

PRODUCT OUTLINES
Individual Variable Life
(Last Updated 7/28/2010)

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Outline for Individual Variable Life Products (7/27/10)

I) Process

I.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: Section 3201(c)(1) and (2) permits the Superintendent to disapprove any policy form that contains provisions that are misleading, deceptive, unfair, unjust, or inequitable or if its issuance would be prejudicial to the interests of policyholders or members. See also §§ 2123, 3209, 4224, 4226, 4228(h), 4231, 4239.
- A.3) Alternative Approval Procedure (“Deemer”) – Section 3201(b)(6) and Circular Letter No. 2 (1998) provide for an expedited approval procedure designed to prevent delays by deeming forms to be approved or denied if the Department or insurer fail to act in a timely manner.
- A.4) Prior Approval With Certification Procedure – Circular Letter No. 6 (2004) provides for an expedited approval procedure based on an appropriate certification of compliance signed by an officer of the Company.
- A.5) An insurer must be qualified to issue variable life insurance policies in accordance with the requirements of 11 NYCRR 54.2
 - (a) A Plan of Operations must be filed with the Life Bureau at the Department office in New York City. See Section III on Separate Account Plan of Operations in this Outline.
- A.6) No filing fee required
- A.7) For Paper Submissions.

(a) 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” or caption as **“Circular Letter No. 6 (2004) Prior Approval With Certification”**.

(b) For SERFF Submissions.

Please see the SERFF General Instructions.

- A.8) Compliance with Circular Letter No. 6(1963), Section I(A) through (G). In particular please note:
 - (a) Filings must be made in duplicate (Not Applicable to SERFF Submissions).

- (b) Form numbers must appear in lower left-hand corner.
 - (c) All blank spaces for policy forms must be filled in with hypothetical data.
 - (d) Clearly indicate as to whether or not form is replacing a previously approved form. If so, submit a highlighted copy showing the differences or changes made to the form and include a description of the differences or changes in the submission letter. Advise as to approval date and Department control number.
 - (e) Any application that is used with this policy must comply with 11NYCRR 54.10. The Company must retain information in its records concerning which approved application is being or has been used with the policy and type of underwriting utilized. Such information must be available upon Department request.
 - (f) If a form is intended to replace a very recently approved form because of an error found in the approved form, the insurer must, if the approved form has not been issued, return the approved form with a statement in the submission letter that the form has not been issued. The insurer may, under these circumstances, use the same form number on the correct form being submitted. If, however, the form has been used, the insurer must place a new form number on the corrected form and need not return the previously approved form.
- A.9) A certification signed and dated by an actuary who is a member in good standing of the American Academy of Actuaries or the Society of Actuaries that the policy form(s) is in compliance with the nonforfeiture requirements of the New York Insurance Law and regulations applicable to variable life insurance. The certification must also indicate that the actuary has read the forms and supporting material submitted with the file.
 - A.10) A complete statement of the method of computation of cash surrender values and other nonforfeiture benefits. Such method shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must comply with subdivision 54.7(a), 54.7(b)(i) or 54.7(b)(ii) of Regulation 77. 11 NYCRR 54.7
 - (a) Sample projections (including beginning and ending account value and cash surrender value and all policy cost factors) should be provided so that the account value mechanics can be fully understood.
 - A.11) Submission letter should be as detailed as possible explaining any innovative or unique features and identifying any special market. e.g. Section 3205 (d) COLI market, mail –order, Section 403(b) etc. Innovative or unique would include one that has not been previously approved by the Department for the insurer.
 - A.12) If the policy does not comply with a specific product outline provision the submission letter should identify the provision and provide a complete explanation of the Company’s position on the issue.
 - A.13) If the policy has been previously submitted to the Department and the file was not approved, 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 new

- submission must be complete in and of itself and not incorporate previously submitted material by reference.
- A.14) The submission letter must identify any bracketed material in the policy that denotes variable material, other than hypothetical data and provide a detailed explanation of that material.
 - A.15) The submission letter must advise whether the policy is sex-distinct or unisex. If sex-distinct, it must confirm the policy will not be issued in any employer-employee situations subject to the Norris decision and/or Title VII of the Civil Rights Act of 1964.
 - A.16) Filings that are incomplete or do not comply with laws and regulations will be closed. See Circular Letter No. 14 (1997).
 - A.17) If the policy will be issued in the Section 3205(d) COLI market, please refer to the COLI product outline on the Department website.
 - A.18) Flesch score certification is not required for variable life products. Such forms are regulated by SEC and they are exempt from readability requirements. (Section 3102(b)(1)(A)).
 - A.19) Advise as to whether or not policy will be illustrated. A copy of the draft or final illustration should be available upon request. All illustrations must be in a form and content acceptable to the Superintendent. 11 NYCRR 54.10(d). See Section II.D.7 (o) and Section II.D.14 (j) as to when a portion of the illustration (draft or final) needs to be filed with the submission.
 - A.20) Provide a statement of self-support in compliance with Section 4228(h) for each form in the submission.
 - A.21) Provide a copy of the prospectus in draft or final for the purpose of compliance with 11NYCRR 54.9.
 - A.22) If the filing is being made on behalf of the Company by another party, a letter of authorization from the Company must be submitted by the party authorized to submit the filing.
 - A.23) Section 3201(b)(6) (“Deemer”) submissions
Compliance with Section 3201(b)(6) and Circular Letter No. 2 (1998). Please note that Circular Letter No. 2 (1998) requires that the certification of compliance should make reference to any law or regulation that specifically applies or is unique to the type of policy form (and rates as required) submitted. An alternative would be to submit a certification of compliance with applicable laws or regulations in this product outline.
 - A.24) Prior Approval With Certification Submissions
 - (a) Compliance with Circular Letter No. 6 (2004)
 - (b) Certification of compliance signed by officer of company in the format provided by Circular Letter No. 6 (2004)
 - A.25) Filings for Out-of-State Delivery Only
 - (a) A single copy with an explanation on how the provisions and rates differ, if at all, from comparable forms approved for delivery in New York.
 - (b) A statement of self support for compliance with Section 4228(h) for each form in the submission.
 - A.26) Except as otherwise provided by the Superintendent, the filing and approval requirements applicable to individual general account life insurance policies shall, to the extent appropriate, be applicable to

individual variable life insurance policies. [11 NYCRR 54.5].

THE REQUIREMENTS AND GUIDANCE IN THE INDIVIDUAL UNIVERSAL LIFE OUTLINE ARE APPLICABLE TO THE FIXED ACCOUNT OF A VARIABLE UNIVERSAL LIFE POLICY.

II) Individual Variable Life {Note: requirements for both single life and joint survivorship (first to die or last to die) forms are the same except as specifically indicated}

Key Applicable Insurance Law Sections – 3102, 3105, 3201 (Approval of Forms), 3203 (Standard Provisions), 3204, 3206 (ALIR), 3207, 3210, 3214, 3227, 4221(n-1) (Standard Non-Forfeiture), 4222 (Loans) 4228, 4240 (Separate Accounts)
Key Applicable Regulations - Regulation 77 (11 NYCRR 54) (Variable Life Insurance)

Key Circular Letters – CL4 (1963), CL6 (1963), , CL16 (1993), CL14 (1997) (Submission and Approval Process), CL2 (1998), and CL8 (1999) (Submission Letters), CL6 (2004) (Certification)

II.A) Cover Page

- A.1) Company's Name and Address
 - (a) The licensed New York company's name appears on the cover page (front or back).
 - (b) Full street address of the company's Home Office for disclosure purposes on front or back cover page.
 - (c) Any corporate logo, trademarks or affiliations will be reviewed on a case by case basis, see Section 219.4(p) of Regulation 34-A.
 - (d) No unlicensed insurer name can appear anywhere on the form. Section 3201(c)(1).
- A.2) Include generic name of the product: i.e., Flexible Premium Variable Life Insurance, Flexible Premium survivorship Variable Life, Flexible Premium Variable Universal Life, Single Premium Variable Life.
- A.3) Include prominent statement that the amount or duration of the death benefit may be variable or fixed under specified conditions and may increase or decrease. 11 NYCRR 54.6(b)(1)(i)
- A.4) Include prominent statement that policy values may increase or decrease in accordance with the experience of the separate account, subject to any minimum guarantees. 11 NYCRR 54.6(b)(1)(ii)
- A.5) Include method, or a reference to the policy provision that describes the method, for determining the amount payable at death. 11 NYCRR 54.6(b)(1)(iv)
- A.6) Brief Description of Policy
 - (a) A description of the policy in accordance with Section I(A) of Circular Letter No. 4 (1963); Death Benefit payable at First Death or Second Death.
 - (b) Description should include whether policy is participating or non-participating in accordance with Section II(F)(1) of Circular Letter No. 4 (1963). A policy should not be silent on this issue.

- (c) Description of a variable universal life policy must also address the flexibility of the premiums, benefits or period of coverage. Based on Section 3203(a)(4) and Section 3204(a)(1)
- A.7) Free Look Provision
 - (a) Policyholder may return the variable life policy within 10 days of receipt and receive a full refund of all premium payments per 11 NYCRR 54.6(b)(1)(v).
 - (b) A 30 day Free Look Period is required for mail order situations.
- A.8) Officer's Signatures
 - (a) The signature of at least one officer of the company in order to execute the contract is required as a matter of contract law.
 - (b) Signatures should be bracketed or underlined to denote variable material.
- A.9) Form Identification Number

A form identification number should appear in the lower left hand corner in accordance with Section I(D) of the Department's Circular Letter No. 6(1963).

II.B) Specification Pages

- B.1) Complete with hypothetical data. Circular Letter No. 6 (1963)I(E)(1).
- B.2) The guaranteed maximum expense charges and loads which may be deducted from the premiums paid or from the account value must be set forth. Based on 11NYCRR 54.6(a)(1).
- B.3) If a listing of the investment options is included, the listing should be bracketed for future changes. A memorandum of variable material identified as a "List of Funds" that lists only the current investment options (and related material) should be submitted for this purpose. See the Additional Guidance on Variable Material for Individual Products (08/08/2008) that can be found on our website.
- B.4) Section 3203(a)(15) compliance for participating policies and Section 3203(a)(16) compliance for policies subject to Section 4232(b).
- B.5) Section 3203(a)(17) compliance for minimum guaranteed interest rate for a Guaranteed Interest Account if offered.
- 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. Based on Section 3203(a)(4) and Section 3204(a)(1)
- B.7) Any surrender charges and partial withdrawal fees must be set forth. 11 NYCRR 54.6(b)(9), 11 NYCRR 54.7, and Section 4221(a)(5-a).
- B.8) If the policy contains non-guaranteed interest, mortality and expense factors, it must give equal prominence to the guaranteed factors. Based on Section 3201(c)(1).
- B.9) For a variable universal life policy the "planned premium" should be disclosed and the planned premium defined in the policy. Based on Section 3203(a)(4) and Section 3204(a)(1).
- B.10) Any no lapse premium and period for which it is payable must be disclosed Based on Section 3203(a)(4) and Section 3204(a)(1). If the policy provides for a secondary guarantee other than a no lapse guarantee then the premium payable (if any) and the period (if any) for the secondary guarantee must be set forth. See Section II.E.7 of this Outline.

- B.11) Disclosure that the policy might not mature even if planned premiums are paid due to change in the current interest rate being credited on the fixed account, the investment performance of the funds in the Separate Account, changes in the current expense loads or COI's, loans and partial withdrawal activity or changes in death benefit options. Based on Section 3203(a)(16) and Section 3201(c)(1). See Section II.E.9 of this Outline.

II.C) Table of Contents

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

II.D) Standard Provisions

D.1) Entire Contract

- (a) Cannot include the words "in absence of fraud". Section II(H)(7) of Circular Letter No. 4 (1963).
- (b) Policy language must be in compliance with Section 3203(a)(4) and Section 3204.
- (c) Incorporation by reference is prohibited. Section 3204(a)(1).
- (d) The application must be attached to the policy if it is to be part of the entire contract. Section 3203(a)(4).
- (e) All statements made by or by the authority of, the applicant for the issuance, reinstatement or renewal of any such contract shall be deemed representations and not warranties. Section 3204(c).

D.2) Grace Period

- (a) Policy language must be in compliance with 11 NYCRR 54.6(b)(3)(i) which provides for a 61 day period.
- (b) Death benefit payable during grace period will equal the death benefit in effect immediately prior to such period less overdue charges; 11 NYCRR 54.6(b)(3)(ii).
- (c) If the policy processing day occurs monthly, the insurer may require the payment of a premium sufficient to keep the policy in force for three months beginning with the policy processing day on which, unless otherwise provided in the policy, the net cash surrender value under the policy was insufficient to pay all the charges authorized by the policy that are necessary to keep the policy in force until the next policy processing date. 11 NYCRR 54.6(b)(3)(ii).
- (d) The grace period provision must include language that a report will be sent to the policyholder if, unless otherwise provided in the policy, the net cash surrender value under the policy on any policy processing day to pay the charges authorized by the policy is less than the amount necessary to keep the policy in force until the next following policy processing day. The grace period provision must indicate that the report shall be mailed no earlier than, and within 30 days after, the policy processing date on which the insurer determined that an insufficiency had occurred, and indicate the minimum payment required under the terms of the policy to keep it

in force and the length of the grace period for payment of such amount. 11NYCRR 54.6(b)(3)(i) and 54.11 (c).

D.3) Incontestability

- (a) Policy language must be in compliance with Section 3203(a)(3) and 11 NYCRR 54.6(b)(13) which provides for a two year period (for last to die survivorship form, policy is incontestable after two years in force during lifetime of at least one of the insured persons). Any increase in policy death benefit after issue, if requested by the owner and subject to evidence of insurability, shall be contestable for two years from date of increase.
- (b) Must be based on "material misrepresentations" in accordance with Section 3105.
- (c) Any policy issued as a result of a conversion option from term insurance must indicate that the incontestable period for the converted amount does not start anew but is effective as of the date the term policy was issued. Section II H.6 of Circular Letter No. 4 (1963).
- (d) Permissible exceptions to the incontestable provision are non-payment of premium or violation of policy conditions relating to service in the armed forces. At the option of the Company provisions relating to benefits in the event of total and permanent disability, and additional provisions related to accidental death may also be excepted. Section 3203(a)(3).

D.4) Reinstatement

- (a) For scheduled premium policies a reinstatement provision in compliance with 11 NYCRR 54.6(b)(4) is required.
 - (i) The period for reinstatement must be at least three years from the date of default.
 - (ii) Written application by the insured must be required.
 - (iii) Evidence of insurability, including good health, satisfactory to the insurer must be required.
 - (iv) The amount of payment required for reinstatement cannot exceed the sum of all overdue premiums for incidental insurance benefits, with interest at a rate not exceeding six percent per annum compounded annually plus the greater of:
 - (I) all overdue premiums (other than for incidental insurance benefits) and any other indebtedness in effect at the end of the grace period following the date of default, with interest at a rate not exceeding six percent per annum for overdue premiums and at a rate not exceeding the applicable policy loan rate or rates for indebtedness compounded annually; or
 - (II) 110 percent of the increase in cash surrender value resulting from reinstatement;
- (b) For other than scheduled premium policies a reinstatement provision may be provided. If one is provided, it must comply with the following:
 - (i) Written 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 must not 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) The account value and surrender charges are determined so that no part of the surrender charge is assessed more than once.
- D.5) Incontestability After Reinstatement

A new incontestable period can begin again upon reinstatement based on the application for reinstatement in accordance with Section 3210.
- D.6) Suicide
 - (a) An insurer may exclude payment of the death benefit if the insured commits suicide within the first two years in accordance with Section NYCRR 54.6(c)(4) (for last to die survivorship form, provision applies only to death by suicide of surviving insured person within first two policy years). (Department Interpretation) The policy may provide an exclusion for suicide within two years of the effective date of any increase in death benefits which results from an application of the owner subsequent to the policy issue date.
 - (b) The insurer must refund the premiums paid during the two year period. Section 3203(b)(3).
 - (c) The phrase “while sane or insane” is prohibited. Section II(I)(1) of Circular Letter No. 4 (1963).
 - (d) The suicide provision cannot begin again upon reinstatement. Section 3210 applies only to the incontestability provision.
 - (e) Any policy issued as a result of a conversion option from term insurance must indicate that the suicide period does not start anew but is effective as of the date the term policy was issued. Section II H.6 of Circular Letter No. 4 (1963).
- D.7) Policy Loans
 - (a) Required after three years and loan value must be at least 75% of cash surrender value 11 NYCRR 54.6(b)(10). Department has interpreted this as applying to the entire policy (i.e., both the variable sub-accounts and the fixed account).
 - (b) Can be either a fixed interest rate not to exceed 7.4% (payable in advance) or 8% (payable in arrears), an adjustable interest rate up to a maximum cap of 8%, or an adjustable interest rate with no cap but subject to the maximum limits of section 3206. Sections 3203 and 3206.
 - (c) For the fixed account, for adjustable rate loans (whether or not as defined in Section 3206), the policy must specify the frequency of adjustment which must be at least once every 12 months, but not more frequently than once in any three month period. Section 3203(a)(8)(F).
 - (d) Adjustable interest rate based on Moody’s Index must be in compliance with Section 3206 requirements as follows:

- (i) Adjustable maximum loan rate shall not exceed the greater of
 - (I) Published Monthly Average for the calendar month ending two months previous
 - (II) Cash Surrender Value rate plus 1%
- (ii) Adjustments made on regular intervals
 - (I) may be increased when rate increases by $\frac{1}{2}\%$ or more
 - (II) must be decreased when rate declines by $\frac{1}{2}\%$ or more
- (iii) The published monthly average is the Moody's Corporate Bond Yield Averages – Monthly Average Corporates.
- (iv) The loan provision for policies providing for an adjustable rate must indicate that the policy cannot lapse as a result of a change in the policy loan interest rate. Section 3206 (e).
- (e) Any indebtedness shall be deducted from proceeds payable on death. 11 NYCRR 54.6(b)(10)(iii).
- (f) Any indebtedness shall be deducted from the cash surrender value upon surrender or in determining any nonforfeiture benefit.
- (g) For the fixed account, policy must state that insurer reserves right to defer payment of loan value, except to pay premiums, for 6 months (Section 4222).
- (h) The policy may include a provision that if at any time, so long as the policy is in force on a premium-paying basis, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding 110 percent of the corresponding increase in policy value and by furnishing such evidence of insurability as the insurer may request. 11 NYCRR 54.6(b)(10)(vi).
- (i) The policy may specify a reasonable minimum amount that may be borrowed at any time, but such minimum shall not apply to any automatic premium loan provision. 11 NYCRR 54.6(b)(10)(vii).
- (j) No policy loan provision is required if the policy is under the extended insurance nonforfeiture option. 11 NYCRR 54.6(b)(1)(viii).
- (k) The policy loan provision shall be so construed that variable life insurance policyholders who have not exercised the loan provision are not disadvantaged by the exercise thereof. 11 NYCRR 54.6(b)(10)(ix).
- (l) Amounts paid to the policyholders upon the exercise of any policy loan provision may be withdrawn from the separate account and may be returned to the separate account upon repayment, except that a stock insurer may provide the amount for policy loans from the general account. 11 NYCRR 54.6(b)(10)(x).
- (m) The policy shall describe how loans are charged against separate accounts and the effect on such accounts when a loan is made or repaid. 11 NYCRR 54.6(b)(10)(xi).
- (n) An insurer must credit on the loaned amount at a rate at least equal to the loan interest rate less two percent, unless the Superintendent allows the crediting of a lower rate of interest upon an insurer

demonstrating a justification for such lower rate. 11 NYCRR 54.6(b)(10)(xii).

- (o) If a future reduction in the loan spread is illustrated or otherwise disclosed, it may be guaranteed in the policy. If the reduction is not guaranteed in the policy, the illustration must clearly address the non-guaranteed nature of the reduction in a manner acceptable to the Superintendent (11 NYCRR 54.10(d)). The portion of the illustration which relates to the future reduction and the non-guaranteed nature of the reduction then must be included in the submission package.

Please note: Section 3209 requires an insurer to furnish preliminary information and a policy summary for variable life policies. However, if an insurer chooses to use a sales illustration in lieu of providing preliminary information and a policy summary as permitted by Section 53-3.5 (d) of Regulation 74 for non-variable life policies, then the insurer must comply with all the applicable provisions of Regulation 74 (11 NYCRR 53). Section 53-3.2 (d) of Regulation 74 does **not** permit the illustration of non-guaranteed bonuses, additional amounts or reductions.

- (p) It is permissible to have a provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans. 11 NYCRR 54.6(c)(3).
- (q) The policy must state how a deposit not designated as a premium or loan repayment will be treated if a loan is outstanding.

D.8) Separate Account(s)

- (a) Describe the designated separate account(s) and the valuation method. The policy must state that the assets of the separate account shall be valued at least as often as any policy benefits vary but at least monthly. 11 NYCRR 54.6(b)(6).
- (b) Separate Accounts must be in compliance with 11 NYCRR 54.3.
- (c) The policy benefits shall reflect the investment experience of one or more separate accounts established and maintained by the insurer. 11 NYCRR 54.6(a)(3).
- (d) Income, gains and losses, whether or not realized, from assets allocated to a separate account shall, in accordance with the applicable agreement or agreements, be credited to or charged against such account without regard to other income, gains or losses of the insurer. Section 4240(a)(1).
- (e) To the extent applicable, there must be a statement that assets in the Separate Account (the variable funds will always be insulated, but the fixed account may also be insulated based on Section 4240(a)(5)) shall not be chargeable with liabilities arising out of any other business of the Company. Section 4240(a)(12).
- (f) There may be no guarantee of the value of the assets allocated to a Separate Account, except as permitted under Section 4240(a)(5).

D.9) Guaranteed Interest Account

- (a) Describe any such account, if made available under the policy, any

- minimum guarantees of interest, and the method of crediting interest. Based on Section 11 NYCRR 54.7(b)(5)(i) and 54.6(b)(5).
- (b) If the guaranteed interest account is subject to a market value adjustment then the requirements of Regulation 136 must be met.

D.10) Death Benefit

- (a) Describe the amount and/or calculation of the death benefit; may be variable or fixed and may include incidental insurance benefits; see 11 NYCRR 54.1 (f - h) (for survivorship forms, describe when base policy benefit is payable - upon death of first insured or only on death of last to die; also define who is the first insured for first-to-die policy and when both insureds die at the same time).
- (b) Any changes in variable death benefits of each variable life insurance policy shall be determined at least annually. 11 NYCRR 54.6(a)(5).
- (c) The policy may offer a minimum death benefit. A minimum death benefit means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment experience of the Separate Account if there are no outstanding policy loans, partial withdrawals or partial surrenders. 11 NYCRR 54.1(g). See Section II.E.7.

D.11) Participating In Surplus

- (a) Section 3203(a)(6) requires that the insurer annually ascertain and apportion any divisible surplus accruing on the policy.
- (b) Must be in compliance with Section 4231 if a participating policy.
- (c) All four options of section 4231(b)(1) must be made available -i.e., cash, as a payment of premium (this can be satisfied with crediting to the account value), accumulation at interest (this can be satisfied with crediting to the account value) and purchase of paid-up additions) - plus any other options as defined in 11 NYCRR 54.6(c)(1).
- (i) The automatic dividend option when none is elected is paid-up additions. Section 4231(b)(4).
- (d) Whenever one year term insurance is purchased by dividends in connection with the policy, it shall provide for an equitable adjustment in the event of termination of the policy (other than by death) prior to the expiration of such one year term insurance. Section II(F)(2) of Circular Letter No. 4 (1963).
- (e) 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).
- (f) If the policy is participating but dividends are not expected to be paid the policy should so state.
- (g) In addition to the dividend options required by Section 4231 the amount of dividend may also be applied as set forth in 11 NYCRR 54.6(c)(1).

D.12) Misstatement of Age or Sex

- (a) Misstatement of Age provision is required by Section 3203(a)(5) (for survivorship forms, any adjustment applies to misstatement of age for either or both insured persons).
 - (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). (for survivorship forms, any adjustment applies to misstatement of sex for either or both insured persons).
- D.13) Settlement Options
- (a) If death proceeds can be paid out in installment or annuity payments, there must be a table in the policy. Section 3203(a)(9) and 11 NYCRR 54.6(b)(11).
 - (b) 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. For example, if at age 45 the life income option with 10 years certain paid \$50 per month for 10 years certain and the life income option with 20 years certain paid \$50 per month for 20 years certain the life option with 20 years certain would be deemed chosen. Section II(J)(1) of Circular Letter No. 4 (1963).
 - (c) The guaranteed interest rate and annuity table being utilized for the tables must be identified in the policy for disclosure purposes. Based on Section 3203(a)(9) and 11 NYCRR 54.6(b)(11) as well as Section 3203(a)(4) and Section 3204(a)(1).
 - (d) The policy language should not make reference to the placement of death proceeds in a checking account or other type of account, since this would relate only to the manner of distribution of benefits. Section 3201(a).
- D.14) Policy Account Value ("benefit base")
- (a) The policy must provide a full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy. 11 NYCRR 54.6(b)(5).
 - (i) The procedure for the crediting of variable returns to the account value must be unambiguous.
 - (ii) The order of application of charges and credits must be described.
 - (iii) All related terms must be fully defined (e.g., net asset value).
 - (b) Policy shall contain a statement of the essential features of the procedures used to determine the dollar amount of the variable elements. Section 4240(a)(11)(A).

- (c) Policy must provide a summary of the method used to compute the policy value and cash surrender value on any given date. 11 NYCRR 54.6(b)(9).
- (d) Policy value and cash surrender value must be determined at least monthly. 11 NYCRR 54.7.
- (e) Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base. 11 NYCRR 54.6(a)(4).
- (f) Mortality and expense risks shall be borne by the insurer. 11 NYCRR 54.6(a)(1).
- (g) Additional amounts (mortality or expense charges or interest credits more favorable than guaranteed) must be credited to the policy not less frequently than annually. 11 NYCRR 54.6(a)(1) and, if applicable, Section 3203(a)(14).
- (h) Policy must clearly indicate which cost factors are subject to adjustment. Based on 11 NYCRR 54.6(b)(5) as well as Section 3203(a)(4) and Section 3204(a)(1)
- (i) Policy must specify the guaranteed factors of interest, mortality and expense. At least the interest and expense factors should be on the specifications page. In addition to a table of mortality charges (COI rates), the basis of such table should be stated, 11 NYCRR 54.7, 54.6(a)(1) and 54.6(b)(5).
- (j) Any reductions in current expense, mortality or risk charges and any additional credits scheduled to take effect after the first policy year may be illustrated. If such reductions are not guaranteed in the policy, the illustration must clearly address the non-guaranteed nature of the reduction or credits in a manner acceptable to the Superintendent (11 NYCRR 54.10(d)). The portion of the illustration which relates to the reductions and the non-guaranteed nature of the reductions then must be included in the submission package.

Please note: Section 3209 requires an insurer to furnish preliminary information and a policy summary for variable life policies. However, if an insurer chooses to use a sales illustration in lieu of providing preliminary information and a policy summary as permitted by Section 53 -3.5 (d) of Regulation 74 for non-variable life policies, then the insurer must comply with all the applicable provisions of Regulation 74 (11 NYCRR 53). Section 53-3.2 (d) of Regulation 74 does **not** permit the illustration of non-guaranteed bonuses, additional amounts or reductions.

- (k) For policies with a fixed account, the policy shall specify a guaranteed rate of interest for the portion of the fund accumulated in the fixed account. 11 NYCRR 54.7(b)(5)(i).
- (l) The policy must provide that additional amounts are nonforfeitable after the effective date of their crediting, except for any charges imposed under the policy which are not greater than those allowed under 11 NYCRR 54.7 or any market value adjustment made

pursuant to 4221(n-2). Application of 11 NYCRR 54.5 to Section 3203(a)(13).

- (m) For policies with a fixed account, 11 NYCRR 54.7(b)(5)(ii), which permits forfeiture, upon surrender, of additional amounts associated with the fixed account that were credited in the last 12 months, has been superseded by section 3203(a)(13) which does not permit such forfeiture.
- (n) If there is a possibility that 2 or more different rate classes could apply at the same time (e.g., due to a change in class prior to a face amount increase), the policy form or submission materials (e.g., nonforfeiture statement) must describe how the net amount at risk for COI calculation purposes is allocated. Similarly, if there are 2 or more rate classes applicable to the face amount, the policy form must describe how a decrease in face amount would be allocated to those classes. 11 NYCRR 54.6(b)(5), Section 3203(a)(4) and Section 3204

D.15) Nonforfeiture Provisions

- (a) Policy must describe a summary of the method of computation of cash surrender values and other nonforfeiture benefits. 11 NYCRR 54.7
- (b) Policy must explain how nonforfeiture benefits are affected by loans. 11 NYCRR 54.6(b)(10)(iv).

NOTE: THE REMAINDER OF THIS ITEM, 16, FOCUSES ON VARIABLE UNIVERSAL LIFE POLICIES.

- (c) The policy must have a table of or description of any surrender charges. 11 NYCRR 54.6(b)(9).
- (d) The policy must provide sufficient detail to allow the policyowner to determine the surrender charge applicable upon a partial withdrawal or face amount decrease and to determine how the remaining surrender charge schedule is impacted by a partial withdrawal or face amount decrease, 11 NYCRR 54.7 and 54.6(b)(5).
- (e) For policies with a fixed account, the policy shall specify that at least once each year, the insured has the option to transfer all separate account funds to the fixed account and apply her or his cash surrender value to purchase a guaranteed fixed paid-up benefit. 11 NYCRR 54.7(b)(5)(iii).
 - (i) In such case, any amount of paid-up whole life insurance provided shall be at least as great as that computed using the mortality table on which the maximum mortality charges have been calculated and the interest rate guaranteed in the policy. Also, any period of extended term insurance provided shall be at least as long as that using an extended term insurance mortality table appropriate to the mortality table for the maximum mortality charges and the interest rate guaranteed in the policy. 11 NYCRR 54.7(b)(5)(iv).

- (ii) For joint life policies, the fixed paid up insurance benefit must be the same type of joint life policy (e.g., last-to-die policies must provide for a last-to-die paid-up benefit).
- D.16) Exchange Provision
 - (a) A provision that at any time during the first 18 policy months, so long as the policy is in force on a premium paying basis, the owner may exchange the policy without evidence of insurability for a substantially comparable general account life insurance policy on the life of the insured for the same amount of insurance as the initial face amount of the variable life insurance policy and on a plan of insurance specified in the policy in accordance with the requirements set forth in 11 NYCRR 54.6(b)7(i) through (iv).
 - (b) If a fixed account is offered in the policy to which all separate account funds can be transferred without restriction, the Department has not required the exchange to a general account product provided the insurer can demonstrate that this approach is more favorable to the policyholder (e.g., the fixed account is competitively priced in relation to such other general account products). 11 NYCRR 54.6(b) – lead sentence.
- D.17) Conversion Provision for Material Change
 - (a) A provision that in the event of a material change in the investment policy of a separate account, any policyholder objecting to such change shall have the option to convert without evidence of insurability, to a substantially comparable general account policy within 60 days after the effective date of the change or the receipt of the notice of the options available, whichever is later. 11 NYCRR 54.4(c) and 54.6(b)(12).
 - (b) If a fixed account is offered in the policy to which all separate account funds can be transferred without restriction, the Department has not required the exchange to a general account product provided the insurer can demonstrate that this approach is more favorable to the policyholder (e.g., the fixed account is competitively priced in relation to such other general account products). 11 NYCRR 54.6(b) – lead sentence.
- D.18) Deferral Provisions
 - (a) The policy must contain a provision that if no premium is in default or if the policy is being continued under a variable nonforfeiture benefit, payment of variable death benefits in excess of any minimum death benefits, cash surrender values, policy loans or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred for any period during which the New York Stock Exchange is closed for trading (except normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical. 11 NYCRR 54.6(b)(8)(i).
 - (b) The policy must contain a provision that if the policy is being continued under a fixed nonforfeiture benefit or to the extent benefits are being paid from the general account, payment of any cash surrender value or loan may be deferred up to six months. 11 NYCRR 54.6(b)(8)(ii).

II.E) Other Provisions

- E.1) Interest on Surrenders, Policy Loans
If the policy provides for a deferral period on payment of surrenders or policy loans, the language must comply with Section 3227 including the 10 day period and the applicable interest rate which is the current rate payable on the interest only settlement option.
- E.2) Interest on Death Proceeds must be in compliance with Section 3214
- E.3) Owner and Beneficiary Provisions
 - (a) Must describe how contingent owner and joint owner provisions operate if being made available. Required for disclosure purposes. Based on Section 3203(a)(4) and Section 3204.
 - (b) Must describe how primary and secondary beneficiary designations operate if being made available. Must describe how multiple beneficiary designations are handled. Required for disclosure purposes. Based on Section 3203(a)(4) and Section 3204.
 - (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 would have the option of not having the automatic survivorship provision be applicable.
 - (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 should not take effect only when recorded by the insurer since there could be substantial delays. Based on case law.
 - (e) If irrevocable beneficiaries are permitted, the beneficiary provision must clearly explain that such beneficiaries cannot be changed without the written consent of the irrevocable beneficiaries as compared to the revocable beneficiary designations. Required for disclosure purposes. Based on Section 3203 (a)(4) and Section 3204.
- E.4) Assignments
 - (a) Life insurance policies are freely assignable unless otherwise restricted under the contract for tax qualification purposes.
 - (b) Insurer’s procedures on assignments i.e. must be in writing, filed with company etc. . . . should be described.
- E.5) Claims of Creditors
 - (a) Must be in compliance with Section 3212
 - (b) Must include statements from Section 4240(a)(1) and (a)(12) if Separate Account assets are to be insulated from claims of insurance creditors.
- E.6) Proof of Loss
It is sufficient to indicate that due proof of death must be provided to the insurer. The specifics of what is necessary to process the death benefit claim i.e. copy of death certificate etc... may be provided if the insurer so chooses.
- E.7) Secondary Guarantees
Secondary guarantees are guarantees that the policy will remain in force

subject only to the payment of specified premiums (a no lapse guarantee), or a guarantee of a minimal return on variable funds, or similar guarantees of benefits and or nonforfeiture values independent of fund performance or actual charges.

- (a) The policy must make it clear whether or not a negative account value (or unpaid charges) will be accumulated during a no-lapse guarantee period and whether or not the deficit needs to be repaid at the end of the no-lapse period. In such case, the policy should also be clear whether or not rates for the cost of insurance can be applied to a base in excess of the death benefit and whether the death benefit is reduced to reflect the negative account value (or unpaid charges). In addition, the policy specifications page must contain a prominent statement that based on payment of the no-lapse premium, an additional lump sum payment may be required to keep the policy in force at the end of the no-lapse period. It should advise the policyowner to contact the Company to obtain additional information about this. (Based on 11 NYCRR 54.6(a)(5), 54.6(a)(9), and 54.7)
- (b) 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).
- (c) 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 inforce, it is recommended that the annual report include an early warning notice to that effect. (Based on 11 NYCRR 54.11(d))
- (d) It should 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 company will verify that the secondary guarantee conditions continue to be met. It must state that the policy owner will be notified when an additional premium payment or other action is required to maintain the secondary guarantee. It must be clear that the secondary guarantee could terminate, even though the policy remains in force. These provisions must be on a basis acceptable to the Superintendent.
- (f) Section 4240(d)(3) excludes application of some provisions of the law (e.g., section 4221 on nonforfeiture) to variable life policies. However 4240(d)(3) does not apply to “any policy providing benefits with respect to the amounts so allocated, if such benefits are guaranteed at any time to be not less than an amount equal to or greater than such allocated amounts accumulated to such time at three percent per annum”. A secondary guarantee may require the form to comply with sections of the law that would otherwise not apply.

E.8) Partial Withdrawals

- (a) If the policy provides for partial withdrawals, there must be a separate provision in the policy describing how the partial withdrawal operates. It must describe how a partial withdrawal is

allocated among account balances; describe how a partial withdrawal is allocated when two or more rate classes are possible, and describe how a partial withdrawal is allocated to changes in amount of insurance when such changes have separate withdrawal charges. (Based on 11 NYCRR 54.7)

- (b) Policy language must ensure that a policyholder can not increase the net amount at risk by making a partial withdrawal. Note that this is a solvency concern and therefore applies to out of state business as well. (Based on section 3201(c)(2))

E.9) 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 with 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 (11 NYCRR 54.7(b)(1)(iii));
 - (II) administrative charges (11 NYCRR 54.7(b)(1)(iv); and
 - (III) charges made as a reduction in investment return (11 NYCRR 54.7(b)(1)(vii).
 - (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) The policy must be clear as to whether policy loans, partial withdrawals and transfers among funds can continue to be made after age 120. Loan repayments must be permitted.
 - (iv) 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. See II.B.11. of the outline.
- (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). See Section II.B.11 of Outline.
- (c) If the policy can continue past age 99 then appropriate disclosure must be provided in the policy indicating that the policy may not qualify as life insurance after the insured's attained age 100 under federal tax law, may be subject to adverse tax consequences and a tax advisor should be consulted before the policyowner chooses to continue the policy after age 100.

E.10) Annual Reports to Policyholders

- (a) Annual reports must be in compliance with 11NYCRR 54.11.

E.11) Evidence of Insurability on Death Benefit Option Change

The policy must permit the Company to require evidence of insurability if, at the time of option change, the net amount at risk is increased. Otherwise, a change in death benefit option should not be subject to

- evidence of insurability unless appropriate justification can be provided to the Department. (Based on section 3201(c)(2))
- E.12) For variable universal life 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))
- E.13) 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 Company must reserve the right to request evidence of insurability and/or reserve the right to refuse the premium. (Based on section 3201(c)(2))
- E.14) The policy must provide that it will refund the excess of any premium payment made over the maximum amount that could be paid without disqualifying the policy as life insurance under Section 7702 of the Internal Revenue Code. (Based on section 3201(c)(2))
- E.15) Any limitations on policy changes must be specified in the policy (e.g., the minimum and maximum amount of face amount increases as well as the number of increases allowed). (Based on section 3204)
- E.16) Transfers Between the Variable Sub-Accounts and the Fixed Account and Among Variable Sub-Accounts
- (a) Any restrictions on the number of transfers permitted, number of transfers without charges, monetary limitations, charges for such transfers, timing of transfers, etc... must be disclosed in the contract. (Based on section 3204)
- (b) The Department recommends that protection against disintermediation attributable to transfers from the general account should be included in the policy. An equity wash, right to delay transfers for e.g., 6 months, or other provision may be prudent.
- E.17) Arbitration
Binding mandatory arbitration provisions are not permitted.
- E.18) Exclusions
- (a) Exclusions from paying the death benefit due to war must be in compliance with Sections 3203(c)(1) and 3203(b)(3).
- (b) Exclusions from paying the death benefit due to aviation or hazardous occupations must be in compliance with Sections 3203(b)(1) and 3203(b)(3).
- (c) Exclusions from paying the death benefit due to medical conditions are not permitted. Section 3203 sets forth the only permissible exclusions.
- (d) The superintendent shall not approve any life insurance policy form containing any war or travel exclusion or restriction unless the policy form shall have printed or stamped across its face 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. (State which or both) In case of any doubt write your company (society) for further explanation." Section 3201(c)(4).
- (e) Exclusions from paying death benefits due to terrorism are not permitted. Section 3203 sets forth the only permissible exclusions.
- E.19) Waiver of Surrender Charges or Reduction in Fees

- (a) Permitted if based on total and permanent disability in accordance with Section 3215 of the Insurance Law or provisions more favorable to the policyowner.
- (b) Permissible if based upon terminal illness, nursing home confinement or the provision of long term care either at home or in a nursing home. Such waivers will be reviewed on a case by case basis. A life insurance policy with this feature cannot be marketed, advertised or sold as long term care coverage or as an alternative to long term care insurance.
- (c) Exclusions due to terrorism in a waiver of surrender charges provision are not permitted.

II.F) Additional Insurance Amounts on the Life of the Same Insured Covered Under the Base Policy

- F.1) An additional insurance amount is an additional death benefit amount on the same insured covered under the base policy subject to different costs 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). The additional insurance amount is distinct from the base insurance amount. 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 upon conversion of the rider.
- F.2) If the rider accrues policy values, it will be treated separately from the base policy and will be treated as if it were a separate policy for nonforfeiture compliance purposes. (Department Interpretation).
- F.3) The rider is subject to the age limitation of Regulation 149.
- F.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. (Based on section 11 NYCRR 54.6(a))
- F.5) If an additional insurance amount is provided in the base policy or can be converted from an additional insurance amount rider to the base policy:
 - (a) The amounts of additional insurance amount and base insurance amount must be listed separately on the specification pages.
 - (b) Additional insurance and base insurance benefits 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 Base Insurance amount, Additional Insurance amount or both, whichever is intended. 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.
 - (d) The relationship among the Additional Insurance amount, Base Insurance amount and tax qualification must be fully explained in the policy.
 - (e) 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.

II.G) Riders

- G.1) Waiver of Premium/Monthly Deduction
 - (a) The waiver of premium rider or monthly deductions rider must comply with Section 3215 and Circular Letter No. 4 (1963).
 - (b) If the waiver of premium rider (either by itself or in conjunction with a waiver of monthly deduction rider) does not operate to guarantee that the policy will not lapse, then a disclosure form to this effect should be signed by the owner when the policy/rider is applied for. A copy of this disclosure form must be included with the submission. As the disclosure form is not subject to our formal approval it should not appear in the "Re" for paper submissions or in the Form Schedule for SERFF submissions.
 - (c) The submission should also indicate that your company will notify the policyholder by letter or notice at the time of disability that the rider does not guarantee the policy will not lapse.
 - (d) An exclusion due to terrorism is not permitted.
- G.2) Accidental Death Benefit
 - (a) Any accidental death benefit must comply with Section IV(B) of Circular Letter No. 4 (1963)
 - (b) Any exclusion based on the taking of drugs excludes those drugs prescribed by a member of the medical profession.
 - (c) An exclusion due to terrorism is not permitted.
- G.3) Guaranteed Insurability Rider
 - (a) Any guaranteed insurability benefit must comply with Section IV(C) of Circular Letter No. 4 (1963)
- G.4) Spouse or Other Insured Term Rider
 - (a) In the event of the suicide of the insured under the base policy, the rider must provide for the coverage for the spouse to continue either under the rider or through a conversion provision.
 - (b) If the spouse is granted a conversion benefit to continue coverage upon the death of the base insured, then the spouse must be given at least 30 days to elect such conversion.
 - (c) For children term riders the class of eligible children defined at issue is consistent with the class of eligible children defined after issue.
 - (d) In the event of the suicide of the insured under the base policy, the rider must provide for the coverage for the eligible children to continue either under the rider or through a conversion provision.
 - (e) If the eligible children are granted a conversion benefit to continue coverage upon the death of the base insured, then the eligible children must be given at least 30 days to elect such conversion.
 - (f) An exclusion due to terrorism is not permitted.

II.H) Dividend Recognition Issues

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

II.I) Policies For The Section 403(b) Market

- I.1) Compliance with Circular Letter 16 (1993).
- I.2) Compliance with Section 3203(a)(8)(J) and Section 4221(q).
- I.3) Policy loan provisions should not be deleted but revised to comply with Section 72(p) of the Internal Revenue Code.
- I.4) Disclosure form required by Section 3209(j).

II.J) Minors

- J.1) Compliance with Section 3207.
 - (a) Policies issued on the lives of minors (under the age of 14 ½) need to be in compliance with the monetary limitations of Section 3207. Such limitations should be set out in an endorsement to be attached to the policy when the policy provides for coverage on the life of the minor.
 - (b) Grandparent exception to the monetary limitations. Section 3207(d).

II.K) Special Requirements for Policies with All Charges Expressed as a Percent of the Account Value

- K.1) Partial Withdrawals
There must be a disclosure statement in the partial withdrawal provision and the death benefit provision of the contract regarding adjustment to the death benefit following partial withdrawals. The insurer should justify any adjustment other than a pro rata reduction. Please note that since this is a solvency issue, this requirement is extraterritorial. (Based on section 3201(c)(2))
- K.2) Mortality Charges
The maximum mortality charges must be based on a traditional net amount at risk formula using a table in compliance with 11 NYCRR 54.7(b)(4).

II.L) Variable Material

The variable funds in the Separate Account should be set forth in the policy on either the policy specification page or the application to be attached to and made part of the policy. The funds should be bracketed to denote variable material. A memorandum of variable material identified as a "List of Funds" that lists only the current investment options (and related material) should be submitted for this purpose. See Additional Guidance on Variable Material for Individual Products (08/08/2008) that can be found on our website. When funds are added or deleted or changed, the Company should send in a revised List of Funds. A copy of the approval letter from the Department's Life Bureau in New York City for the amended Plan of Operations or if such approval has not been received a copy of the Department's acknowledgement letter for that filing should accompany the updated informational filing. Please note that the new funds cannot be utilized until the Life Bureau in New York City has approved the Plan of Operations.

III) Separate Account Plan of Operations

Domiciled and foreign insurers must file and gain approval for their plan of operation or amendment to an approved plan of operation of separate accounts or investment policies offered under the contract. (Section 4240(e)). A policy form cannot be marketed or issued until the Plan of Operations has been approved. A policy form

however can be approved contingent upon the Company's receipt of the approval of the Plan of Operations. The Company should forward a copy of that letter to be added to the file.

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

IV) Special Filing Situations.

IV.A) Interest Rates for the Fixed Account

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