receipt of a

response to a previous comment letter. The form will eventually be reviewed if deemed approved. The form will eventually be reviewed if deemed approved

- d) Time Constraints Applicable to Insurer.
 - (1) Response required within 45 days of receipt of comment letter, unless extension is granted. The response must provide all requested information and respond to all objections.
 - (2) The failure to provide timely response will cause the forms to be denied and the insurer is not allowed to resubmit form for additional 90 days from the date the requested information or response to all objections was due.
 - e) Additional Requirements.
 - (1) Initial correspondence from the Department should state all objections. Current practice is to send separate letters from an actuary and an attorney.
 - (2) New objections in subsequent correspondence can only be based upon modifications of policy or new material submitted. However, the Department can always raise objections that are based on explicit requirements of the Insurance Law and any applicable regulations.
 - (3) The insurer will lose eligibility for the expedited approval procedure for one year if a deemed approved form is subsequently found to fail to comply with the provisions of the Insurance Law.
3. Prefiled Group Insurance Coverage - Circular Letter 1964-1
- a) Circular Letter 64-1 permits insurers to provide or assume risk for group annuity coverage prior to the filing of approved forms. By implication, an insurer can bind risk under a group annuity contract prior to approval, but subsequent to filing with the Department.
 - b) Conditions For Providing Coverage Prior to Approval.
 - (1) Immediate coverage requested by policyholder to meet specific need of policyholder.
 - (2) Insurer has reasonable expectation of approval or acceptance for filing.
 - (3) Confirmation letter sent to policyholder by the insurer stating:
 - (a) the nature and extent of benefits or change in benefits;
 - (b) that the forms may be executed and issued for delivery only after filing with or approval by the department;
 - (c) an understanding that, if such forms are not filed or approved or are disapproved, the parties will be returned to status quo insofar as possible, or the coverage will be modified retroactively to meet all requirements necessary for approval; and
 - (d) the effective date of coverage (Best Practice)
 - (4) Department Notification.

- (a) Copy of confirmation letter submitted within 30 days of agreement to provide insurance. (Best Practice)
 - (b) Statement explaining circumstances and reasons for delay in submitting forms within twelve months of coverage for group annuity.
 - (c) Follow-up statement every six months for group annuity 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.
- (5) Forms must be submitted within twelve months of coverage for group annuity subject to extension with satisfactory explanation for delay.
- c) Administrative Changes and Recommended Practice.
- (1) Insurers are advised to notify department of coverage within 30 days of coverage and submit forms within six months subject to the six month extension for group life and group annuity.
 - (2) Insurers should review prefilings periodically (monthly) to verify compliance with conditions for prefiling.
 - (3) Insurers should vigorously pursue approval (or acceptance for out-of-state filings) of prefiled cases after forms have been submitted to mitigate harm if forms are found not to comply with applicable requirements.

4. Self-Support Statement

- a) Section 4238(e) provides that no insurer shall be permitted to do business in this state if it issues, within or without this state, any policy of group annuity contract which on its issuance does not appear to be self-supporting on reasonable assumptions as to interest, mortality and expense.
- b) The Bureau may request a self-support demonstration for contracts submitted for approval.
- c) A self support statement should be submitted for all out of state filings.

5. Out-of-State Filings

- a) Domestic Insurers - Pursuant to Section 3201(b)(2), domestic insurers must file all policy forms intended for delivery outside of the state.
- b) Section 3201(b)(6) permits disapproval of such out-of-state filing if the issuance would be prejudicial to the interests of the insurers, policyholders or members.
- c) Procedures
 - (1) File two copies of each policy form issued by a domestic insurer for delivery only outside of New York or with policies or contracts delivered outside New York.

- (2) The transmittal letter shall include the following information (Circular Letter 63-6):
 - (a) a comparison of benefits and premiums with similar forms approved or pending approval for use in New York.
 - (b) a list of the states or jurisdiction in which the form is to be delivered.
 - (c) a commitment to notify the Department in the event any such state disapproves any of the forms.
- (3) Provide a self-support statement.

III. Eligible Group Requirements

A. Definitions

1. “Group Annuity Contract” means any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable dependent upon the continuance of the lives of more than one person. Section 4238(a).
 - (a) We view group contracts that provide for the purchase of annuities or the payment of annuity benefits for plan participants or their beneficiaries to be group annuity contracts.
 - (b) The terminology used in Sections 3223 and 4238 was drafted to apply to group deferred annuity contracts which are rarely sold today.
 - (c) Plans funded by group annuity contracts include 401(a), 401(k), 457, 414(d), and 403(b), among others.
2. “Contractholder” means the party or parties to whom or to which the contract is issued. Section 4238(a).
3. “Annuitant” refers to any person upon whose continued life such annuity is dependent. Section 4238(a).
 - (a) “Participant” means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.
4. “Annuities” means all agreements to make periodical payment for a period certain or where the making or continuance of all or some of a series of such payments, or the amount of such payment depends upon the continuance of human life. Section 1113(a)(2).
 - (a) Period Certain annuities first authorized in New York by Section 1 of Chapter 864 of the Laws of 1985.
5. “Employee” may include retired employees, employees of affiliates and subsidiaries of the employer, individual proprietors affiliated with the employer, and partners and employees of individuals affiliated with the employer and of firms controlled by the employer. §4238(c).

B. Types of Contractholders

1. Employer Group. Section 4238(a)(1).
 - (a) Contract issued to an employer

- (b) Contract permits all employees or all of any specified class or classes of employees to become annuitants
 - (c) Payments to the insurer need not be remitted by the contractholder. L1991, c.349, Section 2.
 - (d) Note -
 - (1) Contracts issued to the trustees of a trust established by an employer are described in Section 4238(b)(4).
 - (2) This approach differs from the eligible group provisions in Section 4216 for group life insurance and Section 4235 for group accident and health insurance.
2. Employers' Association Group. Section 4238(a)(2).
 - (a) Contract issued to an employers' association
 - (b) Contract permits all of the employees of such employers or all of any specified class or classes to become annuitants
 - (c) The employers' association may provide for representation by annuitants on its board of directors.
 3. Labor Union Group. Section 4238(b)(3).
 - (a) Contract is issued to a labor union
 - (b) Contract permits all of the members of such union or all of any specified class or classes to become annuitants
 4. Bona Fide Trust Group. §4238(b)(4).
 - (a) Contract issued to the trustees of a trust
 - (b) Trust established by
 - (1) an employer
 - (2) an employers' association
 - (3) one or more labor unions
 - (4) one or more employers and one or more labor unions (Taft-Hartley Trust)
 - (c) Contract permits all of the employees of the employers or all of the members of the unions or of any specified class or classes thereof to become annuitants
 - (d) Note - The trust must be established by an eligible entity. It cannot be merely participated in by such entities. Contrast this requirement with Section 4216(b)(4) and Section 4235(c)(1)(D) and §4238(b)(7).
 5. Association Group. Section 4238(b)(5).
 - (a) Contract issued to an association or the trustees established by such association of persons having a common interest, calling or profession who constitute a homogeneous group
 - (b) Association has a constitution and by-laws
 - (c) Association is organized and maintained in good faith for purposes other than obtaining annuities
 - (d) Contract permits all members of the association and their employees or any specified class or classes thereof to become annuitants
 - (e) Note -
 - (1) This group is used primarily for professional associations
 - (2) The "common interest, calling or profession" requirement appears to be more flexible than corresponding group life and group accident and health sections.
 6. IRC Section 408 Group : Added by L.1997, c.544
 - (a) Contract issued to a
 - (1) Bank
 - (2) Trust Company
 - (3) Trustees of one or more trusts
 - (b) Contract permits individuals for whom contributions are made to:

- (1) Individual retirement accounts; or
 - (2) Individual retirement annuities
 - (c) Individual Pay-all Program
 - (1) Contracts and certificates are subject to the provisions of the Insurance Law applicable to individual annuities
 - (d) Groups described in Section 4238(b)(6) do not qualify for the group exception to the mail order prohibition for unauthorized insurers in Section 1101(b)(2)(B)(i)(III)
- 7. Other Trust Groups. Section 4238(b)(7).
 - (a) Contract issued to the trustees of one or more trust for employees of one or more employers
 - (1) Not a trust described in Section 4238(b)(4) (i.e., not “established by” an employer, employers’ association, labor union or Taft-Hartley Trust)
 - (2) Employers need not adopt (establish or participate in) the trust. See L.1991, c.349, Section 1.
 - (b) Contract permits all of the employees of each such employer or of any specified class or classes to become annuitants
 - (c) If payments are derived wholly from funds contributed by such employees, the insurer must issue a certificate complying with the requirements of the Insurance Law applicable to individual annuities for delivery to each employee who contributes to the contract. (See Sections 3219, 4223 and Regulation 127).
 - (d) This group appears to allow bank collective investment funds or pooled GIC funds.
 - (1) Gives small plan sponsors access to well-diversified, competitively priced GICs that are otherwise only available to larger plans.
 - (e) Groups described in Section 4238(b)(7) do not qualify for group exception from mail order prohibition for unauthorized insurers in Section 1101(b)(2)(B)(i)(III)
- 8. Foundation or Endowment Fund Groups. Section 4228(b)(8).L.1993, c.541, Section 1
 - (a) Contract issued to the trustees of a foundation or endowment fund
 - (b) Contract permits any specified class or classes of professional person to become annuitants

C. Non-Recognized Groups

- 1. Note that Section 4238 was not modernized to permit the newly recognized groups for group life insurance in Section 4216(b), (12), (13) and (14) and for group accident and health insurance in Section 4235(c), (K), (L) or (M) for:
 - (a) Affinity Association Groups
 - (b) Financial Institution Groups
 - (c) Discretionary Groups
- 2. Such group contracts must be issued outside of New York. The contracts are usually funded solely by contributions made by the person covered thereunder. As such, such contracts and certificates must comply with the provisions of the Insurance Law applicable to individual annuities.

D. Unauthorized Insurers

- 1. Section 1101(b)(1) prohibits unlicensed insurers from doing an insurance business in this state by mail or otherwise
- 2. Section 1101(b)(2)(B) provides a group exception where the group conforms to the definitions of eligibility in Section 4238(b), except paragraphs (6) and (7), and the master contracts were lawfully issued without this state in a jurisdiction where the insurer was authorized to do an insurance business

3. Section 1101(b)(2)(B) group exception to mail order prohibition does not apply to group annuity contracts funding
 - (a) IRC Section 408 contracts
 - (b) IRC Section 403(b) Tax Sheltered Annuities
 - (c) Plans under which payments are derived wholly from funds contributed by the persons covered

IV. Contract Provisions

- A. Standard Provisions: §3223: Every group annuity contract delivered or issued for delivery in this state and every certificate used in connection therewith shall contain in substance the following provisions to the extent that such provisions are applicable or provisions which are more favorable to the annuitants , or not less favorable to annuitants and more favorable to the contractholders:
 1. Grace Period-§3223(a)-There shall be a 31-day grace period following the due date of any required payment after the first payment within which the payment may be made. During such grace period, the contract shall continue in full force.
 - a) This provision applies to GICs with a deposit window.
 - b) It also applies if a payment is required to pay any fee or expense charges.
 - c) If the contract continues in force without penalty, no grace period provision is necessary.
 - d) See liquidated damages provision below. IV.C.2.
 2. Entire Contract-§3223(b)-A provision specifying the document or documents, which shall include the contract and ,if a copy is attached thereto, the application of the contractholder , constituting the entire contract between the parties. See also §3204.
 - a) Many GICs have deposit agreements or deposit riders. These forms must be attached to the contract. If the initial deposit account terms are bracketed and there is a satisfactory explanation of variables, the deposit agreement and/or rider need not be resubmitted for new deposit windows or deposit cells.
 3. Misstatement of Age or Sex-§3223(c)-A provision for the equitable adjustment of the benefits payable or of the payments to be made to the insurer if the age or sex of any person , or of any other fact affecting the amount or date of payment by or to the insurer has been misstated.
 - a) The Arizona vs. Norris decision held that Title VII of the Civil Rights Act of 1964 prohibits an employer from offering its employees a retirement benefit option where a women is paid a lower monthly retirement benefit than a man who has made the same contributions.

- b) We have permitted misstatement provisions which omit the reference to sex.
 - c) §3219(a)(5) requires that the interest rate to be charged or credited to underpayments and overpayments be specified in the contract and cannot exceed six percent. . (Best Practice)--*The §3223(c) provision should also state whether and how much interest will be charged against or credited to such underpayments and overpayments. The rate must be the same for overpayments and underpayments. We may question any rate above six percent.*
4. Retired Life Certificate-§3223(e)-A provision stating that the insurer shall issue for delivery to each person to whom annuity benefits are being paid thereunder a certificate setting forth a statement in substance of the benefits to which such person is entitled under the contract.
- a) Note that no active life certificate is required for unallocated GICs because the contract does not provide for the maintenance by the insurer of one or more accounts for each plan participant/annuitant. See §3223(d).

B. Plan Benefit Rule Provisions In Regulation No. 139

1. Plan Benefit Rule -- §40.4(a) of Regulation 139 – Any contract issued in connection with a defined contribution plan which provides the contractholder with the right to withdraw from the contract the amounts required to pay lump sum benefits of the participant’s individual account balance as they arise in accordance with the provisions of the plan upon bona fide termination of employment must provide for such withdrawals to be made on a basis pursuant to which neither the amount withdrawn from the contract nor the amount of the remaining principal balance of the accumulation fund following such withdrawal is adjusted to reflect changes in interest rates or asset values since the receipt of funds.
- a) GICs do not need to be benefit responsive. However, if the contract is benefit responsive ,it must comply with this rule.
 - b) The lump sum payment cannot be subject to a market value adjustment.
 - c) The interest rate credited to the accumulation amount cannot be affected by such withdrawals.
 - (1) We have approved an interest adjusted withdrawal provision, which permits the insurer to recognize the gain or loss due to the difference between the actual and expected plan withdrawals in calculating the next reset rate. As long as the estimated withdrawal activity is factored into the guarantees, we believe that there is good faith compliance with §40.4(a) because the initial rate guarantee will not be illusory or misleading. For deposit administration contracts, this feature is the norm.

- (2) We have also approved “make whole” provisions which require repayment of withdrawals from the contract from the next available cash flow as long as there is no penalty for nonpayment.
 - d) We have permitted graded surrender charges primarily in GIC-2 contracts that are designed solely to recoup acquisition expenses.
 - (1) The insurer should describe all acquisition expenses and explain how such expenses will be amortized (i.e., identify the charge and recoupment period) so that we can verify that the charge is not excessive and does not reflect other factors such as disintermediation, liquidity, cash flow, asset depreciation etc.
 - (2) Generally, the charge must be premium based , that is, not based on the accumulation value. We will permit accumulation based charges that are capped at a percentage of premium (not to exceed the percentage that reflects acquisition expenses) which gradually reduce as acquisition expenses are recouped.
 - (3) Please note that no surrender charge is permitted if the participant’s account value is applied to purchase an annuity.
2. Betterment of Rates -- §40.4(b) -- For any group annuity contract funding a defined contribution plan, the contract must provide that any annuity benefit purchased with respect to an amount equal to the plan participant’s account value as determined at the time of its commencement shall not be less than that which would be determined by the application of such amount to purchase a single consideration immediate annuity offered by the company to the same class of contracts.
- a) The betterment of rates provision ensures that annuities will be purchased on a new money basis. As such, GICs funding defined benefit plans should also include this provision to the extent that annuities are provided for under the contract. If the contractholder cannot purchase annuities on a new money basis, it can be argued that the interest rate guarantees are misleading.
 - b) This provision/concept was borrowed from §4223(a)(1)(E) of the Insurance Law , except that the entire accumulation value is applied to provide the annuity.
 - c) Section 4231(e)(1) and (g)(2) address the issue of whether the annuities must provide for the distribution of dividends.
 - (1) Pursuant to §4231(e)(1), any policies or contracts described in §4231(g)(2) and deferred annuity providing a period of deferment of annuity payments not in excess of one year can be issued on a nonparticipating basis.
 - (2) Section 4231(g)(2) provides, in part, that dividends need not be distributed on any deferred annuity contract for the period following the period of deferment of annuity

payments nor on any group annuity contract providing deferred annuities for a class or classes of participants in a qualified pension or profit sharing plan who have terminated their participation under such plan, or with respect to which class or classes further contributions have been discontinued under the plan and notice of such discontinuance has been given to the commissioner of internal revenue (or regulatory authority of such other jurisdiction).

3. Allocated Share of Benefit Payments -- §40.4(c) – In the event that there is more than one funding vehicle or cash is available under a defined contribution plan, a contract need not provide for withdrawals (in accordance with the plan benefit rule) in an amount in excess of the contract’s allocated share of benefit payments as determined pursuant to the agreement of the insurance company and contractholder.
 - a) This provision operates much like a coordination of benefits provision. If the contract is silent as to its allocable share, benefits will be paid as if it is the only funding vehicle.
 - b) We have approved last-in, first-out provisions; first-in, first-out provisions; pro-rata provisions; buffer fund provisions and combination provisions.

4. Participant Directed Investment Option -- §40.4(d) –In the case of a contract which funds a participant directed investment option under which each contribution allocated to such option is credited with a specified rate of interest to a stated maturity date which rate and maturity date are disclosed to the participant prior to the allocation, such contract may provide that any withdrawals (other than withdrawals on account of bona fide termination of employment due to death or disability of the participant on whose behalf the withdrawal is made) be postponed until the stated maturity date for the contribution.
 - a) In such cases , the contract may permit withdrawals prior to maturity for the contribution that are subject to a negative market value adjustment and/or surrender charge. We have not required positive market-value adjustments.
 - b) Such contracts must have at least one option for participants age 55 and over on the date contributions are received where the maturity date will not exceed five years. The “age 55” rule in §40.4(b) is similar to §44.3(t) in Regulation No. 127.
 - c) The exception to the plan benefit rule is intended to recognize contracts that are similar to modified guaranteed annuities authorized by Chapter 864 of the Laws of 1985 and Regulation 127.
 - (1) Note that in contracts subject to §4223 and Regulation 127 the MVA must be positive as well as negative.

5. Plan Amendments or Changes In Plan Administration -- §40.4(e) – If the plan terms or the manner in which plan is administered materially change after issue, withdrawals from the contract to pay plan benefits are not subject to the plan benefit rule.

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

6. Bona Fide Termination of Employment -- §40.4(f) – The contract can include procedures or conditions in order to establish that a requested contractual withdrawal is being made in accordance with a bona fide termination of employment and in accordance with the plan provisions.

- a) Termination of employment means the cessation of an employment relationship with an employer, multiple employer or membership in an employee organization sponsoring the plan, including cessations due to retirement, death, and disability.
- b) Termination of employment does not include:
 - (1) Any temporary absence,
 - (2) A change in position or other occurrence qualifying as a temporary break inservice under the plan,
 - (3) Transfer or other change of position resulting in employment by an entity controlling, controlled by, or under common control with the employer,
 - (4) Cessation of an employment relationship resulting from a reorganization, merger, or sale or discontinuance of all or any part of the plan sponsor’s business, [The risk for these transactions are typically not considered by the insurer in making the guarantees provided in the contract. Such transaction may result in unexpected withdrawal activity that was not priced for when the contract was issued.]
 - (5) Plan termination or partial plan termination.

C. Other Provisions

1. Market-Value Adjustment Provision

- a) §40.2(o) of Regulation 139 defines market-value adjustment as an adjustment for increasing or decreasing the accumulation fund in the event of full or partial surrender or contract termination to reflect changes in interest rates or asset values since the receipt of funds by the insurer according to a formula described in the contract. §3204- Entire Contract of the Insurance Law requires

that the MVA formula be incorporated in the contract or attached to the contract.

- (1) The market-value adjustment formula should be sufficiently clear so that the contractholder can calculate the adjustment at any time.
 - (2) The factors used in the calculation should be sufficiently definite and not based items solely within the insurers discretion. For example, the formula can refer to an outside index or to rates guaranteed or credited under the contract. If the formula referred to the insurer's earnings rate on supporting assets, we would require justification because the contractholder cannot verify such rate.
- b) Note that §40.5(i) of Regulation 139 which gives the insurer in certain contracts the right to change the method for determining the market-value adjustment upon at least 31 days prior written notice to the contractholder, does not apply to GICs. Since GICs provide for a specified maturity there is no need to make any unilateral change in the formula.
- (1) Of course, the insurer can amend the formula for new deposit windows under the same contract. The contractholder can agree to the change by continuing to make deposits under new deposit riders or agreements.
- c) Liability-Based Formula -- For GICs, insurers should consider only using liability based adjustment formula. In Prohibited Transaction Exemption 81-82, the U.S. Department of Labor granted an exemption from the prohibited transaction rules for separate account GICs. The DOL did not believe that any market-value adjustment requirements were necessary for separate account GICs "so long as the adjustment is not made with reference to the investment performance of a separate account".
- (1) This exemption was repealed when the plan asset regulation was promulgated. §2510.3-101(h) carves out an exception for separate accounts that are "maintained solely in connection with fixed contractual obligations of the insurance company under which the amounts payable, or credited, to the plan and to any participant or beneficiary of the plan (including an annuitant) are not affected in any manner by the investment performance of the separate account".
 - (2) Asset-based market-value adjustment formulas in general account GICs may raise concerns with the DOL. In any event, the standards applicable to market-value adjustments should be the same for general account and separate account GICs. All of the early separate account GICs were funded through "book value" separate accounts.
 - (3) We may question an asset-based formula if the assets do not appear to closely match the contractual guarantees, especially with respect to duration.

- (4) Regulation 127 provides guidance with respect to liability-based market-value adjustments.
 - d) Two-Way MVA Not Required – Although Regulation 127 requires a two-way market-value adjustment for contracts subject to §4223, we have not made this requirement applicable to GICs. The contractholder and plan participant should not complain if the plan or plan participant receives book value on premature termination even though market value exceeds book value. The contractholder has received the benefit of the bargain.
- 2. Liquidated Damages Provision -- §40.2(m) of Regulation 139 defines liquidated damages as the charges or adjustments which may become applicable in the event contributions are not made in the amounts or on the dates specified in the contract and which reasonably reflect the actual losses anticipated by the insurer in making commitments in advance of the receipt of the specified contributions. A liquidated damages provision is an alternative to contract termination in the event that the contractholder fails to make a scheduled contribution.
 - a) We have objected to provisions that provide for a fixed charge or fixed interest rate reduction for any such failure to contribute
 - b) The method for calculating the charge should be set forth in the contract. The contractholder should be able to calculate the adjustment from the terms of the contract. Many insurers use an explicit formula similar to the market-value adjustment formula.
- 3. Dividend Provision – For participating GICs, we have permitted language to the effect that due to the nature of guarantees under the contract no dividends are anticipated.
 - a) Insurers typically credit GICs with a current or spot rate, in which no interest in excess of the rate guaranteed is anticipated.
- 4. Non-Benefit Related Withdrawals and Transfers – For withdrawals that are not subject to §40.4(a), an insurer should protect against anti-selection. Such withdrawals are usually subject to a negative market-value adjustment.
 - a) We have permitted insurers to make a certain percentage of such withdrawals from 10% to 20% on a book value basis annually. This percentage is often called the free corridor amount.
- 5. Clone Contract Provision – We have approved provisions that provide for the issuance of a substantially similar GIC with the same maturity date and interest rate in the event of a partial termination triggered by a reorganization, merger, or sale or discontinuance of all or part of the plan sponsor’s business.

- a) The clone contract should satisfy the insurer's underwriting requirements.
 - b) The cost of the conversion can be prorated among the two surviving contracts or covered by the plan sponsor. In any event, the actual charges, if any, should be specified in the contract.
6. Competing Funds Provision – We have approved provisions, which limit deposits and/or transfers to competing fixed income funds offered by the plan to plan participants.
- a) This provision is designed to ensure that all scheduled deposits are made to the contract and to prevent transfers to other fixed income or stable value funds when interest rates increase.
7. Liquidity Protection Provision – We encourage insurers to include a contractual liquidity protection provision in all benefit responsive GICs and all other GICs that permit withdrawals prior to maturity. The Department and insurers need to monitor the liquidity exposure in their GIC portfolio and other liquid group annuity contracts. The market-value adjustment formula (even if liability-based) may reflect a close approximation of the market value of supporting assets under normal circumstances; but it may not reflect the liquidation value if assets need to be sold in times of distress.
- a) A six month deferral provision is most common.
 - b) A contractual provision that gives the insurer the option on the maturity date of paying funds in lump sum or installments over five years or less is approvable.
 - c) An insurer should consider a diversification requirement applicable to contractholders. No single contractholder, such as GIC broker should have a disproportionate share of the insurers liquid contracts.

V. Department Interpretations

- A. Maximum Window Period.--- We have permitted deposit windows for recurring deposits of up to two years, without requiring any actuarial justification.
- 1. When the deposit window exceeds two years, an actuarial demonstration that the contract can be hedged will be requested.
 - 2. For deposit windows that exceed two years, if the required deposits are not fixed in the contract, the contract should specify the minimum and maximum deposits as well as the ratio of initial deposits to the deposit maximum. If the range between the minimum and maximum deposit is too wide, the contract will be impossible to hedge.

- B. Maximum Guarantee Period.--- We have limited the guarantee duration attributable to any deposit cell in GIC contracts to ten years. No insurer has objected to this limit. We will consider an exception in the future if a case arises.
1. No surrender charge should apply at the expiration of the interest rate guarantee. Otherwise, the interest rate guarantee can be viewed as misleading (i.e., the interest rate guarantee should be calculated so as to amortize any charges prior to maturity).
 2. We have permitted installment payments to be made over a period in excess of five years as long as the total guarantee period does not exceed ten years.
- C. Credit Rating Downgrade Provisions.---
1. Circular Letter No. 2 (1992) states that the Department will not approve a credit rating bailout provision which would permit the contractholder to terminate the contract prior to maturity at book value in the event the insurer's credit rating downgrade. The provision is considered unfair, unjust and inequitable pursuant to §3201(c)(2).
 - a) Waiver of a surrender charge or market value adjustment upon credit rating downgrade would be unfair, unjust and inequitable to persisting contractholders who would be required to subsidize the withdrawal activity of other contractholders. Surrender charges and market-value adjustments are designed to protect against disintermediation.
 - b) A credit rating bailout provision would enhance the probability of a panic run that could impair or threaten the solvency of the insurer and result in regulatory intervention under Article 74.
 2. Circular Letter No. 2 (1992) also states that we will disapprove any such provision submitted by a domestic insurer for use outside of New York on the grounds that the issuance would be prejudicial to the interests of policyholders pursuant to §3201(c)(6).
 3. We have disapproved any credit rating downgrade provision included in a GIC funding a pension plan that gives the contractholder the right to terminate a contract prior to maturity even if the withdrawals are subject to a negative market-value adjustment because the provision will increase the risk of disintermediation.
- D. Market Value Make-Up/Advance Interest Credit Provisions.--- In the early 1980s, the Department permitted insurers to issue GICs that credited an amount in excess to the actual contribution equal to the market-value adjustment charged on the transfer of funds from the insurer's IPG or DA contracts and credited a reduced interest rate designed to amortize the excess amount or credit over the life of the contract. This market value make-up or advance interest credit allowed plan sponsors to maintain book value accounting at the plan participant level and

allowed insurers to conserve existing group annuity business at a time when contractholders were generally dissatisfied with the interest crediting rates on IPG and DA contracts in the high interest rate environment. More recently, we allowed one or more insurers to use market make-up type provisions to help Confederation Life GIC contractholders maintain book value accounting. The Department has permitted the use of these provisions under the following conditions and circumstances:

1. The advance interest credit or book-in amount cannot exceed 5% of the market value of the amount deposited.
 2. The book-in provision can only be used with unallocated contracts funding defined contribution plans and the funds cannot derive from equity separate accounts. This provision should not be used to recover losses on equity investments.
 3. The insurer must not be proactive in using book-ins as a marketing strategy.
 - a) Book-ins should only be used as a business conservation measure or in limited cases at the request of a plan sponsor.
 - b) Book-ins used in connection with new business should represent a small percentage of new business and only a small number (i.e., less than ten) per year.
 4. The contract must provide that in the event that the contract is terminated or discontinued prior to the date on which the advance credit is fully amortized , the unrecouped amount will be deducted as a separate charge prior to any final payment to the contractholder.
 5. The insurer must notify the Department each year of the circumstances of each book-in, including the credit provided (dollar value and as a percentage of the initial deposit), the amortization period and the source of funds (business conservation or new business).
- E. Purchase Rate Guarantee/Unilateral Change. --- The mortality and interest basis for guaranteed purchase rates should be stated in the contract. Companies can make unilateral changes in guaranteed annuity purchase rates for new contributions. This is required as it would be if Section 4223(a)(1)(C) was applicable.
1. Purchase rates must be adequate and should not be excessive. If rates are excessive and the current rates are not competitive, the betterment of rates provision will be less effective.
 2. With respect to mortality, insurers should start using the 94 GAR Table. We have accepted the 83 GAM with projection scale H.

3. With respect to interest, the interest rate guarantee should be conservative such as 3% or 4%.
4. Although we have approved expense loads in the past, we may question and require justification for the use of any expense loading when the guaranteed purchase rates comply with the mortality and interest limitations above. It can be argued that such loading does not comply with §40.4(a) of Regulation No. 139.

VI. Advertising and Disclosure

A. Regulation 139 - Section 40.3

1. Written statement and/or specimen contract with a statement citing location in contract of disclosures required by paragraphs (1),(3),(4),(5),(6),(9) and (10) of §40.3(b) of Regulation 139. See §40.3(a)
 - a) Statement indicating any restrictions as to amount and timing of contributions, and penalties for non-payment. §40.3(b)(1)
 - b) Description of the right to discontinue contributions to contract, and penalties resulting from such action. §40.3(b)(2)
 - c) Statement of all current fees and charges that are or may be assessed against the contractholder or deducted from the contract, including a description of the extent and frequency to which such fees and charges may be modified and the extent to which they take precedence over other payments. §40.3(b)(3)
 - d) Statement of the interest rates and/or method of determination of rates and a description as to how any withdrawals, transfers or payments will affect the amount of interest credited. §40.3(b)(4)
 - e) Description of expense, interest and benefit guarantees under the contract and any rights to modify or eliminate such guarantees, including the right to apply surrender charges or market-value adjustments to plan benefit payments if there are plan amendments or changes in the manner of plan administration. .§40.3(b)(5)
 - f) Description of the contractholder's and participant's right to withdraw funds (or apply to purchase annuities), along with a description of any charges, fees or market-value adjustments applicable to such withdrawals or a statement that no such withdrawals or payment are permissible prior to maturity or the happening of a certain event. §40.3(b)(6)
 - g) Statement indicating any pro rata, percentage or other limitations which may apply to benefit payments to be purchased or provided under the contract when the plan is not funded entirely under the contract. §40.3(b)(7)
 - h) Statement that contractholder or participant withdrawals under the contract are to be made in a FIFO or LIFO basis or other applicable basis. §40.3(b)(8)
 - i) Statement that the contract may be amended, including any right of the insurer to unilaterally amend the contract. §40.3(b)(9)
 - j) Statement, if applicable, that any dividends and experience rate credits are subject to the insurer's discretion. § 40.3(b)(10)

- k) Statement, if applicable, concerning supporting asset's affect on withdrawal timing. § 40.3(b)(11)
- l) Statement that the contractholder or plan sponsor is solely responsible for determining whether the contract is a suitable funding vehicle. §40.3(b)(12)
- m) Statement, if applicable, that the insurer does not have responsibility to reconcile participants' individual account balances with the accumulation fund balance where the insurer does not maintain individual account balances. §40.3(b)(13)

B. Regulation 34-A - Rules Governing Advertisements of Life Insurance and Annuity Contracts.

C. **ALERT:** The disclosure rules in the proposed U.S. DOL regulations that clarify the application of ERISA to insurance company general accounts should be reviewed to determine their applicability to guaranteed interest contracts. See 62 FR 66908. Most likely, GICs will qualify as guaranteed benefit policies and be exempt from such disclosure requirements.

VII. Additional Matters

A. IRC Section 457 Public Deferred Compensation plans.

1. See New York State Deferred Compensation Board Rules 9 NYCRR 9000 and Circular Letter 1988-17.
 - a) No plan shall permit any distribution option that provides for installment payments over a period measured by one or more natural lives. See §9001.4(b).
 - (1) The regulation prohibits traditional annuity pay-out options, in part, because some annuity options allow for the forfeiture of undistributed account balances upon a participant's death. The Board may not have been aware of annuity options that minimize any forfeiture, including the modified cash (or installment) refund annuity or the life annuity with (5,10 or 20 year) period certain option.
 - (2) Installment payments may be made with reference the life expectancy of both the participant and his/her beneficiary.
 - (3) The Board was undecided as to the permissibility of the annual recalculation of life expectancy method of determining installment distribution payments. The Board is concerned that while the number of payments may increase, the amount of each payment would decrease. The Board did not revise the language in the regulation to permit the annual recalculation method because it claimed that it did not have sufficient time to study this issue.

- (4) The Board intends to permit participants to continue to enjoy full benefits of market participation for plan assets until distribution (i.e., similar to variable annuities).
- (5) Comment: As a result of this rule, plan participants bear the risk of outliving their §457 retirement benefits. The Board has noted that the vast majority of plan participants also have a defined benefit plan that provides for a lifetime income stream.
- b) Loans are not permitted. See §9001.4(d).
- c) Maximum contract term for NY State Deferred Compensation Board is five years. See §§9003.5(a) and 9003.7.
- d) No penalties or surrender charges are permitted at the expiration of the contract or agreement for the transfer of assets. See §9003.5(a)
- e) Contracts subject to a competitive bidding process on issue and renewal. See §9003.1 and 2.
- f) Prompt payments by state or local employer (two days from payroll date) and appointed trustee (one day after receipt). Amounts held in interest bearing account until financial organization receives necessary instructions or determines that it is prudent to transfer to another investment fund. See §9003.8.
- g) Every contract must contain a provision that it is subject to the plan and regulation, and that such plan and regulation are made a part of the contract. See §9006.2.

B. 12 CFR 9 Fiduciary Powers of National Banks. The Office of the Controller of the Currency requires that a federally-chartered bank permit commingled fund investors to withdraw from the fund with twelve months notice.

Guaranteed Interest Contracts Checklist (4/99)

I. Filing Process

A. Type of Filing:

- For prior approval - §3201(b)(1); Circular Letter 1997-14
- Expedited approval - §3201(b)(6); Circular Letter 1998-2
- For delivery outside of New York, only - Circular Letter 1963-6
- Pre-Filed or Pre-Approved Insurance Coverage - Circular Letter 1964-1
 - Confirmation Letter
 - Department Notification
- Self-Support Statement for Out-of-State Filings

B. Submission Letter - Circular Letter 1963-6; Circular Letter 1969-4

- 2 copies
- Identification of Insurer
- Listing of form numbers
- Table of Contents of all material in the filing
- Listing of the mandatory or optional insert pages with which the submitted forms must or may be used, including the application forms used for a policy
- Description of the benefits provided
- Type of group, as defined in §4238. Specify paragraph(s) _____
- Classes covered, as defined in §4238
- Statement as to source of contributions. Employer Employee
- Statement as to whether the form is new or is intended to replace a previously approved form.
 - Identify prior submission(s) _____
 - Redlined Copy Attached
- Statement as to how the form will be used and how it will be marketed, as described in Circular Letter 1976-12. Specify Type of Plan(s) to be funded _____
 - Defined Benefit Plan Defined Contribution Plan
 - 401(a) 401(k) 403(b)
 - 457 414(d) SIMPLE
 - IRA SEP Roth IRA
- Caption identifies all forms, describe type of insurance and type of form Circular Letter No. 8 (1999)

C. Preparation of Forms - Circular Letter 1963-4; Circular Letter 1963-6; Circular Letter 1969-4

- 2 copies of Forms
- 2 copies of Explanatory Memorandum describing variability

D. Additional Information Required

- Readability Certification, in accordance with the requirements described in §3102

II. Contract Provisions

A. Standard Provisions

- Grace Period - §3223(a)
- Entire Contract - §3223(b)
- Misstatements of Age or Sex - §3223(c)
- Retired Life Certificate - §3223(e)

B. Plan Benefit Rule Provisions in Regulation No. 139

- Plan Benefit Rule - §40.4(a)
- Betterment of Rates - §40.4(b)
- Allocated Share of Benefit Payments - §40.4(c)
- Participant Directed Investment Option - §40.4(d)
- Plan Amendments or Change In Plan Administration - §40.4(e)
- Bona Fide Termination of Employment - §40.2(x)

C. Other Provisions

- Market Value Adjustment
 - Liability-based formula Asset-based formula
 - Negative MVA only Two-way MVA
- Liquidated Damages Provision
- Dividend Provision
- Non-Benefit Related Withdrawals or Transfers
 - Free Corridor Amount, Specify Percentage _____
- Clone Contract Provision
- Competing Funds Provision
- Liquidity Protection Provision
 - Six-Month Deferral
 - Premature Withdrawals Not Permitted
- Annuity Purchase Rate Guarantee
 - Specify Mortality Table _____
 - Specify Interest Rate Assumption _____
 - Specify Loading, if any _____

III. Type of Guaranteed Interest Contract

- GIC-1 - §40.2(j)(1)
 - Guarantee duration
 - Single deposit Window (specify duration _____)
 - Lump sum payment Installment payments
 - Fixed interest rate Indexed rate (specify index _____)
- GIC-2 - §40.2(j)(2)
 - Surrender charge. Specify Amount or Percentage _____