



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

**Individual Universal Life Product Outline  
(Last Updated January 22, 2015)**

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## **Product Outline: Individual Universal Life Policies (Last Updated January 22, 2015)**

This outline is current as of January 22, 2015. Subsequent changes to statutes, regulations, circular letters, etc., may not be reflected in the outline. In case of any doubt, please contact the Life Bureau.

### I. Scope

This product outline applies to all individual universal life insurance policies delivered or issued for delivery in New York. This outline replaces the Individual Universal Life Product Outline last updated July 24, 2012. Please see the Individual Variable Life Outline for universal life policies containing variable features.

### II. Filing Process

#### II.A) General Information

##### A.1) Prior Approval Requirement

Section 3201(b)(1) provides that no policy form shall be delivered or issued for delivery in this state unless it has been filed with and approved by the Superintendent as conforming to the requirements of the Insurance Law (standard and generally applicable provisions) and not inconsistent with law (federal and state statutory, regulatory and decisional law).

##### A.2) Discretionary Authority for Disapproval

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

##### A.3) No filing fee required

#### II.B) Types of Filings

##### B.1) Prior Approval

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

##### B.2) Alternative Approval Procedure

(a) Section 3201(b)(6) and Circular Letter No. 2 (1998) provide for an expedited approval procedure designed to prevent delays by deeming forms to be approved or denied if the Department or insurer fails to act in a timely manner.

(b) Circular Letter No. 2 (1998) provides that the certification of compliance should make reference to any law or regulation that specifically applies or is unique to the type of contract form submitted. An alternative would be to submit a certification of compliance with the applicable laws and regulations cited in this product outline. A statement that the filing is in compliance with all applicable laws and regulations is not acceptable.

B.3) Prior Approval With Certification Procedure

- (a) Circular Letter No. 6 (2004) provides for an expedited approval procedure based on an appropriate certification of compliance signed by an officer of the insurer in the format provided by Circular Letter No. 6 (2004). Certifications that have altered or otherwise modified the language of the certification will not be accepted.
- (b) The original signed certification must be provided. The form number of each form and the memorandum of variable material for each form must be listed in the body of the certification, rather than in an attached list. For a certification pertaining to a large number of forms, the list may begin in the body of the certification and continue in list form on the second page.
- (c) The submission letters for paper submissions and the Filing Descriptions for submissions made via the State Electronic Rate and Forms Filing system (SERFF) must comply with applicable circular letter and product outline guidance.
- (d) Substitution filings and follow-up correspondence with post-approval form changes requested prior to initial issuance of forms will not be permitted for Circular Letter No. 6 (2004) filings.

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

- (a) The English version of the form must be approved before the non-English version will be approved. The submission letter must identify, by form number, date of approval and Department file number, the previously approved form that is being translated into a non-English version.
- (b) The non-English version must have a different form number to distinguish it from the English version. For example, the Spanish version of form UL-123 could be UL-123-S.
- (c) An original certification by a translator must be provided indicating that the text of the form is an accurate and complete translation of the English version of the form. The certification must reference the specific form numbers of both the English and non-English forms and must reference the memorandum of variable material. The certification should not use qualifying language such as “to the best of my knowledge and belief.”
- (d) An original certification by an officer of the insurer must be provided indicating that the officer has exercised due diligence in choosing a competent translator or translation service. The certification must reference the specific form numbers of both the English and non-English forms. The certification must state that the underlying English language policy form achieves a minimum Flesch score of 45 in accordance with Section 3102(c)(1)(D). Section 3102(b)(3).
- (e) If the approval of the English version of the form was subject to any conditions or limitations, then the non-English language version of the form will be subject to the same conditions or limitations.

- (f) If the non-English version of the form contains variable material, a memorandum of variable material must be provided. The exact language of any non-English alternate text must be set forth.

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

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

II.C) Preparation of Forms

C.1) Duplicates

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

C.2) Form numbers

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

C.3) Hypothetical Data

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

C.4) Application

- (a) The application to be used with the policy form must be an approved form. When submitting a policy form to which a copy of the application will be attached when issued, the form number and Department file number of the previously approved application must be supplied. If the application has not been approved, the application form must be submitted with the policy forms for approval. If the application is already pending approval, please provide the Department file number. Section I.E.4 of Circular Letter No. 6 (1963).
- (b) Both the initial premium amount and the planned premium amount must be set forth in the application. Section 3204.
- (c) The insurer must retain information in its records concerning which approved application is being used or has been used with the policy and the type of underwriting utilized. Such information must be available upon Department request. See Regulation 152.

C.5) Final Format

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

C.6) Submissions Made on Behalf of the Insurer

If the filing is made on behalf of the insurer by another party, a letter authorizing the third party to act on behalf of the insurer must be provided. The letter must be:

- (a) on company letterhead or include the company name in the subject line of the letter;
- (b) specifically addressed to the New York State Department of Financial Services;
- (c) properly executed by an authorized officer of the insurer;
- (d) dated; and
- (e) either
  - (i) specific to the file submitted for approval by including form number(s); or
  - (ii) generally applicable to all policy forms filed on behalf of the insurer as long as a copy of such authorization is included in each submission.

It is the insurer's responsibility to ensure that their authorizations are accurate and reflect their current relationship with the third party filer.

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

Filings which are incomplete or do not comply with laws and regulations will be closed and returned. See Circular Letter No. 14 (1997). Note that if a product does not comply with a specific product outline requirement or is considered substantively non-compliant with applicable law, then the file may be closed.

II.D) Submission Letter Requirements/SERFF Submissions

For SERFF submissions, the Life Bureau no longer requires a separate signed cover letter to be included with submissions. Instead, any information that would ordinarily be included in the signed cover letter must be in the Filing Description under General Information. Inclusion of "please see cover letter" or phrases of similar intent will not meet this requirement.

Note: References in this outline to submission letter content requirements are also requirements for SERFF General Information unless otherwise noted.

D.1) Caption Requirement

For paper submissions, the "re" or caption of the submission letter must identify each of the forms that is being submitted for approval or filed for informational purposes and must be in compliance with Circular Letter No. 8 (1999). Section 3201(b)(6) ("Deemer") filings must be

identified in the “re” or caption. Circular Letter No. 6 (2004) filings must be identified in bold print in the “re” of the submission letter.

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

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

- (a) Submit in duplicate, except for SERFF filings.
- (b) The submission letter must be signed by a representative of the insurer authorized to submit forms for filing or approval for the insurer.
- (c) Identify form number of each form submitted.
- (d) State the type of coverage provided.
- (e) Indicate whether (1) the form is replacing a previously approved form (provide the form number and date of approval); (2) the form will be issued in addition to other similar forms and/or benefits (provide form numbers and approval dates); or (3) the form is a new form unlike any previously approved form. If there have not been a substantial number of changes, submit a highlighted copy showing the material differences or changes made to the form. If the changes are too extensive, then a highlighted copy is not required, but the changes must be identified in the submission letter. State whether the previously submitted form was approved, disapproved, withdrawn or otherwise disposed or is still pending approval (under review) with the Department and provide the form number and file number of the such form.
- (f) If the form is other than a policy (i.e. rider, endorsement, or insert page), give the form number of the policy form or forms with which it will be used, or, if for more general use, describe the type or group of such forms as well as whether the pending forms will be used with new and/or previously issued/delivered policies.
- (g) If there are similar forms (i.e., other individual universal life insurance policy forms similar to the submitted form) not being replaced, identify those forms and indicate why they are not being replaced.
- (h) If a form is intended to replace a very recently approved form because of an error found in the approved form and the approved form has not been issued, the insurer may request to make a substitution of the approved form using the regular prior approval process. The substitution request letter must confirm that the form has not been issued and identify the changes made to the corrected form. The insurer may, under these circumstances, use the same form number on the corrected form being submitted. If the original form was approved in paper format the insurer must also return the stamped original of the approved form to the Department. If, however, the form has been issued, the insurer must place a new form number on the corrected form and need not return the previously approved form. This option is not available for policy forms approved under the Circular Letter No. 6 (2004) procedure.



D.3) Explanation of Unique Features and Markets

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

D.4) COLI Market

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

D.5) Sex-Distinct/Unisex

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

D.6) Noncompliance Explanation

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

D.7) Informational Filings

- (a) An informational filing must be identified in the "Re" of the submission letter. All informational filings will be acknowledged by the Department indicating that the information submitted has been placed on file with the Department for informational purposes only. The insurer should wait for the acknowledgement from the Department that the information has been filed prior to its use.
- (b) For the submission of an informational filing through SERFF, the company should use a SERFF TOI of "Life – Informational", a SERFF Sub-TOI of "Form or Rate Related", a SERFF Filing Type of "Form", and a SERFF requested Filing Mode of "Informational".

D.8) Resubmissions

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

## II.E) Attachments

### E.1) Readability Certification

Provide a Flesch score certification signed by an officer of the insurer in accordance with Section 3102. The Flesch score must be at least 45. Please refer to the Department's February 18, 1982 letter, available on the Department's website, for a sample certification. Please note that the Memorandum of Variable Material for each form must be listed separately in the Flesch score certification.

### E.2) Policy Illustration

The submission letter must state whether the policy form is to be marketed with or without an illustration. Section 53-3.1(b) of Regulation 74. If the policy will be marketed with an illustration, submit the certification required by Section 53-3.7(d) of Regulation 74.

Please note all illustrations used in lieu of the preliminary information required by Section 3209 must comply with Regulation 74. Please see the guidance on the Department's website.

### E.3) Self-Support Statement

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

### E.4) Actuarial Nonforfeiture Certification

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

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

### E.5) Variable Material

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

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

If a detailed statement of the method of computation of the cash surrender values and paid-up nonforfeiture benefits shown in the policy is not stated therein, such detailed statement must be filed with the submission. Section 4221(a)(6). See Section III.E.5 of this Outline.

II.F) Key References

F.1) Insurance Law. §§ 336, 3102, 3105, 3201, 3203, 3204, 3205, 3206, 3207, 3209, 3210, 3211, 3212, 3214, 3215, 3227, 4221, 4222, 4228, 4231 and 4232.

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

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

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

III. Individual Universal Life

III.A) Cover Page

A.1) Insurer Name and Address

- (a) The licensed New York insurer's name must appear on the cover page (front or back) as well as the cover page of each rider.
- (b) The full street address of the insurer's Home Office must appear on the cover page, front or back, and should be bracketed or underlined to reflect possible future changes. For changes applicable to new business, an informational filing is required. For changes applicable to existing business, an endorsement setting forth the new address must be submitted for approval and sent to all holders of in-force policies. Please refer to guidance available on the Department's website.
- (c) In addition to the home office address, the full street address of the administrative or service office, if different than the home office address, may be set forth on the cover page (front or back). The administrative or service office address, if any, should be bracketed or underlined to reflect possible future changes. An informational filing is required for such changes.
- (d) If the name of another entity is included on the cover page (insurance group designation, name of the licensed parent company or licensed affiliate, etc.) or if a logo, trademark or other device is included, such name or device shall not be displayed in a manner that would have a tendency to mislead or deceive as to the true identity of the insurer, or create the impression that someone other than the insurer would have any responsibility for the financial obligations under the policy. Section 3201(c)(1). The name of the issuing insurer must be clearly disclosed, and must be at least as prominent as any other entity mentioned. This paragraph applies to applications as well.

(e) No unlicensed insurer name can appear anywhere on the form. Section 3201(c)(1).

(f) Marketing names may not appear in the policy form. Section 3201(c)(1).

A.2) Free Look Provision

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

A.3) Form Identification Number

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

A.4) Brief Description of Policy

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

(b) The description must include whether policy is participating or non-participating in accordance with Section II.F.1 of Circular Letter No. 4 (1963).

(c) The description must address the flexibility of premiums, benefits or period of coverage, if applicable. Based on Section 3203(a)(4) and 3204(a)(1).

(d) If the policy provides that the death benefit is not available in a lump sum, the cover page must disclose this information.

A.5) Officers' Signatures

(a) The signature of at least one officer of the insurer in order to execute the contract is required as a matter of contract law.

(b) Signatures should be underlined or bracketed to denote variable material.

III.B) Specification Page

B.1) All hypothetical data must appear on the specifications page. Section I.E.1 of Circular Letter No. 6 (1963).

B.2) The policy specifications page for participating policies must state that dividends are not guaranteed and the insurer has the right to change the amount of dividend to be credited to the policy which may result in lower dividend cash values than were illustrated, or, if applicable, require more premiums to be paid than were illustrated. Section 3203(a)(15).

- B.3) The guaranteed maximum expense charges and loads that may be deducted from the premiums paid or the account value must be set forth. Based on Section 3203(a)(12).
- B.4) The specification page must state, to the extent applicable, that additional amounts are not guaranteed and the insurer has the right to change the amount of interest credited to the policy and the amount of cost of insurance or other expense charges deducted under the policy which may require more premium to be paid than was illustrated or the cash values may be less than those illustrated. Section 3203(a)(16).
- B.5) The minimum guaranteed interest rate used to determine the guaranteed policy values must be specified. Section 3203(a)(17). This rate may not be variable.
- B.6) Any limitation on the crediting of additional interest on a portion of the policy value or cash surrender value must be set forth. Section 3203(a)(12). (i.e., crediting excess interest on a portion of the cash value over and above a certain amount).
- B.7) Any surrender charges and partial withdrawal fees must be set forth. Based on Section 3203(a)(12) and 4221(n-1)(2)(A).
- B.8) If the policy contains non-guaranteed interest, mortality and expense factors, it must give at least equal prominence to the guaranteed factors. Based on section 3201(c)(1).
- B.9) The planned premium amount, if any, must be disclosed and “planned premium” must be defined in the policy. Based on Section 3203(a)(4) and Section 3204(a)(1).
- B.10) Any no-lapse premium and the period for which it is payable must be disclosed. If the policy provides for a secondary guarantee other than a no lapse guarantee then the premium payable (if any) and the period (if any) for the secondary guarantee must be set forth.
- B.11) The specification page must contain a disclosure, to the extent applicable, that the policy might not mature, even if planned premiums are paid, due to the fact that current cost of insurance and interest rates are not guaranteed, policy loans and partial withdrawals may be taken, there may be changes in the choice of death benefit options and there may be requested changes to the specified face amount. Based on Section 3201(c)(1).

### III.C) Table of Contents

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

### III.D) Standard Provisions

#### D.1) Entire Contract

- (a) The policy shall state that the policy, together with the application if a copy of such application is attached to the policy when issued, shall constitute the entire contract between the parties. Policy language must be in compliance with Section 3203(a)(4) and Section 3204.

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

D.2) Grace Period

- (a) For policies in which the amount and frequency of premiums may vary, after payment of the first premium, the policyholder is entitled to a sixty-one day grace period, beginning on the day when the insurer determines that the policy's net cash surrender value is insufficient to pay the total charges necessary to keep the policy in force for one month from that day, within which to pay sufficient premium to keep the policy in force for three months from the date the insufficiency was determined. Section 3203(a)(1).
- (b) For scheduled premium policies, after payment of the first premium, the policyholder is entitled to a thirty-one day grace period or one month following any subsequent premium due date within which to make payment of the premium then due. During such grace period, the policy shall continue in full force. Section 3203(a)(1).
- (c) The policy must contain language indicating that:
  - (i) if the death of the insured occurs within the grace period, the insurer may deduct the amount needed to continue the policy to the end of the policy month in which such death occurred; and
  - (ii) if death occurs during a period for which the amount needed to continue the policy has been applied, the insurer must add to the policy proceeds a refund of such amount applied for any period beyond the policy month in which the death occurred. Section 3203(a)(2).

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

D.3) Incontestability

- (a) Policy language must be in compliance with Section 3203(a)(3) which provides that a policy is incontestable after it has been in force during the lifetime of the insured for a period of no greater than two years from the date of issue.
- (b) Contests must be based on material misrepresentations in accordance with Section 3105(b).
- (c) Regarding a policy issued as a result of a conversion option from term insurance, either provide in the policy that the incontestable period for the converted amount does not start anew but is effective as of the date the original term policy was issued, or provide the form number, approval date and Department file number of the endorsement to be attached to the conversion policy stating that the incontestability period will run from the date the original term policy was issued. Section II.H.6 of Circular Letter No. 4 (1963). See Section 3220(a)(6) for conversion from group to individual insurance.
- (d) Any policy issued as a result of a conversion from a group policy must indicate, either in the policy or by an endorsement, that the two-year contestable period does not start anew, but is effective as of the date of the original group coverage. Circular Letter 1963-4 § II.H.6.
- (e) If a policy provides that the death benefit provided by the policy may be increased, or other policy provisions changed, upon the application of the policyholder and the production of evidence of insurability, the policy with respect to each such increase or change shall be incontestable after two years from the effective date of such increase or change. Section 3203(a)(3).
- (f) Exceptions to the incontestability provision are permitted for non-payment of premium, violation of policy conditions as relating to service in the armed forces and, at the option of the insurer, provisions relating to benefits for total and permanent disability and additional benefits for accidental death. Section 3203(a)(3). An exception to the incontestability provision for fraud is not authorized under Section 3203(a)(3).

D.4) Reinstatement

- (a) A policy that provides for scheduled premium payments must provide for a minimum reinstatement period of three years from the date of default. The reinstatement provision must be in compliance with Section 3203(a)(10).
- (b) For policies in which the amount and frequency of premium payments may vary, a reinstatement provision may be provided. If a reinstatement provision is provided, it must comply with the following:
  - (i) Application by the insured must be required.
  - (ii) Evidence of insurability, including good health, satisfactory to the insurer must be required.

- (iii) The amount of payment required for reinstatement cannot exceed the payment of an amount sufficient to keep the policy in force for no more than three months after charging for any coverage provided during the grace period.
- (c) For all reinstatement provisions:
  - (i) The policy must explain how the account value, loan balance and surrender charge will be determined upon reinstatement.
  - (ii) Upon reinstatement, the account value and surrender charges are determined so that no part of the surrender charge is assessed more than once.
- (d) Joint life survivorship policies with a reinstatement provision must provide that the policy will be reinstated subject to evidence of insurability of both insureds if both insureds were alive on the date of lapse or, if only one insured was alive on the date of lapse, then the policy will be reinstated subject to evidence of insurability only for that insured. Section 3201(c)(2).

D.5) Incontestability After Reinstatement

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

D.6) Exclusions

(a) Resident of a Specified Foreign Country

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

(b) Suicide

- (i) An insurer may exclude or restrict liability in the event of death caused by suicide within two years from the issue date of the policy in accordance with Section 3203(b)(1)(B).
- (ii) The insurer shall pay the amount of the gross premiums charged on the policy less dividends paid and less any indebtedness, including interest due and accrued. Section 3203(b)(3).



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

(c) Aviation

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

(d) Hazardous Occupations

- (i) An insurer may exclude or restrict liability in the event of death caused by hazardous occupations specified in the policy, provided death occurs within two years from the issue date of the policy. Section 3203(b)(1)(D).
- (ii) The insurer shall pay the amount of the gross premiums charged on the policy less dividends paid and less any indebtedness, including interest due or accrued. Section 3203(b)(3).

(e) War

- (i) An insurer may exclude or restrict liability in the event of death as a result of:
  - (I) War or an act of war, if the cause of death occurs while the insured is serving in any armed forces or attached civilian unit and death occurs no later than six months after the termination of such service (Section 3203(c)(1)(A));

- (II) The special hazards incident to service in any armed forces or attached civilian unit, if the cause of death occurs during the period of such service while the insured is outside the home area, and if death occurs outside the home area or within six months after the insured's return to the home area while in such service or within six months after the termination of such service, whichever is earlier (Section 3203(c)(1)(B));
  - (III) War or act of war, within two years from the date of issue of the policy, if the cause of death occurs while the insured is outside the home area but is not serving in any armed forces or attached civilian unit, and death occurs outside the home area or within six months after the insured's return to the home area (Section 3203(c)(1)(C)).
- (ii) Any war exclusions must be drafted in accordance with the definitions listed in Section 3203(c)(3).
  - (iii) Such exclusions are not to be construed as exclusions because of status as a member of any armed forces or attached civilian units, or because of the presence of the insured as a civilian in a combat area. Such permissible exclusions shall not exclude deaths due to diseases or accidents which are common to the civilian population and are not attributable to special hazards to which a person serving in such forces is exposed in the line of duty. Section 3203(c)(4).
  - (iv) Any such war exclusion shall terminate six months after the end of the war in which the insured was engaged or the war in which the insured was likely to engage in at the time of application for the policy, after the discharge, release or separation of the insured from active military service, after the demobilization of the insured, or after the insured permanently leaves the war area, whichever occurs first. Section 3203(c)(5). This termination requirement does not apply to war exclusions for disability benefits under Section 3215 or accidental death benefits provided either in the life insurance policy itself or by rider to the policy.
  - (v) If a death occurs that is subject to an exclusion or restriction pursuant to Section 3203(c)(1)(A) or (B), the insurer must pay the reserve on the face amount in accordance with Section 3203(b)(3) or, if the policy has been in force for less than two years, the insurer shall pay the amount of the gross premiums charged on the policy less dividends and less any indebtedness, including interest due or accrued. If a death occurs that is subject to an exclusion or restriction pursuant to Section 3203(c)(1)(C), the insurer shall pay the amount of the gross premiums charged on the policy less dividends paid and less any indebtedness, including interest due or accrued. Section 3203(b)(3).
  - (vi) Any life insurance policy form containing a war or travel exclusion or restriction must have printed or stamped across the face page in red and in capital letters not smaller than twelve point type the following:

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

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(state which or both)

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

Section 3201(c)(4).

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

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

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

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

D.7) Policy Loans

(a) A policy loan provision is required pursuant to Section 3203(a)(8)(A).

- (i) For scheduled premium policies, if the policy is not in default and where three full years' premiums have been paid, the policyholder shall be entitled to a loan in an amount not exceeding the loan value, under the conditions specified in section four thousand two hundred twenty-two of the insurance law.
- (ii) For policies in which the amount and frequency of premiums may vary, if the policy is not in default, after three years from the date of issue of the policy, the policyholder shall be entitled to a loan in an amount not exceeding the loan value, under the conditions specified in section four thousand two hundred twenty-two of the insurance law.
- (iii) A policyholder shall be entitled to a loan from an equity index account that credits additional amounts less frequently than annually at any time the equity index policy has a loan value.

(b) Loan value is defined as the cash surrender value at the end of the current policy year. This applies to scheduled premium as well as flexible premium policies. See Section 4222. We have permitted a loan value of either (I) the current cash surrender value less up to 3 months' current expense and cost of insurance charges as well as (II) the current cash surrender value projected from the date of loan to the following anniversary and discounted at the loan interest rate.

(c) The loan interest rate must be:

- (i) a fixed interest rate not to exceed either 7.4% (payable in advance) or 8% (payable in arrears),

- (ii) an adjustable interest rate up to a maximum cap of 8%, or
- (iii) an adjustable interest rate with no cap but subject to the maximum limits of section 3206.

Sections 3203(a)(8)(F) and 3206.

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

Note: The insurer must comply with the notice requirements for adjustable rate loans in Section 3206(d).

- (f) Based on 3203(a)(8)(G) the policy may provide:
  - (i) that if the interest on the loan is not paid when due, it shall be added to the existing loan, and bear interest at the applicable rate or rates payable on the loan in accordance with the terms of the policy; and
  - (ii) subject to the Section 3206(e) requirement for adjustable loan provisions that no policy shall terminate in a policy year as the sole result of a change in the interest rate, when the total indebtedness on the policy including interest due or accrued, equals or exceeds the amount of the policy's loan value and if at least thirty day's prior notice shall have been given in the manner provided in Section 3211, then the policy shall terminate and become void.

- (g) The sole security for the loan shall be assignment or pledge of the policy. Section 3203(a)(8)(B).
  - (i) For equity indexed policies, the policy may provide that the amounts to be paid upon the exercise of a policy loan may be secured by the value of the policy's equity index account or by the general account of the insurer. Section 3203(e)(4).
- (h) The policy shall state that the insurer reserves right to defer payment of loan value, except to pay premiums, for 6 months after receipt of the loan application. Section 4222.
- (i) A required minimum loan amount is not authorized by statute. Section 3203(a)(8)(A).
- (j) An insurer may not restrict the number of loans taken out by the policyholder except that the total indebtedness cannot exceed the policy's loan value. The insurer may require repayment of the previous loan with the new loan proceeds so that only one outstanding loan exists at a time. Section 3203(a)(8)(A).
- (k) Any indebtedness can be deducted from the cash surrender value upon surrender or in determining any extended term nonforfeiture benefit. Reduced paid-up nonforfeiture benefits may be determined with or without indebtedness.
- (l) Any automatic premium loan provision shall indicate that it is effective only if affirmatively elected and that such election is subject to revocation. The policy shall clearly indicate how the provision will apply if the loan value is insufficient to pay the stated premium due and the disposition of any sums not used to pay premiums. The provision must be separately captioned and not included under or with the nonforfeiture provisions. Section II.E.2 of Circular Letter No. 4 (1963).
- (m) The additional interest included in the interest rate credited to the portion of the account value equal to the loan balance may be reduced, provided that such reduction does not cause the combination of the guaranteed interest rate and additional interest to be more than 2.00% less than the loan interest rate

Example:

Guaranteed Interest Rate	=	4.00%
Current Interest Rate	=	5.50%
Loan Interest Rate	=	8.00%

The loaned portion of the accumulation value must be credited at least 5.50%. The current interest rate of 5.50% consists of 4.00% guaranteed interest plus 1.50% additional interest. Since this combination is already less than 6.00% (loan interest rate less 2.00%) no reduction in the 1.50% additional interest is allowed.

See Section 3203(a)(8)(H).

We have permitted a 3% spread for a single premium policy, which has no current expense or cost of insurance charges.

- (n) If a future reduction in loan spread is illustrated or otherwise disclosed, it must be guaranteed in the policy. See Section 53-3.2(d) of Regulation 74.
- (o) The policy must state how a deposit not designated as a premium or loan repayment will be treated if a loan is outstanding.
- (p) A policy that credits additional amounts does not need a table of loan values. Section 3203(a)(8)(C).
- (q) If the policy is in force under a paid-up nonforfeiture option (other than extended term), the policy loan provision must still be in effect.

D.8) Participating Policies

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

D.9) Misstatement of Age or Sex

- (a) A Misstatement of Age provision is required to be in the policy and shall state that if the age of the insured has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age. Section 3203(a)(5).
- (b) The adjustment in cases of discovery at time of death should be based on adjustment of the net amount at risk by the ratio of the incorrect COI rate to the correct COI rate. Other

approaches will be considered. In the case of discovery while the insured is alive, we have also permitted retroactive adjustment to the account value. Based on Section 3201(c)(2).

- (c) If the premiums, benefits or values differ depending upon the sex of the insured, the misstatement of age may include a provision for adjustment in the event of misstatement of sex. Section II.H.8 of Circular Letter No. 4 (1963).

D.10) Maturity Date

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

- (a) A policy may be written with or without a maturity date. If the policy has no maturity date or has a maturity date beyond age 120 then the following conditions must be satisfied:
  - (i) There must be a policy provision to the effect that after age 120 there will be no cost of insurance charges or other charges except for:
    - (I) service charges; or
    - (II) administrative charges.
  - (ii) There must be a policy provision to the effect that no further premium payment, except as necessary in order to prevent the policy from lapsing, will be accepted after age 120.
  - (iii) If partial withdrawals are not available after age 120, the policy must so state.
  - (iv) Policy loans and loan repayments must be permitted.
  - (v) 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 120.
- (b) There must be a provision in the policy describing the relationship between payment of the planned premium and the maturity date (or if no maturity date, age 120).
- (c) The policy may state: "There may be tax consequences to either surrendering the policy on or after Age \_\_\_ [fill in appropriate age] or continuing the policy past Age \_\_\_ [fill in appropriate age]. A tax advisor should be consulted to determine which choice best meets your needs." As of the date of this outline, due to the Internal Revenue Code, Age 100 is the appropriate age to complete the above brackets. The Department would also approve Age 121. See IRS Revenue Procedure 2010-28.
- (d) The cash values after the last age in the mortality table underlying the nonforfeiture values must increase annually at an interest rate not less than a reasonable current interest rate (i.e., the settlement option interest rate, the interest rate paid on death claims). The

Department would also find acceptable the use of an interest rate not less than the maximum nonforfeiture interest rate in effect at the time the policy was issued.

- (e) The death benefit cannot be less than the cash value at the time of death.

D.11) Settlement Options

- (a) If death benefit proceeds can be paid out in installment or annuity payments, there must be a table in the policy. Section 3203(a)(9). The guaranteed interest rate and mortality table being utilized for the tables should be identified in the policy for disclosure purposes. See Section 3203(a)(9).
- (b) For settlement options using the 2012 Individual Annuity Reserving (2012 IAR) Table:
  - (i) The policy must describe the payout rates by reference to interest and mortality assumptions and provide company contact information for the policy owner holder and/or beneficiary to obtain more detailed information on the payout rates. The contact information must always provide a telephone number and may provide a website.
  - (ii) The annual report must include a statement that the policy owner or beneficiary may contact the insurer to obtain a quote for the payout rates and the contact information to obtain that quote.
  - (iii) We recommend that additional information be provided in the policy and/or annual report such as a set of illustrative guaranteed payout rates or to list the guaranteed payout rates for a specific age (65) and for specific birth years in 10 year increments in the policy and/or annual report. An insurer could also include the complete set for either the specific policy owner or beneficiary or for all policy owners or beneficiaries.

Note: The Department still expects tables of guaranteed payout rates to appear if the company uses a static table. This would include both situations where the company uses an age set back or a mortality projection is used to produce a single table.

- (c) If any life income settlement option with a period certain provides for installment payments of the same amount at some ages for different periods certain, the policy must state that the insurer will deem an election to have been made for the longest period certain which could have been elected for such age and amount. Section II.J.1 of Circular Letter No. 4(1963).

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

- (d) The guaranteed interest rate and annuity table being utilized for the tables must be identified in the policy for disclosure purposes. See Section 3203(a)(9).



- (e) Policy language may not refer to the placement of death proceeds into a checking or other type of account since this would relate only to the manner of distribution. Section 3201(a).
- (f) Settlement options need not appear in the policy. However, in light of Circular Letter 4 of 2012, in order for insurers to be able to offer other settlement options to the policyholder or beneficiary in addition to the payment of the full life insurance proceeds in a single check to the beneficiary, language must be included in the policy form that indicates that additional settlement options may be made available. The Department would consider the following language acceptable and would consider alternatives on a case-by-case basis:
  - (i) "Unless otherwise elected by the policyholder or beneficiary, benefits will be paid in a single lump sum check. We may make other options available in addition to the single check option"; or
  - (ii) "When the benefit is payable, we will pay it in a single lump sum check, unless another method of payment is requested by the policyholder or beneficiary and agreed to by us."

D.12) Account Value

- (a) Policy must clearly indicate which cost factors are subject to adjustment. Section 3203(a)(12), Section 3203(a)(4) and Section 3204(a)(1).

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

- (b) Policy must state the guaranteed factors of mortality, expense and interest. Section 3203(a)(12). The interest and expense factors should appear on the specification page. The table of mortality charges (COI rates), and the basis of such table must be stated.
- (c) The policy must provide a statement of the method used by the insurer in calculating actual policy values. Section 3203(a)(12).
  - (i) The procedure for the crediting of interest to 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.
- (d) In any policy under which additional amounts may be credited pursuant to Section 4232(b), the policy must state that additional amounts are nonforfeitable after crediting except indirectly due to surrender charges made pursuant to Section 4221(n-1) or market value adjustments made pursuant to Section 4221(n-2). Section 3203(a)(13).

- (e) The policy must state that additional amounts will be credited no less frequently than annually, except that policies that credit additional amounts in an equity index account may do so in such account no less frequently than every three years. Section 3203(a)(14).
- (f) Additional amounts on equity indexed policies may be credited no less frequently than every three years. Section 3203(a)(14). However, the policy shall include an option that credits additional amounts at least annually. Section 3203(e)(3).
- (g) Reductions in current expense and insurance mortality charges must not be illustrated unless they are guaranteed. Section 53-3.2(d) of Regulation 74.
- (h) No persistency bonus, specified additional amount, or specified reduction in mortality or expense costs in any policy year, after the first policy year, may be illustrated or otherwise disclosed unless it is guaranteed in the policy. Section 53-3.2(d) of Regulation 74. No such amount shall be used in the illustration unless it complies with Section 4232(b).
- (i) 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. Based on Section 3203(a)(12), Section 3203(a)(4), and Section 3204.

### III.E) Nonforfeiture Provisions

#### E.1) Minimum Cash Surrender Values

- (a) Universal life policies must provide cash surrender values that meet the requirements of Section 4221(n-1)(3)(A) or Section 4221(n-1)(3)(B).

Notes: 1. If an additional rider or supplemental benefit has an identifiable additional premium, then the rider or supplemental benefit is subject to stand alone nonforfeiture requirements. Section 4221(c)(2).

2. If a rider or supplemental benefit is integrated with the policy value for the payment of benefits or charges, the base policy and rider or supplemental benefit combined must comply with the nonforfeiture requirements of Section 4221(n-1).

- (b) Policy value (i.e., account value) shall be an amount equal to gross premiums paid under a policy (excluding separately identified premiums for riders or supplementary benefits that are not credited to the policy value) plus interest credited less the amount of any partial withdrawals and the following charges as specified in the policy: (i) expense charges, (ii) benefits charges, (iii) service charges, and (iv) partial surrender charges. Section 4221(n-1)(2)(A).

Please note the following:

- (i) The interest credited may not be less than 0% when complying with Section 4221(n-1)(3)(B) and may not be less than 3% when complying with Section 4221(n-1)(3)(A). See 4221(n-1)(2)(G).
  - (ii) Transactional charges made under mandatory policy provisions are expense and not service charges unless specifically permitted by law or regulation.
  - (iii) Surrender charges include charges triggered or accelerated due to a reduction in death benefits.
  - (iv) Services charges must be reasonably related to actual cost.
  - (v) Since the payment of premium to keep the policy in force is a mandatory policy provision, premium collection charges are expense and not service charges.
  - (vi) All elements affecting the policy value must be accounted for within the categories of elements given in Section 4221(n-1)(2)(A) without double counting. For example, a benefit charge or surrender charge must not also be an expense charge. A premium bonus is an interest credit.
  - (vii) At the time of deduction, deferred expense charges are expense charges subject to any expense charge limitations.
  - (viii) Any percent of policy value charge that is not a benefit charge is an expense charge.
- (c) Excess first year expense charges means the greatest amount by which (x) can exceed (y) based, for scheduled premium policies, on the premiums set forth in the policy and, for flexible premium policies, on the assumption that any premium (other than a single premium) payable in the first policy year is also payable during the entire premium paying period, where:

(x) is the amount of the expense charges made in the first policy year; and

(y) is the arithmetic average of the corresponding charges which the policy states would be imposed in policy years 2 through 20 or the premium paying period, if shorter.

Section 4221(n-1)(2)(E).

Notes: 1. The "corresponding charges" are the charges stated in the policy in the amounts stated (whether stated as maximum charges or otherwise). This usually means guaranteed charges.

2. Flexible premium policies must consider all possible first year premium amounts permitted.

(d) Net level whole life annual premium at issue means an annual premium based on face amounts of insurance set forth in the policy and on the assumption of level annual

premiums for life, the mortality table rate used to calculate the maximum mortality charges (but not greater than that permitted under Section 4221(n-1)(3)(A)(iv)), and an interest rate based on the higher of 4 percent or that specified in the policy. Section 4221(n-1)(2)(H).

- Notes:
1. The net level whole life annual premium may be determined using a fully continuous method.
  2. If the policy matures before the last year in the mortality table, insurance for the endowment amount at maturity may be assumed to continue until the end of the mortality table. If there is no endowment, the net level whole life annual premium will be a term premium until the maturity date.
- (e) The policy must not establish a deferred expense charge after the first policy year, except for deferred expense charges resulting from an increase in the face amount.
- (f) With respect to cash surrender values meeting the requirements of Section 4221(n-1)(3)(A), please note the following:
- (i) The limitation on expense charges described in Section 4221(n-1)(3)(A)(i) is a policy year requirement, not a cumulative requirement. Except for the allowance described in (iii) which is available in the first year regardless of when the premium is received, any unused allowance applicable for a particular year cannot be carried back to an earlier year or carried forward to a later year.
  - (ii) Expense charges in the first year exclude deferred first year expense charges. In subsequent years, expense charges include any deferred first year expense charge being charged to the policy in that year.
  - (iii) Ninety percent of premiums received up to the net level whole life annual premium at issue (regardless of when received), is available in the first year even if the premium is received after the first year.
  - (iv) The ten percent of all other premiums received referenced in Section 4221(n-1)(3)(A)(i)(II) excludes separately identified premiums for riders or supplementary benefits that are not credited to the policy value.
  - (v) The ten dollars per one thousand dollars of initial face amount in the first policy year referenced in Section 4221(n-1)(3)(A)(i)(IV) excludes face amounts paid by separately identified premium not credited to the policy value.
  - (vi) Note the expense allowance of one dollar per one thousand dollars of face amount in subsequent policy years in Section 4221(n-1)(3)(A)(i)(V) is capped at one hundred dollars because it only applies to the first one hundred thousand dollars of face amount.
  - (vii) Pursuant to Section 4221(n-1)(3)(A)(iii) the maximum allowable surrender charge for a year is the lesser of (1) the maximum initial allowable surrender charge

reduced by the annuity factors in Section 4221(n-1)(3)(C) and (2) the maximum initial surrender charge less all deferred first year expense charges made to the policy prior to the start of the year.

(viii) For medically underwritten policies, the cash surrender values must meet the requirements of Section 4221(n-1)(3)(A)(iv).

(g) The following applies to policies complying with Section 4221(n-1)(3)(B):

(i) Note the expense allowance of Section 4221(n-1)(3)(B)(i) can be \$10 per \$1000 of face amount less than the expense allowance provided in Section 4221(k)(2).

The expense allowance in Section 4221(n-1)(3)(B)(i) is 1% of the average face amount plus the lesser of 125% of the net level whole life annual premium at issue and 4% of the average face amount of insurance provided under the policy during the first ten policy years.

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

(ii) The policy shall provide that the policyowner has the option to convert the policy to guaranteed paid-up life insurance once each policy year. Section 4221(n-1)(3)(B)(iii). Please note the following:

(I) The policy must indicate that no expense charges will be applied thereafter.

(II) The policy must specify the purchase basis.

(III) The policy must specify how subsequent cash surrender values are determined.

(IV) Rider payments may be taken from the guaranteed paid-up life insurance if the right to cancel the rider exists.

(V) The guaranteed paid-up life insurance may have options to increase (with evidence of insurability) or decrease the death benefit.

(VI) In the event of default of a scheduled premium policy, reduced paid-up insurance must be eligible for excess interest. Section 4232(b)(3).

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

- (h) The surrender charge in policy years after the first shall not exceed the maximum initial surrender charge permitted under Section 4221(n-1)(3) multiplied by the ratio of (i) the value of a life annuity due of one dollar per year for the balance of the amortization period to (ii) the corresponding annuity value at issue, based on the mortality table and interest rate used in calculating the net level whole life annual premiums. For all policies the maximum amortization period is twenty years. Section 4221(n-1)(3)(C).

Note: 1. The 20 year amortization period is the maximum and not necessarily the actual amortization period in the contract.

2. If appropriate, the numerator in the ratio is based on fractional years.

3. Surrender charges would include any charges accelerated due to the surrender.

#### E.2) Interest and Mortality Tables

- (a) The policy must specify the mortality table, interest rate and method used in calculating paid-up nonforfeiture benefits available under the policy. Section 3203(a)(7)(A). The policy must state the guaranteed factors of mortality, expense and interest and a statement of the method used in calculating actual policy values. Section 3203(a)(12).
- (b) The mortality table description must be complete (e.g., sex distinct/ unisex, smoker/nonsmoker or composite, age last birthday or age nearest birthday, etc.). If both smoker and nonsmoker tables are used, it must be clear which table is applicable, and the word “smoker” or “nonsmoker” must be included in the identification of the risk class on the specification page.
- (c) A rider based on the 2001 CSO table can be attached to a policy based on the 1980 CSO table if the rider is ignored in the nonforfeiture calculation (Section 4221(m)(3)) or if the rider is supplemental (i.e., nonforfeiture values are calculated separately (Section 4221(c)(2))). Note that Internal Revenue Code Section 7702 tax implications may arise and the insurer should consult tax counsel.
- (d) If a rating class within a plan of insurance does not have separate premiums for smokers and non-smokers, non-smoker mortality tables are not available to determine minimum cash surrender values and smoker mortality tables are not available to determine minimum paid-up nonforfeiture benefits for that rating class when such tables are limited by law. Section 4221(n-1)(3)(A)(iv) and Regulation 113.

#### E.3) Accounts with an Equity Index Feature

- (a) An additional amount based on an equity index is nonforfeitable once it is credited. Section 3203(a)(13).
- (b) Additional amounts may be credited no less frequently than every three years. Section 3203(a)(14). However, the policy shall include an option that credits additional amounts at least annually. Section 3203(e)(3).

- (c) The guaranteed minimum interest, if greater than zero, must be credited from the date of deposit to the date of withdrawal for any type of withdrawal, surrender, or loan. The minimum interest rate must be credited on death if the death benefit option includes the account balance.
- (d) We have approved the use of dual guaranteed interest rates (e.g. 0% and 2%) for accounts with an equity index feature. The lower rate (e.g. 0%) is applied during each equity index segment. This result would be used for such purposes as determining the net amount at risk and loan value before the end of a segment. At the end of the equity index segment any credit due to the change in the index would be applied. This then becomes the starting point for the next equity index segment.

An additional guarantee (e.g. 2%) would be applied at the end of a specified period of time. The products we have approved used a 5 year specified period of time and 1 year equity index segments. Interest is credited at the end of each 1 year segment using the higher of 0% or the equity index crediting formula. If the application of the additional guarantee (e.g. 2%) would result in an increased account when applied at the end of the specified period of time (e.g. 5 years) the account value will be reset to the greater value. This then becomes the starting point for all future calculations. However for surrenders and death benefits during the specified period, the additional guarantee would be applied for the time elapsed from the start date of the specified period and if higher, this value would be applied.

The following example may help.

Minimum Equity Index Segment Interest	0.00%
Index Cap	5.00%
5 Year Segment Guaranteed Interest	2.00%

(1) Year	(2) Change in Index	(3) Beginning Balance	(4) Index Credit %	(5) Index Credit	(6) Ending Index Balance	(7) 5 Year Segment Minimum	(8) Ending Balance @ 5 <sup>th</sup> Yr
1	3.00%	10,000.00	3.00%	300.00	10,300.00	10,200.00	N/A
2	1.00%	10,300.00	1.00%	103.00	10,403.00	10,404.00	N/A
3	-5.00%	10,403.00	0.00%	0.00	10,403.00	10,612.08	N/A
4	8.00%	10,403.00	5.00%	520.15	10,923.15	10,824.32	N/A
5	-5.00%	10,923.15	0.00%	0.00	10,923.15	11,040.81	11,040.81
6		11,040.81					

- Column (4)= the lesser of the change in the index and the index cap, but not less than 0
- Column (6) is the accumulation of the index credits. This would be used for the net amount at risk calculation and the loan value
- Column (7) is the accumulation based on the 5 year guarantee. This would be used at the end of 5 years, where the starting value for year 6 would be the higher of columns (6) and (7) at the end of year 5. The higher of Columns (6) and (7) would be used for surrenders and death claims.
- Column (8) At the end of year 5 it is the higher of columns (6) and (7).

- (e) Disclosure must be made when a credit, based on the equity index formula, is not applied on the date of death or any withdrawal.
- (f) The policy may provide that amounts to be paid upon the exercise of a policy loan may be secured by the value of the policy's equity index account or by the general account of the insurer. Section 3203(e)(4).

E.4) Market Value Adjustment (MVA)

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

E.5) Required Disclosures

- (a) Surrender charges, if any, and partial withdrawal charges, if any, must be provided in the policy. Sections 4221(a)(5-a), 4221(n-1)(2)(A), 4221(n-1)(3)(A)(ii) and 4221(n-1)(3)(B)(ii). The policy must provide sufficient detail to allow the policyowner to determine the surrender charge applicable upon a partial withdrawal or face amount decrease and to determine how the remaining surrender charge schedule is impacted by a partial withdrawal or face amount decrease.
- (b) The policy must either provide a detailed statement of the method of computation of the values and benefits shown in the policy or a statement that the method of computation of the values and benefits shown in the policy has been filed with the insurance supervisory official of the state in which the policy is delivered. The policy must contain a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy. Sections 3201(c)(5) and 4221(a)(6).

Note: The policy must describe the method of crediting interest. Section 3203(a)(12).



- (c) The policy must contain a statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by any statute of the state in which the policy is delivered. Sections 4221(a)(6) and 4221(b)(1)(C).
- (d) The policy must contain an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy. Sections 4221(a)(6) and 4221(b)(1)(C).
- (e) For scheduled premium universal life, the policy must contain a table showing either the cash surrender value or the paid-up nonforfeiture benefit, if any, available on each anniversary of the contract during the lesser of 20 contract years or the term of scheduled payments, calculated upon the assumption that there are no dividends or paid-up additions credited to the contract and that there is no indebtedness to the company on the contract. Section 4221(b)(1)(B).
- (f) The policy must explain how nonforfeiture benefits are affected by loans. Section 4221(a)(6).
- (g) The policy must state that insurer reserves the right to defer payment of cash surrender values for 6 months from date of request. Do not restrict this right, for example, by requiring the approval of the Superintendent. See the paragraph following Section 4221(a)(8).

E.6) Joint Life Policies

- (a) Minimum nonforfeiture values are based on the exact joint life mortality using mortality tables that would be required for each single life and assuming that the mortality of the joint lives are independent.
- (b) For second-to-die policies, minimum nonforfeiture values and policy disclosures may be based on the use of joint life mortality throughout the lifetime of the policy. Minimum nonforfeiture values and policy disclosures on each possible status of the lives under the terms of the policy are also acceptable if the disclosures and minimum value requirements of the Insurance Law are met for each possible status.
- (c) Joint life survivorship policies with a reinstatement provision must provide that the policy will be reinstated subject to evidence of insurability of both insureds if both insureds were alive on the date of lapse or, if only one insured was alive on the date of lapse, then the policy will be reinstated subject to evidence of insurability only for that insured. Section 3201(c)(2).

### III.F) Other Provisions

#### F.1) Secondary Guarantees

- (a) Secondary guarantees are guarantees that the policy will remain in force subject only to the payment of specified premiums (a no lapse guarantee), or similar guarantees of benefits and/or nonforfeiture values independent of fund performance or actual charges.
- (b) The policy must make it clear:
  - (i) whether or not a negative account value (or unpaid charges) will be accumulated during a no-lapse guarantee period; and
  - (ii) whether or not the deficit needs to be repaid at the end of the no-lapse period.
- (c) If a negative account value (or unpaid charges) can be accumulated, the policy must fully explain the effect, if any, on the calculation of cost of insurance charges and death benefits. In such case, the policy must be clear whether or not rates for the cost of insurance can be applied to a base in excess of the death benefit and whether the death benefit is reduced to reflect the negative account value (or unpaid charges).
- (d) It must be clear from the policy language whether a secondary guarantee can be reinstated and the conditions for reinstatement. Based on Section 3204.
- (e) The policy must explain how and when the insurer will verify that the secondary guarantee conditions continue to be met. It must state that the policy owner will be notified when an additional premium payment or other action is required to maintain the secondary guarantee. It must be clear that the secondary guarantee could terminate, even though the policy remains in force. These provisions must be on a basis acceptable to the Superintendent.
- (f) The policy specifications page must contain a prominent statement that based on payment of the no-lapse premium, an additional lump sum payment may be required to keep the policy in force at the end of the no-lapse period. It must advise the policyowner to contact the insurer to obtain additional information about this. Based on Sections 3203(a)(12), 3203(a)(4) and 3204(a)(1).
- (g) The policy and annual report must describe in a prominent place any policyholder action (e.g., partial withdrawal or loan) that will nullify the secondary guarantee. Based on Section 3201(c)(2).
- (h) The annual report must state whether or not the guarantee is in effect on the date of the report. If a lump sum is projected to be required to be paid at the end of the no-lapse period to maintain the policy in force, it is recommended that the annual report include an early warning notice to that effect.

F.2) Partial Withdrawals

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

Sections 3203(a)(12) and 4221(a)(6).

- (b) Policy language must ensure that a policyholder can not increase the net amount at risk by making a partial withdrawal. Based on Section 3201(c)(2).
- (c) For policies with no explicit COI charges or COI charges expressed as a percent of account value, there must be a disclosure statement in the partial withdrawal provision and the death benefit provision of the contract regarding adjustment to the death benefit following partial withdrawals. The insurer must justify any adjustment other than a pro rata reduction. Based on section 3201(c)(2).

F.3) Interest on Surrenders, Policy Loans

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

F.4) Interest on Death Proceeds

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

F.5) Owner and Beneficiary Provisions

- (a) The policy must describe how contingent owner and joint owner provisions operate if such options are made available. Required for disclosure purposes. See Sections 3203(a)(4) and Section 3204.

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

F.6) Assignments

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

F.7) Claims of Creditors

Certain life insurance proceeds may be exempt from claims of creditors. Policy language, if any, must be in compliance with Section 3212.

F.8) Proof of Loss

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

F.9) Policy Changes

- (a) The policy must permit the insurer to require evidence of insurability if, at the time of option change, the net amount at risk is increased. Otherwise, a change in death benefit

option must not be subject to evidence of insurability unless appropriate justification can be provided to the Department. Based on section 3201(c)(2).

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

F.10) Arbitration

Binding mandatory arbitration provisions are not permitted.

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

- (a) The Department has approved waiver of surrender charge/fee provisions triggered by terminal illness, total and permanent disability, nursing home confinement or provision of long-term care either at home or in a nursing home. We would consider other waiver of withdrawal charge/fee provisions on a case-by-case basis. The waiver of withdrawal charge/fee provisions must set forth all terms, conditions and restrictions related to the benefit.
- (b) If based upon total and permanent disability, the benefit must be drafted in accordance with Section 3215 of the Insurance Law.
- (c) A life insurance policy with this feature cannot be marketed, advertised or sold as long term care coverage or as an alternative to long term care insurance.
- (d) Exclusions from paying disability benefits due to terrorism are not permitted. See Section 3215(b).

III.G) Dividend Recognition Issues

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

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

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

### III.I) Minors

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

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

- J.1) An additional insurance amount is an additional death benefit on the same insured under the base policy subject to different cost where the difference in cost is not based on a different mortality expectation (i.e., additional amounts other than additional insurance underwritten at a different risk class). These are distinct from the base insurance amount benefits. An additional insurance amount may be offered in a rider or incorporated in the base policy or offered in a rider and then incorporated into the base policy at a specific age.
- J.2) If a rider has an identifiable additional premium, it will be tested separately from the base policy for nonforfeiture compliance purposes. Section 4221(c)(2). (Department interpretation) See Section III.E.1(a) of this outline.
- J.3) The rider is subject to the age limitation of Regulation 149.
  - (a) For riders subject to Subpart 42-1 of Regulation 149 the age limit is age 80 unless one of the exemptions set forth in Section 42-1.4 is met.

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

#### IV. Special Filing Situations

##### IV.A) Interest Rates

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

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

- B.1) Any changes to the guaranteed maximum policy cost factors set forth in the policy requires prior approval from the Department. Please follow the general filing process in Section II.A of this Outline. If this is the only change to the policy, then only the pages affected must be submitted for approval. The new pages must have a distinguishing form identification number

such as “Rev.” or the date. The actuarial memorandum must be reviewed to see if it also needs to be revised and submitted to the Department as necessary.