



**Group Variable Universal Life Insurance Product Outline  
(Last Updated October 11, 2013)**

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## **Product Outline: Group Variable Universal Life Insurance (Last Updated October 11, 2013)**

This outline is current as of March 4, 2019. 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.

All citations herein are to the New York State Insurance Law unless otherwise stated.

### **I) Scope**

This product outline applies to all group variable universal life insurance policies and certificates delivered or issued for delivery in New York. This outline replaces the Group Variable Universal Life Insurance Product Outline last updated 09/09/02.

For purposes of this outline, language required in the group policy is also required for group certificates, unless the context clearly indicates otherwise. In general, group policy provisions that affect the rights and benefits of certificateholders must also be included in the group certificates. The Department has approved group policies which incorporate the provisions of the attached certificates.

The enabling legislation for universal life insurance (Chapter 627 of the Laws of 1982) refers only to individual life insurance policies. See Section 4232(b) of the Insurance Law. We have permitted group variable universal life insurance to be sold in New York as long as the certificates delivered in this state comply with the requirements applicable to individual variable universal life insurance except where the Superintendent has determined that such requirements are not appropriate

### **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.**

##### **A.4) Qualification to Write Variable Life Insurance**

An insurer must be qualified to issue variable life insurance policies in accordance with the requirements of Section 54.2 of Regulation 77. A plan of operations must be filed with the Life Bureau's New York City office. Section 4240(e); Section 54.2 of Regulation 77.

##### **A.5) Application of General Account Standards**

Except as otherwise provided by the Superintendent, the filing and approval requirements applicable to group general account life insurance policies and certificates shall, to the extent appropriate, be applicable to group variable universal life insurance policies and certificates. Section 54.5 of Regulation 77.

A.6) Non-guaranteed elements

Group policies and certificates with cost or benefit elements at the discretion of the insurer are not required to be participating policies because of the exemption provided by Section 4231(g)(1)(C) for policies that comply with 4232(b). See Section 54.5 of Regulation 77. If a group policy and certificate does not have elements at the discretion of the insurer, requirements related to discretionary elements are not applicable.

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.
- (e) Group policies and certificates with secondary guarantees may be submitted under the Circular Letter No. 6 (2004) certified process if the submission includes a certification pursuant to Section 98.9(c)(2)(x)(j) of Regulation 147. See "Important Notice Regarding Universal Life Insurance with Secondary Guarantees" dated 03/08/2013, available on the Department's website.
- (f) Group policies and certificates where the non-forfeiture values are less than the minimum non-forfeiture values permitted under individual life standards in New York may not be submitted for approval under the certified process of Circular Letter No. 6 (2004).

#### 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.
- (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

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

## B.6) Pre-filed Insurance Coverage

Circular Letter No. 1 (1964) permits insurers to provide or assume risk for group life coverage prior to the filing or approval of such forms. The conditions include the following:

- (a) Immediate coverage requested to meet specific need of a policyholder.
- (b) Insurer has reasonable expectation of approval or acceptance for filing. The reasonable expectation is usually based on the nature and extent of benefits provided and the similarity of the form (or provisions in the form) to other previously approved forms (or provisions) for the insurer or other insurers.
- (c) Confirmation letter sent to the policyholder by the insurer stating:
  - (i) the nature and extent of benefits or change in benefits;
  - (ii) that the forms may be executed and issued for delivery only after filing with or approval by the department;
  - (iii) an understanding that, if such forms are not filed or approved or are disapproved, the parties will be returned to status quo insofar as possible, or the coverage will be modified retroactively to meet all requirements necessary for approval; and
  - (iv) the effective date of coverage (Best Practice).
- (d) Department notification:
  - (i) A statement explaining the circumstances and reasons for delay in submitting forms must be submitted within nine months for group life insurance
  - (ii) A follow-up statement must be submitted every six months until the form is submitted. If the reason for the delay is unacceptable, the Department may pursue a violation under Section 4241 for willful violation of the prior approval requirement.
- (e) Recommended Practice:
  - (i) It is recommended that insurers notify the Department of coverage within 30 days (i.e., copy of the confirmation letter) of coverage and submit forms within six months, notwithstanding the twelve month period noted in Circular Letter No. 1 (1964). (Best Practice).
  - (ii) Insurers should review pre-filings periodically (monthly) to verify compliance with conditions for pre-filing.
  - (iii) Insurers should vigorously pursue approval (or acceptance for out-of-state filings) of pre-filed cases after forms have been submitted to mitigate harm if forms are found not to comply with applicable requirements.

## 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). Unless the forms are to be used for an insert page method, 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 may be separately approved as a different form with a different form number. We do not permit the company's use of the matrix or modular approach that identifies benefit provisions within group policy and certificate forms with separate form numbers.

#### C.3) Hypothetical Data

All blank spaces for group policy and certificate forms, except applications and enrollment forms, must be filled in with hypothetical data. Section I.E.1 of Circular Letter No. 6 (1963). We would encourage the inclusion of hypothetical data in applications and enrollment forms.

#### C.4) Application and Enrollment Forms

- (a) The application and enrollment forms to be used with the group policy and certificate forms must be approved forms. When submitting a group policy or certificate form to which a copy of the application or enrollment form will be attached when issued, the form number and Department file number(s) of the previously approved application and enrollment form must be supplied. If the application or enrollment form has not been approved, the application or enrollment form must be submitted with the group policy and certificate forms for approval. If the application or enrollment form 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 enrollment form and may, at the insurer's option, also be included in the application. Section 3204.
- (c) The insurer must retain information in its records concerning which approved application and enrollment forms are being used or has been used with the group policy and certificate and the type of underwriting utilized. Such information must be available upon Department request. See Regulation 152.
- (d) If either the amount or duration of the death benefit may vary under specified conditions, the application and enrollment forms shall contain a prominent statement to that effect. Section 54.10(a) of Regulation 77.
- (e) The application and enrollment forms shall contain prominent statements that certificate values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees). Section 54.10(b) of Regulation 77.

- (f) In the case of a variable endowment group policy and certificate, the application and enrollment form shall contain a prominent statement that the amount of the endowment payable at maturity is not guaranteed but is dependent upon the then cash surrender value (subject to any specified minimum guarantees). Section 54.10(c) of Regulation 77.
- (g) The application and enrollment forms shall contain a prominent statement, in the case of a private placement group variable universal life policy, that due to the illiquid nature of the investment options, the payment of the death benefit, the cash surrender value, certificate loans, partial withdrawals or partial surrenders, as applicable, may be delayed. The statement shall advise the applicant to refer to the group policy and certificate for further details on any delay of payments. Section 54.10(d) of Regulation 77.
- (h) The application and enrollment forms shall contain a notice that the following are available upon request: Illustrations of benefits, including death benefits, certificate values and cash surrender values. Such illustrations shall be in a form and content acceptable to the Superintendent. Section 54.10(e) of Regulation 77.

**NOTE:** An insurer must obtain a written acknowledgement of receipt of a private placement offering memorandum or a prospectus from the applicant coincident with or prior to the execution of the application and enrollment form in accordance with Section 54.9 of Regulation 77. The prospectus must also comply with the requirements of Section 54.9 of Regulation 77.

#### C.5) Final Format

Group policy and certificate 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
- (f) specific to the file submitted for approval by including form number(s) or
- (g) generally applicable to all 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.

#### C.8) Incorporations by Reference

All incorporations by reference should be attached to the forms and submitted for approval or if previously approved, accompany the submission. See Sections 3204 and 3201 and Circular Letter No. 4 (1963), Guidelines for Examination of Group Life Forms at Section I. B.12.

#### C.9) Special Rules for Combination Submissions

(a) Combination submissions are usually comprised of a group life insurance policy and certificate that provide one or more types of accident and health insurance benefits in addition to the principal life insurance benefit. Combination submissions may also include group application and enrollment forms to apply for both life insurance and accident and health insurance coverage.

(i) To simplify and expedite the review process, the addition of the accident and health insurance benefits to the life insurance group policy and certificates should be done using a separate rider or insert page form. The accident and health insurance rider or insert page form must have a unique form number to distinguish it from the underlying life insurance policy and certificate forms. The group policy and certificate, riders and insert pages should be such that those pertaining to life insurance contain no accident and health provisions and the policy/certificate, riders and insert pages that pertain to accident and health insurance contain no life insurance provisions. Forms that do not comply with this filing procedure will not be accepted, except as provided in section (c) below.

(ii) The group policy and certificate forms dealing with life insurance should be submitted to the Life Bureau only and the forms dealing with accident and health insurance should be submitted to the Health Bureau only. The forms submitted to the Health Bureau must be accompanied by the requisite actuarial memorandum and rate manual pages.

(b) Whether accidental death benefits should be submitted to the Life Bureau or to the Health Bureau will depend on the specifics of the benefit(s) being provided.

(i) If the accidental death benefit is provided in conjunction with life insurance and does not include dismemberment, it is life insurance and should be submitted to the Life Bureau only. An additional benefit in the event of death by accident is defined as life insurance under Section 1113(a)(1) of the Insurance Law.

(ii) If the accidental death benefit is a stand-alone benefit that can be purchased or maintained independently of life insurance coverage or if the benefit includes dismemberment, it is accident and health insurance and should be submitted to the Health Bureau only. Accident insurance

benefits are recognized under Section 1113(a)(3) of the Insurance Law and Section 52.9 of Regulation No. 62 as a type of accident and health insurance.

- (c) Application and enrollment forms that may be used to apply for both group life insurance and accident and health insurance coverage must be submitted to both the Life Bureau and to the Health Bureau for review and approval. Also, any riders, endorsements or revised memoranda of variable material to be used with previously approved combination forms must be submitted to both Bureaus.
  - (i) The submission letter to each Bureau should clearly indicate that the form may be used with both group life insurance and accident and health insurance. The submission letter should also state that an identical submission of the form has been made to both Bureaus. We recommend that the company first file and obtain approval from the Health Bureau prior to filing with the Life Bureau
  - (ii) Any correspondence from the company during the course of the submission and any revised forms must be provided to both Bureaus.
  - (iii) Each Bureau will send a separate approval letter to the company. The form may not be used until approval of the same version has been received from both Bureaus.
  - (iv) It is the responsibility of the company making the submission to make sure that the same version of the form is approved by both Bureaus. Since each Bureau offers a variety of expedited submission methods and maintains separate filing queues, it may not be possible for both Bureaus to review the submissions simultaneously. For example, if the company uses an expedited process with one of the Bureaus and obtains an approval before the other Bureau has had an opportunity to review the form and the second Bureau requests changes to the form; the revised version of the form will need to be resubmitted to the first Bureau for approval. The only version of the form that may be used is the version that has been approved by both Bureaus.

#### II.D) Submission Letter Requirements/SERFF Submissions

For SERFF submissions, the Life Bureau no longer requires that a separate signed cover letter be included with submissions. Instead, for SERFF filings, 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.

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 are 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 form.
- (f) If the form is other than a group policy or certificate (i.e. rider, endorsement, or insert page), give the form number of the group policy or certificate 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 group policies or certificates.
- (g) 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 group policy and certificate 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, Internal Revenue Code (IRC) 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.
- (c) COLI Market  
If the group policy and certificate will be issued in the COLI market, please refer to Section 3205 and the COLI Product Outline on the Department's website.

#### D.4) Sex-Distinct/Unisex

Submission letters must advise whether the group policy and certificate are sex-distinct or unisex or both. If sex-distinct, the letter must confirm that the group policy and certificate 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 group policy and certificate endorsement or a separate unisex group policy and certificate to be used in such cases. If a previously approved unisex endorsement will be used with the group policy or certificate for Norris or Title VII situations, the submission letter should so state (provide the form number and date of approval).

#### D.5) Noncompliance Explanation

If the group policy or certificate 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.6) Informational Filings

- (a) An informational filing should 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".
- (c) Informational filings about changes in the List of Funds should follow the instructions in "Filing Guidance on Changes in the Investment Options Of a Separate Account for Group and Individual Variable Products". It is available on the Department's website.

#### D.7) Resubmissions

If the group policy or certificate has been previously submitted to the Department and the file was closed, any resubmission of the group policy or certificate to the Department must reference the Department 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.

#### D.8) Policy Illustration

The submission letter must state whether the group policy and certificate forms are to be marketed with or without an illustration. Section 3209(I).

**NOTE:** Pursuant to Sections 4231 and 4232, no sales illustration, preliminary information or certificate summary shall depict a persistency bonus, a specified additional amount or specified reduction in mortality costs or expense costs in a specific certificate year, after the first certificate year, unless such bonus, additional amount or reduction is guaranteed in the group policy and certificate. Section 53-3.2 (d) of Regulation 74.

**NOTE:** Any reductions in current expense, mortality or risk charges and any additional credits scheduled to take effect after the first certificate year may be illustrated. If such reductions are not guaranteed in the group policy and certificate, the illustration must clearly address the non-guaranteed nature of the reduction or credits in a manner acceptable to the Superintendent. The portion of the illustration which relates to the reductions and the non-guaranteed nature of the reductions must be included in the submission.

#### D.9) Other Submission Requirements

- (a) When the group policy and certificate forms are designed as insert pages, the insurer must submit a statement of the mandatory pages which must always be included, a list of any optional pages which may be included and application and enrollment forms, together with an explanation of how the form will be used. Previously approved forms should be identified by form number and approval date. See Section I.G.8 of Circular Letter No. 6 (1963). See also Circular Letter No. 4 (1963), Guidelines for Examination of Group Life Forms at Section I.A.2. Copies of the previously approved group policy and certificate forms into which the insert pages will be incorporated must also be submitted for informational purposes if said group policy or certificate was approved prior to 1998.
- (b) Identify the applicable paragraph(s) in section 4216(b) which best describes the group or groups for which the forms are intended. The statement that the forms are for use with all eligible groups should be avoided.
- (c) Identify the eligibility classes covered, as defined in Section 4216 (i.e., conditions pertaining to employment and family status) as well as the rate classes (e.g., age, gender, smoker status, family status). See Circular Letter No. 4 (1963), Guidelines for Examination of Group Life Forms at Section I.B.2.
- (d) Include a statement as to whether the group policy is contributory or non-contributory. If the group policy is contributory for some insureds, or for some

levels of insurance, or under some conditions, indicate the situations or conditions under which contributions from the insureds would be permitted or required. (For example, a group policy may provide non-contributory basic life and optional contributory supplemental life insurance).

- (e) Include a statement as to whether the group policy will be delivered or issued for delivery in New York or outside of New York. In addition, include a statement as to whether the certificate will be delivered or deemed delivered in New York or outside of New York.
- (f) The submission letter should indicate whether non-forfeiture values are less than the minimum non-forfeiture values permitted under individual life standards in New York. The Department will review such submissions on a case by case basis. Filing for approval under the certified process of Circular Letter No. 6 (2004) is not permitted in these cases.

## II.E) Attachments

### E.1) Readability Certification

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

### E.2) Policy Illustration Certification

If the group policy and certificates will be marketed with an illustration intended to comply with Regulation 74, in lieu of complying with preliminary information and certificate summary requirements of Section 3209, the certification required by Section 53-3.7(d) of Regulation 74 must be submitted.

### E.3) Actuarial Nonforfeiture Certification

- (a) The non-forfeiture requirements for group life insurance are at the discretion of the Superintendent. (Section 3220(a)(11)). For group universal life insurance, the Department has accepted nonforfeiture values that are not less than the minimums required by New York Laws and Regulations for individual universal life insurance.
- (b) If the forms' nonforfeiture values meet the individual nonforfeiture standards a certification and memorandum are required. The certification must be signed and dated by an actuary who is a member in good standing of the American Academy of Actuaries or the Society of Actuaries that the group policy and certificate are in compliance with the nonforfeiture requirements of the New York Insurance Law and regulations applicable to individual variable 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.



- (c) If the forms' nonforfeiture values may be less than the individual standards, provide an actuarial memorandum on the nonforfeiture values. Approvals under Circular Letter No. 6 (2004) are not permitted in these cases. The memorandum must demonstrate that the nonforfeiture provision(s) is (are) equitable to the insured persons and to the policyholder and provide a detailed explanation of the method and calculation of nonforfeiture values so that the Department can determine in all circumstances what nonforfeiture values the forms will provide. Sample projections (including beginning and ending account value and cash surrender value and all policy cost factors) should be provided so that the account value mechanics can be fully understood.

#### E.4) Variable Material

- (a) The submission must include a separate detailed statement of variability for any variable material other than hypothetical data. Illustrative material may be used for items which may vary from case to case such as names, dates, premiums and schedules for determining the amount of insurance for each person insured. Section I.F.4 of Circular Letter No. 6 (1963). Material in forms other than illustrative items may vary if the filing includes a statement of variability. The statement of variability is subject to approval and must comply with the filing guidance on the Department's website.
- (b) Variable material must be clearly indicated in forms (e.g., with bracketing or underlining). How material is designated as variable should be stated in the submission letter and in the explanatory statement. The statement of variability must clearly indicate the nature and scope of the variations to be used for the variable portions of provisions such as insuring clauses, benefit provisions, restrictions, eligibility requirements, and termination of coverage provisions. Section I.F.4 of Circular Letter No. 6 (1963).
- (c) The statement of variability should be drafted in sufficient detail to determine the scope of variation for each variable item. Where text is variable, the statement of variability should include alternative text and/or an explanation of when the bracketed text will be omitted from the form. Similarly, variable numerical items should include the range (i.e. minimum and maximum) of variation. It should be clear which item in the statement of variability corresponds to which variable item in the form. One option would be to number the items in the statement of variability and place the number of the item next to the corresponding variable item in the form.
  - (i) A statement of variability that the variations "will conform to law" or "as requested by the policyholder" is not acceptable.
  - (ii) The statement of variability and subsequent amendments to the explanation of variable material are subject to approval.
  - (iii) If a form is submitted with areas denoted as variable but without a statement of variability, only the information appearing in the form may be used, The use of any other variation would be considered use of an unapproved form.
  - (iv) The statement of variability must include a revision date.

- (d) Open-face riders or endorsements may be submitted for approval for general use in amending variable material within the limitations of Section I.F.4 of Circular Letter No. 6 (1963). However, any text that will be used in the rider other than that contained in the approved statement of variability must be provided.

#### E.5) Statement on the Method of Computation of Values

If a detailed statement of the method of computation of the cash surrender values and other nonforfeiture benefits shown in the group policy and certificate is not stated therein, such detailed statement must be filed with the submission. Section 54.7 of Regulation 77 (introductory paragraph).

### II.F) Key References

#### F.1) Insurance Law

Sections 336, 2123, 3102, 3105, 3201, 3203, 3204, 3205, 3206, 3207, 3209, 3210, 3211, 3212, 3214, 3215, 3220, 3227, 4216, 4222, 4231, 4232, and 4240.

#### F.2) Regulations

Regulation 34-A, Regulation 60, Regulation 74, Regulation 77, Regulation 113, Regulation 123, Regulation 136, Regulation 147, Regulation 149, and Regulation 152.

#### 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) and Internal Revenue Code Section 7702.

### III) Group Variable Universal Life

#### III.A) Cover Page

##### A.1) Insurer's Name and Address

- (a) The licensed New York insurer's name must appear on the cover page (front or back) of the group policy and certificate 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 of the group policy and certificate, 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 group policies and certificates. 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 of the group policy and certificate (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 of the group policy and certificate (insurance group designation, name of the licensed parent company or licensed affiliate, group policyholder, 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 group policy and certificate. 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 and enrollment forms 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 group policy or certificate forms. Section 3201(c)(1).

#### A.2) Free Look Provision

- (a) Section 3220 of the Insurance Law does not provide for a free look provision. However, since group variable universal life insurance is not funded entirely by policyholder contributions, we have not approved group policy and certificate forms that fail to grant certificateholders free look rights complying with Section 3203(a)(11) of the Insurance Law. See Section 54.6(b)(1)(v) of Regulation 77. Such provisions may also be required for groups that are not recognized in Section 4216 (b).
- (b) A Free Look Period of not less than 10 nor more than 30 days from certificate delivery whereby the certificateholder may receive a full refund is required in accordance with Section 3203(a)(11). See also Section 54.6(b)(1)(v) of Regulation 77. 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.
- (c) The free look provision must be clearly explained on the cover page of the certificate. A free look provision may be included in the group policy.

#### 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 (e.g. group variable universal life) must appear on the cover page of the group policy and certificate. The word "Group" must appear as part of the group policy and certificate 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 group policy and certificate 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 Sections 3203(a)(4) and 3204(a)(1).

#### 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.

#### A.6) Disclosures

- (a) If the group policy and certificate provide that the death benefit is not available in a lump sum, the cover page of the policy and certificate must disclose this information.
- (b) The cover page or pages corresponding to the cover page of each such group policy and certificate shall contain:
  - (i) a prominent statement that the amount or duration of death benefit may be variable or fixed under specified conditions and may increase or decrease;
  - (ii) a prominent statement that certificate values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;
  - (iii) a statement describing any minimum death benefit; and
  - (iv) the method, or a reference to the group policy and certificate provisions, which describes the method for determining the amount of insurance payable at death.

Section 54.6(b)(1) of Regulation 77.

### 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 specifications page for participating group policies and certificates must state that dividends are not guaranteed and the insurer has the right to change the amount of dividend to be credited 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. Section 54.6(a)(1) of Regulation 77. 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 certificate the amount of cost of insurance or other expense charges deducted under the certificate 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 certificate values must be specified. Section 3203(a)(17).
- B.6) Any limitation on the crediting of additional interest on a portion of the value or cash surrender value must be set forth (i.e., crediting excess interest on a portion of the cash value over and above a certain amount). Section 3203(a)(12).
- B.7) Any surrender charges and partial withdrawal fees must be described or set forth in a table. Section 3204(a)(1). For scheduled premium policies, any surrender charges shall be shown in a table in the group policy and certificate or otherwise described in the group policy and certificate. Section 54.6(b)(9) of Regulation 77.
- B.8) If the group policy and certificate contain 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 group policy and certificate. 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 group policy and certificate provide 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 certificate might not mature, even if planned premiums are paid, due to the fact that current cost of insurance and interest rates are not guaranteed, certificate values may increase or decrease in accordance with the investment performance of the funds in the Separate Account, the current expense loads of the funds in the Separate Account may change, certificate 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) and 3203(a)(16).
- B.12) If a listing of the investment options is included, it should be bracketed or otherwise denoted as variable material. A separate memorandum of variable material identified as List of Funds that lists only the current investment options (and related material) must also be provided. See the guidance documents available on the Department’s website.

### III.C) Table of Contents

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

### III.D) Standard Provisions

Group policies and certificates must contain in substance the following provision or provisions which in the opinion of the Superintendent are more favorable to certificateholders or not less favorable to certificateholders and more favorable to policyholders.

#### D.1) Entire Contract

- (a) Section 3220(a)(2) requires a provision in the group policy and certificate stating: "The rights of any policyholder, insured or beneficiary shall not be affected by any provision not contained: (a) in the policy, riders, endorsements, or amendments signed by the policyholder and the insurer, (b) in the policyholder's application attached to the policy, or (c) in any individual statement submitted with the application."
- (b) Section 3204(a) requires that the approved forms contain the entire contract between the parties. The entire contract provision in the both the group policy and certificate should include reference to the certificate. The group policy and certificate shall not include language stating that the certificate merely summarizes the terms of the group policy. The group policy and certificate shall not state that the terms of the group policy control in the event of a conflict between the group policy and the certificate, especially where coverage is voluntary and the certificateholder pays part or all of the premium. To the extent that the terms conflict, the forms can be viewed to be misleading in violation of Section 3201(c)(1).
- (c) The application and/or enrollment must be attached to the group policy and certificate if it is to be part of the entire contract. Section 3203(a)(4).
- (d) Nothing can be incorporated by reference unless a copy is endorsed upon or attached to the group policy and certificate. Section 3204(a)(1). Circular Letter No. 4 (1963), Guidelines for Examination of Group Life Forms at Section I.B.12 provides that incorporation by reference is governed by Section 3204(a). References to other sources to determine factual situations, such as facts of employee status, membership in a collective bargaining unit or a union, other benefits, salary, termination of employment or membership, etc., are not incorporations by reference.
- (e) 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).
- (f) The entire contract provision may not include the words "in the absence of fraud." Section II.H.7 of Circular Letter No. 4 (1963).
- (g) The contract may not be modified, nor may any rights or requirements be waived, except in a writing signed by a person specified by the insurer in the group policy and certificate. Section 3204(a)(3).
- (h) Note: a table or schedule of rates, premiums or other payments which is on file with the Superintendent for use in connection with such group policy and certificate is excepted from the requirements of Section 3204(a).

- (i) No insertion or other alteration of any written application shall be made by any person other than the applicant without his/her written consent, except that insertions may be made by the insurer for administrative purposes only in such a manner as to indicate that the insertions are not be ascribed to the applicant. Section 3204 (d).
- (j) Changes to the Entire Contract (Riders/Endorsements)
  - (i) Riders and Endorsements are forms which must be submitted to the Department for approval in accordance with Section 3201.
  - (ii) All riders and endorsements must contain the name of the insurer, the signature of an officer of the insurer, and the effective date of the rider. See Circular Letter No. 4 (1963), Guidelines for Examination of Group Life Forms at Section III.1.
  - (iii) Any policy rider or endorsement that affects the rights and benefits of the certificateholder, whether positively or negatively, must have a corresponding certificate rider or endorsement which will be delivered to the certificateholder.
  - (iv) Except for riders and endorsements by which the insurer exercises a specifically reserved right under the group policy or which concern only administrative changes, all riders and endorsements which may be added to the group policy after date of issue and which diminish rights, benefits and/or coverage should provide for signed acceptance by the group policyholder. In addition, written certificateholder consent must be obtained for changes that reduce or eliminate rights or benefits of the certificateholder in the following cases:
    - (I) the certificateholder pays a part or all of the premium and the group policy was issued outside of New York to a group not recognized under section 4216(b). Section 59.4(b) of Regulation 123.
    - (II) If the group is a discretionary group approved pursuant to section 4216(b)(14) the Superintendent may require such certificateholder consent as a condition of approving the discretionary group.
    - (III) If the certificateholder pays a part or all of the premium and the group is other than as described above, certificateholder consent must be obtained unless the certificate and enrollment forms contain prominent disclosure indicating that: a) the group policy permits the group policyholder to change, reduce, restrict or terminate the certificateholder's rights or benefits under the group policy without the certificateholder's consent and b) such change, reduction, restriction or termination may occur at a time when the certificateholder's health status has changed and may affect his or her ability to procure individual coverage. Section 3201(c).

## D.2) Grace Period

- (a) For flexible premium group policies and certificates, the group policy and certificate must include a provision for a grace period beginning on the certificate processing day when the total charges authorized by the certificate that are necessary to keep the certificate in force until the next certificate processing day exceed, unless otherwise provided in the group policy and certificate, the net cash surrender value under the certificate to pay such charges in accordance with the terms of the group policy and certificate. Such grace period shall end on a date not less than 61 days after the certificate processing day on which the insurer determined that an insufficiency had occurred. The group policy and certificate must provide that the insurer shall send the Report to Policyholder and Certificateholder required by Section 54.11(c) of Regulation 77 within 30 days of such certificate processing day. Section 54.6(b)(3)(i) of Regulation 77. The group policy and certificate must also provide that the death benefit payable during the grace period will equal the death benefit in effect immediately prior to such period less any overdue charges. If the certificate processing days occur monthly, the insurer may require the payment of a premium sufficient to keep the certificate in force for three months beginning with the certificate processing day on which, unless otherwise provided in the group policy and certificate, the net cash surrender value under the certificate was insufficient to pay all charges authorized by the group policy and certificate that are necessary to keep such certificate in force until the next certificate processing day. Section 54.6(b)(3)(ii) of Regulation 77.
- (b) For scheduled premium group policies and certificates, the group policy and certificate must include a provision for a grace period either of 30 days or one month from the premium due date, which shall provide that where the premium is paid within the grace period, certificate values will be the same as if the premium had been paid on or before the due date. The group policy and certificate must also provide that where the insured dies during the grace period without having paid the premium, the certificate values will be the same as if the premium had been paid on or before the due date, except for the deduction of the overdue premium. Section 54.6(b)(2) of Regulation 77.
- (c) The group policy and certificate 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 certificate to the end of the certificate month in which such death occurred; and
  - (ii) if death occurs during a period for which the amount needed to continue the certificate has been applied, the insurer must add to the certificate proceeds a refund of such amount applied for any period beyond the certificate month in which the death occurred.

Section 3203(a)(2); Sections 54.6(b)(2) and 54.6(b)(3) of Regulation 77.

**NOTE:** Interest may not be added to any overdue premium.

### D.3) Incontestability

- (a) Section 3220(a)(1) requires a provision in the group policy and certificate that no statement made by any person insured under the policy relating to his or her



insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such person's lifetime and in no event unless a written instrument signed by such person, a copy of which is or has been furnished to such person or to his or her beneficiary.

- (b) Section 3220(a)(1) requires a provision stating the policy is incontestable after two years from its date of issue, except for non-payment of premiums by the policyholder.
  - (i) Pursuant to Section 3203(a)(3), the policy should be incontestable after being in force for two years *during the life of the insured* for a period of two years. We would not object to the italicized language.
  - (ii) Incontestability cuts off a claim of fraud in the application and enrollment form. Accordingly, we object to any qualification of the incontestability provision with language such as, "in the absence of fraud".
- (c) Section 54.6(b)(13) of Regulation 77 provides that a group 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. Any increase in the death benefit after issue, if requested by the owner and subject to evidence of insurability, shall be contestable during the lifetime of the insured for two years from date of increase.
- (d) If the benefit provided is related to life insurance or provided in conjunction with life insurance (e.g., acceleration of the benefit, continuation, portability, etc.), the incontestability provision from Section 3220 (a)(1) applies to that benefit.
- (e) If there will be a renewed contestability period for applied for increases, the group policy and certificate must clearly state that such contestability period will be applicable only to "applied for" increases and will be applicable only to the amount of the applied for increase. The contestability period for applied for increases may not extend beyond 2 years from the effective date of the applied for increase.
- (f) Contests must be based on material misrepresentations in accordance with Section 3105(b).
- (g) Exceptions to the incontestability provision are permitted for non-payment of premium, violation of group policy and certificate 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).

#### D.4) Reinstatement

- (a) For scheduled premium group policies and certificates, the group policy and certificate must include a provision that the certificate will be reinstated at any time within three years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of

extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and the payment of an amount not exceeding the greater of subparagraphs (i) or (ii), plus (iii):

- (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; and
- (iii) all overdue premiums for incidental insurance benefits, with interest at a rate not exceeding six percent per annum compounded annually.

Section 54.6(b)(4) of Regulation 77.

- (b) For group policies and certificates 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) 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 cannot exceed the payment of an amount sufficient to keep the certificate in force for no more than three months after charging for any coverage provided during the grace period.

Based on Section 3201(c)(2).

- (c) For all reinstatement provisions:
  - (i) The group policy and certificate 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.5) Incontestability After Reinstatement

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

#### D.6) Permitted Exclusions

Sections 3203(b) and (c) of the Insurance Law identify permissible exclusions and restrictions of liability for individual life insurance. Regulation 62 sets forth permissible exclusions and restrictions of liability for accident and health benefits. In the absence of any guidance in Section 3220, we have permitted insurers to utilize the Section 3203(b) and (c) exclusions in the group life insurance context, notwithstanding Section 3203(e). We have also, on a limited basis as set forth below, permitted some of the Regulation 62 exclusions to be used in group life insurance.

(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 certificate has been in force for less than two years, the insurer shall pay the amount of the gross premiums charged on the certificate 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 certificate in accordance with Section 3203(b)(1)(B) or if the insured dies as a result of an intentionally self-inflicted injury within the first two years from the issue date of the certificate.
- (ii) The insurer shall pay the amount of the gross premiums charged on the certificate less dividends paid in cash or used in the payment of premiums thereon 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” except with respect to additional accidental death benefits. 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) The policy and certificate 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 certificate issue date. Section 54.6(c)(4) of Regulation 77. It must be clearly stated that the suicide provision will only apply to the applied for amount.
- (vi) Any individual 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. Section II.H.6 of Circular Letter No. 4 (1963).

(c) Aviation

- (i) An insurer may exclude or restrict liability in the event of death caused by aviation other than as a fare paying passenger on a scheduled or charter flight operated by a scheduled airline under conditions specified in the policy in accordance with Section 3203(b)(1)(C).Section 52.16 (c)(4)(iii) or Regulation 62.
- (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 certificate has been in force for less than two years, the insurer shall pay the amount of the gross premiums charged on the certificate 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 group policy and certificate, provided death occurs within two years from the issue date of the certificate. Section 3203(b)(1)(D).
- (ii) The insurer shall pay the amount of the gross premiums charged on the certificate less dividends paid and less any indebtedness, including interest due or accrued. Section 3203(b)(3).

(e) Extra-hazardous Activities

- (i) A group policy and certificate may exclude or restrict liability in the event of death resulting from extra-hazardous activities.
- (ii) If such an exclusion or restriction is included, it must provide a definition of "extra- hazardous activities." The definition may include aviation and related activities, such a sky-diving and parachuting and participation as a professional in athletics or sports. See section 52.2(i) of Regulation 62. We would consider inclusion of other activities on a case by case basis. Subject to the approval of the Department.

(f) War

- (i) An insurer may exclude or restrict liability in the event of death as a result of:
  - (IV) 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));
  - (V) 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));

- (VI) War or act of war, within two years from the date of issue of the certificate, if the cause of death occurs while the insured is outside the home area but is not serving in any armed forces or attached civilian unit, and death occurs outside the home area or within six months after the insured's return to the home area. (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 certificate, 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 group life insurance policy or certificate itself or by rider to the group policy and certificate.
- (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 certificate has been in force for less than two years, the insurer shall pay the amount of the gross premiums charged on the certificate 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 certificate less dividends paid and less any indebtedness, including interest due or accrued. Section 3203(b)(3).
- (vi) Any group life insurance policy or certificate 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 (certificate) 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 group life insurance policy and certificate itself or by rider to the group policy and certificate.

**NOTE:** In accordance with Section 336, the insurer must notify the Superintendent prior to issuing group life insurance policies and certificates which contain a war restriction or exclusion.

**NOTE:** An application or enrollment form to be used with a group policy and certificate containing a war restriction must have a notice that a war restriction is included in the group policy and certificate. Section 45.1 of Regulation 19.

- (g) 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.
- (h) If the group policy and certificate are issued pursuant to the NY Volunteer Firefighter's Benefit Law, the group policy and certificate must exclude:
  - (i) Death while in the line of duty resulting from intoxication of the volunteer firefighter,
  - (ii) Death in the line of duty resulting from the willful intention of the volunteer firefighter to bring about the injury or death of himself or another. N.Y. Volunteer Firefighter's Benefit Law Sections 1, 6, and 8.

#### D.7) Certificate Loans

- (a) A provision for loans after the certificate has been in force for three full years is required. Section 54.6(b)(10) of Regulation 77.
- (b) Loan value must be at least equal to 75 percent of the certificates' cash surrender value. Section 54.6(b)(10)(i) of Regulation 77.
- (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.

Section 54.6(b)(10)(ii) of Regulation 77 requires rate compliance with 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 group policy and certificate 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. See Section 54.5 of Regulation 77; 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  $\frac{1}{2}\%$  or more; and
    - (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 group policies and certificates providing for an adjustable rate must indicate that the certificate cannot lapse as a result of a change in the group policy and certificate loan interest rate during the certificate year of such change. Section 3206(e).

**Note:** The insurer must comply with the notice requirements for adjustable rate loans in Section 3206(d); Section 54.5 of Regulation 77.

- (f) Based on Section 3203(a)(8)(G), the group policy and certificate 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 group policy and certificate; and
  - (ii) subject to the Section 3206(e) requirement as described in (e)(iv) above, when the total indebtedness on the certificate including interest due or accrued, equals or exceeds the amount of the certificate's loan value, and if at least thirty days prior notice shall have been given in the manner provided in Section 3211, then the certificate shall terminate and become void.
- (g) The sole security for the loan shall be assignment or pledge of the certificate. Based on Section 3203(a)(8)(B).
- (h) For amounts to be paid from the general account, the group policy and certificate shall state that the insurer reserves the right to defer payment of loan

value, except to pay premiums, for six (6) months after receipt of the loan application. See Section 54.6(b)(8)(ii) of Regulation 77 and Section 4222. For amounts to be paid from the separate account, see Section III.E.7 of this Outline.

- (i) The group policy and certificate may specify a reasonable minimum amount which may be borrowed at any time, but such minimum shall not apply to any automatic premium loan provision. Section 54.6(b)(10)(vii) of Regulation 77.
- (j) An insurer may not restrict the number of loans taken out by the certificateholder except that the total indebtedness cannot exceed the certificate's loan value. Based on Section 3203(a)(8)(A). The insurer may require repayment of the previous loan with the new loan proceeds so that only one outstanding loan exists at a time.
- (k) Any indebtedness shall be deducted from the proceeds payable on death. Section 54.6(b)(10)(iii) of Regulation 77. Any indebtedness shall be deducted from the cash surrender value upon surrender or in determining any extended term nonforfeiture benefit. Section 54.6(b)(10)(iv) of Regulation 77. 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 group policy and certificate 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). Section 54.6(c)(3) of Regulation 77.
- (m) An insurer must credit on the loaned amount a rate at least equal to the loan interest rate less 2%, unless the Superintendent allows crediting of a lower rate of interest upon an insurer demonstrating a justification for such lower rate. See Section 54.6(b)(10)(xii) of Regulation 77. The Superintendent has permitted certain exceptions to the requirements of Section 54.6(b)(10)(xii) of Regulation 77. These exceptions are discussed in the Note at the end of Section III.D.7(s) of this Outline.
- (n) The group policy and certificate must state how a deposit not designated as a premium or loan repayment will be treated if a loan is outstanding.
- (o) If the certificate is in force under a paid up nonforfeiture option (other than paid up term or extended term), the policy loan provision must still be in effect. No certificate loan provision is required if the certificate is under the extended insurance nonforfeiture option. See Section 54.6(b)(10)(viii) of Regulation 77.
- (p) For scheduled premium group policies and certificates, whenever the indebtedness exceeds the cash surrender value, the group policy and certificate shall provide that the insurer shall give notice of any intent to cancel the certificate if the excess indebtedness is not repaid within 31 days after the date of mailing of such notice. For flexible premium group policies and certificates, whenever the total charges authorized by the group policy and certificate that are necessary to keep the certificate in force until the next following certificate processing day exceed, unless otherwise provided in the



group policy and certificate, the net cash surrender value under the certificate to pay such charges, a report must be sent to the certificateholder containing the information specified by Section 54.11(c) (i.e., the minimum payment required under the terms of the certificate to keep it in force and the length of the grace period for payment of such amount). See Section 54.6(b)(10)(v) of Regulation 77.

- (q) The group policy and certificate may include a provision that if at any time, so long as the certificate 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 certificateholder may increase such variable death benefit up to what it would have been if there has been no loan or withdrawal by paying an amount not exceeding 110 percent of the corresponding increase in certificate value and by furnishing such evidence of insurability as the insurer may request. See Section 54.6(b)(10)(vi) of Regulation 77.
- (r) The certificate loan provision shall be so constructed that variable life insurance certificateholders who have not exercised such provision are not disadvantaged by the exercise thereof. Section 54.6(b)(10)(ix) of Regulation 77.
- (s) Amounts paid to the certificateholders upon the exercise of any certificate 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 amounts for certificate loans from the general account. Section 54.6(b)(10)(x) of Regulation 77. The group policy and certificate shall describe how loans are charged against separate accounts and the effect on such accounts when a loan is made or repaid. Section 54.6(b)(10)(xi) of Regulation 77.

**NOTE:** The Superintendent has permitted exceptions to the requirements of Section 54.6(b)(10)(xii) of Regulation 77 in the following situations:

- (i) A stock insurer may provide for loans secured by the separate account, but where the amounts paid to the certificateholder are not withdrawn from the separate account. In this instance, the funds securing the loan would be credited with the results of the separate account.
- (ii) An insurer may provide for loans secured by an equity index account that includes a guarantee of at least principal (except for charges) where the amounts paid to the certificateholder are not withdrawn from the separate account. In this instance, the funds securing the loan would earn the results of the equity index account.
- (t) A group policy and certificate may include a provision allowing the certificateholder to elect in writing in the application or enrollment form for the certificate or thereafter an automatic premium loan on a basis not less favorable than that required of other certificate loans under Section 54.6(b)(10) of Regulation 77. Section 54.6(c)(3) of Regulation 77.
- (u) For a private placement group variable universal life insurance policy and certificate, there must be a provision stating that the payment of the certificate loan shall be made as expeditiously as possible but in no event later than

fifteen (15) months from the date the request for payment is received. Section 54.6(b)(16) of Regulation 77.

#### D.8) Participating Policies

- (a) Section 3203(a)(6) requires the group policy and certificate to state that the insurer annually ascertains and apportions any divisible surplus accruing on the policy.
- (b) Group policy and certificate 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 group policy and certificate. Section 3204. The Department has approved one-year term additions as an additional dividend option. The group policy and certificate may include the dividend options specified in Section 54.6(c)(1) of Regulation 77.
- (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 group policy and certificate. Section 3204. The amount of the dividend may be applied to provide paid-up amounts of additional general account or variable life insurance. Section 54.6(c)(1)(i) of Regulation 77.
- (e) Whenever one year term insurance is purchased by dividends in connection with a certificate it shall provide for an equitable adjustment in the event of termination of the certificate (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 group policy and certificate, 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 group policy and certificate should so state.

#### D.9) Misstatement of Age or Sex

- (a) Section 3220(a)(3) requires a provision in the group policy and certificate for the equitable adjustment of the premium, or if the amount of insurance depends on the age of the insured, for the equitable adjustment of the amount of insurance and the premium in the event of a misstatement of the age of the person insured. The forms should be clear as to what happens if the discovery of the misstatement occurs either at or after the death of the insured or prior to the death. 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).

- (b) The group policy and certificate should indicate that when a misstatement is discovered and the insured is alive then the group policy and certificate terms will be based on the correct age and/or sex (as applicable).
- (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).  
Note that products sold in the employer/employee market are generally subject to the Arizona v. Norris decision and must use unisex rates.
- (d) For survivorship forms, any adjustment applies to misstatement of age or sex for either or both insured persons. Section II.H.8 of Circular Letter No. 4 (1963).
- (e) The provision may provide for equitable adjustment of the premium or amount of insurance based on misstatement of facts in addition to age or sex, if premiums, benefits, or values differ depending upon those other factors, but adjustment based on those other factors is limited to the first two years that coverage is in force. Section 3220(a)(1).

#### D.10) Maturity Date

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

- (a) A certificate may be written with or without a maturity date. If the certificate has no maturity date or has a maturity date beyond age 120 then the following conditions must be satisfied:
  - (i) There must be a group policy and certificate provision to the effect that after age 120 there will be no cost of insurance charges or other charges except for:
    - (I) service charges (Section 54.7(b)(1)(iii) of Regulation 77); or
    - (II) administrative charges (Section 54.7(b)(1)(iv) of Regulation 77);  
and
    - (III) charges made as a reduction in investment return (Section 54.7(b)(1)(vii) of Regulation 77).
  - (ii) There must be a group policy and certificate provision to the effect that no further premium payment, except as necessary in order to prevent the certificate from lapsing, will be accepted after age 120.
  - (iii) If partial withdrawals are not available after age 120, the group policy and certificate must so state.
  - (iv) Certificate loans and loan repayments must be permitted.
- (b) There must be a provision in the group policy and certificate describing the relationship between payment of the planned premium and the maturity date (or if no maturity date, age 120).

- (c) The group policy and certificate may state: "There may be tax consequences to either surrendering the certificate on or after Age \_\_\_\_ [fill in appropriate age] or continuing the certificate 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 allow the disclosure to reference Age 121. See IRS Revenue Procedure 2010-28.
- (d) For the fixed account, if any, 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 certificate was issued.
- (e) The death benefit cannot be less than the cash value at the time of death.

#### D.11) Settlement Options

- (a) If the certificate proceeds can be paid out in fixed installment or annuity payments, there must be a table in the group policy and certificate. Section 54.6(b)(11) of Regulation 77. The guaranteed interest rate and mortality table being utilized for the tables should be identified in the group policy and certificate for disclosure purposes.
- (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 group policy and certificate 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.
- (c) Group policy and certificate 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).
- (d) Settlement options need not appear in the group policy and certificate. However, in light of Circular Letter 4 of 2012, in order for insurers to be able to offer settlement options, in addition to the payment of the full life insurance proceeds in a single check to the beneficiary, language needs to be included in the group policy and certificate forms 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 certificateholder 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 certificateholder or beneficiary and agreed to by us."

#### D.12) Account Value

- (a) The group policy and certificate must clearly indicate which cost factors are subject to adjustment. Section 3203(a)(12), Section 3203(a)(4) and Section 3204(a)(1); Section 54.6(b)(5) of Regulation 77. Mortality and expense risks shall be borne by the insurer. The mortality and expense charges shall be subject to the maximums stated in the group policy and certificate. More favorable charges, if any, must be credited to the certificate not less frequently than annually. Section 3203(a)(14); Section 54.6(a)(1) of Regulation 77.  
**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) The group policy and certificate 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. Sections 54.7, 54.6(a)(1) and 54.6(b)(5) of Regulation 77.
- (c) The group policy and certificate must provide a statement of the method used by the insurer in calculating actual certificate values. Section 3203(a)(12).
  - (i) The procedure for the crediting of interest to a fixed account's 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) The group policy and certificate must provide that additional amounts are nonforfeitable after the effective date of their crediting, except for any charges imposed under the group policy and certificate which are not greater than those allowed under Section 54.7 of Regulation 77 or any market value adjustment made pursuant to Section 4221(n-2). Section 54.5 of Regulation 77; Section 3203(a)(13).  
**NOTE:** For group policies and certificates with a fixed account, Section 54.7(b)(5)(ii), which permits forfeiture, upon surrender, of additional amounts associated with the fixed account that were credited in the last twelve (12) months, has been superseded by Section 3203(a)(13) which does not permit such forfeiture.
- (e) The group policy and certificate must state that additional amounts will be credited no less frequently than annually. Section 3203(a)(14)
- (f) If there is a possibility that two (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 group policy and certificate 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 two (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; Section 54.6(b)(5) of Regulation 77.

- (g) The group policy and certificate must include a summary of the method for computing the certificate value and the cash surrender value. Section 54.6(b)(9) of Regulation 77.
- (h) The group policy and certificate must include 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 group policy and certificate. Section 54.6(b)(5) of Regulation 77. Specifically, the procedure for the crediting of variable returns to the account value must be unambiguous; the order of application of charges and credits must be described; and all related terms (e.g., net asset value) must be fully defined.
- (i) The group policy and certificate must state the essential features of the procedures used to determine the dollar amount of the variable elements. Section 4240(a)(11)(A).
- (j) For scheduled premium group policies and certificates, a minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid (subject to the provisions of Section 54.6(b)(10) of Regulation 77). Section 54.6(a)(2) of Regulation 77.
- (k) Each group variable universal life insurance policy and certificate shall be credited with the full amount of the net investment return applied to the benefit base. Section 54.6(a)(4) of Regulation 77.

#### D.13) Separate Account

- (a) The group policy and certificate must contain a provision designating the separate account to be used and stating that the assets of such separate account shall be valued at least as often as any certificate benefits vary, but no less frequently than annually for private placement group variable universal life insurance and monthly for any other group variable universal life insurance. Sections 54.3(g) and 54.6(b)(6) of Regulation 77.
- (b) The certificate value and cash surrender value shall be determined no less frequently than annually for a private placement group variable universal life insurance policy and certificate and at least monthly for any other group variable universal life insurance policy and certificate. Section 54.7 of Regulation 77.
- (c) The separate account must comply with Section 54.3 of Regulation 77.
- (d) The group policy and certificate must include a provision that in the event of a material change in the investment policy of a separate account, any certificateholder objecting to such change shall have the option to convert, without evidence of insurability, to a general account life insurance certificate;

that the insurer will give appropriate notice to such objecting certificateholder of the options available; and that the option to convert is exercisable within sixty (60) days after (i) the effective date of such change in the investment policy or (ii) the receipt of the notice of the options available, whichever is later. Sections 54.4(c) and 54.6(b)(12) of Regulation 77.

**NOTE:** If a general account is offered in the group policy and certificate 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 certificateholder (e.g., the general account is competitively priced in relation to such other general account products). Section 54.6(b) of Regulation 77.

- (e) The certificate benefits shall reflect the investment experience of one or more separate accounts established and maintained by the insurer. Section 54.6(a)(3) of Regulation 77.
- (f) 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).
- (g) 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 insurer. Section 4240(a)(12).
- (h) 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.14) Exchange

- (a) Except in the case of a private placement group variable universal life insurance policy, the group policy and certificate must contain a provision that at any time during the first 18 policy months, so long as the certificate is in force on a premium-paying basis, the owner may exchange the certificate without evidence of insurability for a certificate of general account life insurance on the life of the insured for the same amount of insurance as the initial face amount of the group variable universal life insurance certificate, and on a plan of insurance specified in the group policy and certificate, subject to the following requirements:
  - (i) the new certificate shall bear the same date of issue and issue age as the group variable universal life insurance certificate;
  - (ii) the new certificate shall be issued on a substantially comparable plan of insurance offered in this state by the insurer (or if not available from the insurer, by a subsidiary of the insurer, its parent or an affiliate licensed to do a life insurance business in this state) with the same date of issue as the group variable universal life insurance certificate and at the rates in effect on that date for the same class of risk;

- (iii) the new certificate shall include such incidental insurance benefits as were included in the group variable universal life insurance certificate if such incidental insurance benefits were then available for issue with the new certificate and
- (iv) the exchange shall be subject to an equitable premium or certificate value adjustment that takes appropriate account of the premiums and certificate values under the original and new certificates. A detailed statement of the method of computing such adjustment shall be filed with the Superintendent.

Section 54.6(b)(7) of Regulation 77.

- (b) If a general account is offered in the certificate 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 certificateholder (e.g., the general account is competitively priced in relation to such other general account products). Section 54.6(b) of Regulation 77.

#### D.15) Premiums

For scheduled premium group policies and certificates which permit the insurer to adjust premiums, the group policy and certificate must contain a provision stating the frequency with which premium will be reviewed to determine whether an adjustment should be made. Such frequency must be at least once every five policy years. Section 54.6(b)(14) of Regulation 77.

#### D.16) 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 Section 54.1(f) – (h) of Regulation 77 (for survivorship forms, describe when certificate benefit is payable - upon death of first insured or only on death of last to die; also define who is the first insured for a first-to-die certificate when both insureds die at the same time).
- (b) Any changes in variable death benefits of each group variable universal life insurance policy and certificate shall be determined at least annually. Section 54.6(a)(5) of Regulation 77.
- (c) The group policy and certificate 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 group variable universal life insurance policy and certificate regardless of the investment experience of the separate account if there are no outstanding certificate loans, partial withdrawals or partial surrenders. Section 54.1(g) of Regulation 77; see *also* Section III.F.1 of this Outline.
- (d) For a private placement group variable universal life insurance policy and certificate, there must be a provision stating that the payment of variable death benefits shall be made no later than thirty (30) days from the date the request



for payment and all necessary documentation are received. Section 54.6(b)(15) of Regulation 77.

#### D.17) Certificate Issuance and Validity

- (a) Section 3220(a)(4) requires a provision stating that the insurer will issue a certificate to the group policyholder for delivery to the person whose life is insured under such policy containing a statement of the insurance protection to which s/he is entitled including any changes in such protection depending on the age of the person whose life is insured and the statutory conversion rights.
- (b) The certificate must include in substance all provisions of the policy that are directly relevant to the insureds, including provisions related to premium contributions (e.g. provisions related to the circumstances in which certificateholders are required to contribute if coverage is contributory, provisions related to the circumstances in which certificateholders must pay premium directly to the insurer, etc.).
- (c) Any inconsistencies or conflicts between the group policy and certificate must be eliminated prior to approval. The terms of the group policy must not conflict with the terms of the certificate. Otherwise, the certificates would be misleading. See Section 3201 (c)(1).
- (d) The group policy and certificate must include a statement that nothing in the group policy invalidates or impairs any rights or benefits as stated in the certificate or granted by New York law. Note that certificates deemed to be delivered in New York under a group policy issued out-of-state to a non-recognized group are subject to individual or group standards that afford the insured the greatest protection, as determined by the Superintendent, pursuant to Section 59.4(b) of Regulation No. 123.
- (e) Certificate forms delivered or deemed to be delivered in New York must clearly state that rights and benefits granted to the certificateholder will not be less than those required by New York law.
- (f) Certificates may be issued to the group policyholder electronically for delivery to the certificateholder. Circular Letter No. 33 (1999) and Supp. No. 1 to Circular Letter No. 33 (09/03/2002). Electronic issuance to the group policyholder may only be used where the group policyholder has agreed, in advance, to electronic issuance. If the insurer delivers the certificate directly to the certificateholder, electronic delivery of the certificate may be used only if the certificateholder has agreed, in advance, to electronic delivery. NY State Tech Law Section 309. Posting certificates on the insurer's website may satisfy the issuance or delivery requirements as long as consent, as noted above, has been obtained. While the insurer's procedures for electronic delivery need not be set forth in the group policy or certificate, the procedures should result in actual receipt of the correct certificate(s), should protect the confidentiality of certificateholder information and, where applicable, comply with NY State Tech. Law Sections 301-309.

#### D.18) Conversion Privilege

(a) Conversion Rights

- (i) Pursuant to Section 3220(a)(6) of the Insurance Law, an employee or member shall be entitled to have issued to him or her by the insurer a policy of life insurance upon the termination or reduction in coverage only under the following conditions:
  - (I) without evidence of insurability,
  - (II) upon application made to the insurer within 31 days after such termination or reduction of insurance or within any extended conversion notice period, whichever is later. See "Notice of Conversion" below.
  - (III) upon payment of premium applicable to the class of risk to which he/she belongs under the group policy (i.e. if the insured belongs to a class under the group policy that is charged unisex rates [e.g., a policy issued to an employer subject to Title VII of the Civil Rights Act of 1964] he or she may not be charged sex-distinct rates under the individual conversion policy. Similarly, if the insured belongs to a class under the group policy that is charged unismoker rates, he or she may not be charged smoker (or tobacco) distinct rates under the individual conversion policy.), and the form and amount of the policy at his/her then attained age;
  - (IV) the policy of life insurance is in any one of the forms customarily issued by such insurer, except term insurance. Note that "any" is interpreted to mean a choice by the insured from all forms customarily issued by the insurer.
- (ii) We have permitted affiliated and unaffiliated insurers to provide the individual conversion benefit where the group life insurer does not offer any individual policies under limited circumstances. We review the contractual arrangement between the two insurers, the subsidy or charge made against the group life insurer and the rate class to which the converttees convert. Where the arrangement occurs between affiliates, the transaction is also subject to approval of the Department's NYC office (see Insurance Law Article 15). The Department would expect the contractual arrangement to provide for a permanent plan (e.g., Whole Life) and a meaningful term policy.
- (iii) Conversion rights under Section 3220(a)(6) do not apply to groups described in Section 4216(b)(3) (credit life) or (8) (municipal corporation or public housing authority).
- (iv) The effective date of the individual conversion policy shall be the date of termination of coverage under the group policy.

(b) Triggering Events -Termination or Reduction in Coverage and the Amount that can be Converted

- (i) Employee's or member's group life insurance coverage ceases because of termination of:
  - (I) employment or membership in the class or classes eligible for coverage. Note that retired employees must be granted equitable rights of conversion for individual termination of coverage. See Circular Letter No. 4 (1963), Guidelines for Examination of Group Life Forms at Section I.B.6. and Circular Letter dated June 2, 1953.
  - (II) the policy - (See replacement or reinstatement of such group policy).
  - (III) for an insured covered under a Section 4216(b)(12), (13) or (14) group policy, within 31 days after notice from the insurer that to continue coverage, he/she must contribute more than 133% of the net premiums computed according to the Commissioners 1960 Standard Group Mortality Table at 3.0% interest.
  - (IV) The insured may convert the amount of life insurance protection (including supplemental life coverage) in effect under the group policy at the time of such termination less any amount of life insurance remaining in force. See Section 3 Replacement Coverage below for exception.
- (ii) Employee's or member's group life insurance coverage is reduced
  - (I) in the case of a policy covering an employee or union member under a plan arranged by the insured person's employer or union, on or after the employee's or union member's attainment of age sixty (60) in any increment or series of increments aggregating 20% or more of the amount of coverage in force before the first reduction on account of such age;
  - (II) in the case of a policy covering any member other than described in item (i) above, at the time of the first reduction of insurance;
  - (III) due to change in class; or
  - (IV) due to an amendment of the policy to take effect immediately or at any subsequent date.
  - (V) The amount of coverage that can be converted upon reduction of coverage depends on the type of group. For groups described in item (i) above, the insured may convert the amount of the aggregate reduction. For groups other than described in item (i) above, the insured may convert 80% of the amount of coverage in effect immediately prior to the reduction. The Department has approved provisions which provide that upon any reduction, the insured has the right to convert the amount of the reduction.

- (iii) The group policy and certificate forms should be clear as to how the amount of any outstanding loans affects the amount available for conversion.

(c) Replacement Coverage

The group policy and certificate may (i.e. permissive) contain a provision that if the group policyholder or insurer terminate the group policy, the amount of life insurance that may be converted shall in no event exceed the amount of such employee's or member's life insurance protection less any amount of life insurance for which he/she may be or may become eligible under any group policy issued or reinstated by the same or another insurer within 45 days after the date of such cessation.

(d) Preliminary Term Insurance Section 3220(a)(6)

At the option of the employee or member, he/she shall be entitled to have issued to him/her a policy of life insurance only, in any one of such forms:

- (i) preceded by term insurance for a period of one year,
- (ii) with the premium payable, at the option of the employee or member, in any mode customarily offered by the insurer.

(e) Total and Permanent Disability Benefit - (L.1997,c.287)

- (i) This benefit is a mandated additional benefit. See Section 3220 (a)(6).
- (ii) If an employee's or member's coverage ceases because of termination of employment or membership due to total and permanent disability, the employee or member shall be entitled to have issued to him/her:
  - (I) a policy of life insurance only, in any one of such forms (i.e. including term).
  - (II) preceded by term insurance for a period of one year.
  - (III) with premium payable at option of the employee or member, in any mode customarily offered by the insurer.
  - (IV) in an amount of such employee's or member's life insurance protection in effect immediately before termination, less the amount of any life insurance which is replaced with the same or another insurer within 45 days after cessation of the group life insurance protection.
- (iii) We have interpreted the phrase "any one of such forms" to mean choice by the insured of any one from all such forms customarily issued by such insurer, including term insurance. Therefore, in addition to the one year preliminary term policy, any individual term life policies customarily offered by the insurer must also be made available for disabled convertees.
  - (I) Term insurance was not excepted from this benefit as is the case with the general conversion right.

- (II) Also, this additional benefit would have no meaning if term insurance was not available.
  - (III) The term insurance alternative is consistent with the Legislature's goal of making conversion more affordable for insureds who are least able to afford more expensive options.
  - (iv) For definitions of total and permanent disability, we have relied upon Section 3215, notwithstanding Section 3215(g). We will consider more favorable definitions.
- (f) Death During the Conversion Period
- (i) A death benefit (equal to the full amount of death benefit payable under the original group policy) must be paid if death occurs within the 31-day conversion application period or any extended notice period pursuant to Section 3220(a)(8).
    - (I) Death of the insured before expiration of the 90th day of the notice period is deemed exercise of right of conversion if no notice is provided. *Oakley v. National Western Life Ins. Co.*, D.C. N.Y. 1968, 294 F. Supp. 504; *Payne v. Equitable Life Assur.*, 14 A.D.2d 266 (1st Dept. 1961).
    - (II) The death benefit shall be payable under the original group policy if application for conversion has not been made at the time of death. The death benefit shall be payable under the individual conversion policy if satisfactory application for conversion has been made at the time of death. In the latter case, the insurer may deduct from the death benefit premiums owed under the individual policy.
  - (ii) The group policy may contain a provision obligating the group policyholder to pay a premium to the insurer for this coverage extension if the extension is a direct result of the policyholder's voluntary termination of the policy and the policyholder replaces the coverage within six months with the same or another insurer.
- (g) Individual Conversion Policy
- (i) Incontestability. The conversion policy may provide that statements made by the insured under the group policy relating to insurability under the group policy may be used in contesting the validity of the individual conversion policy only to the extent that such statement could have been used in contesting the validity of the coverage under the group policy if the group coverage had not ceased. The contestability period does not start anew for the conversion policy.
  - (ii) Suicide. The individual conversion policy shall not exclude or restrict liability in the event of suicide of the insured after two years from the date that the insured became covered under the group policy.
- (h) Conversion for Dependents

- (i) Pursuant to Section 3220(a)(7) of the Insurance Law, an employee/member has the option of covering dependents who were insured under the group policy under a converted policy upon termination or reduction of coverage as described in Section 3220(a)(6). The effective date of the converted policy or policies shall be the date of termination or reduction of the dependent's insurance under the group policy.
- (ii) The conversion privilege is also available
  - (I) to the surviving spouse, children or other dependents upon death of the employee or member insured under the group policy;
  - (II) to a child of the insured or other child dependent upon attaining the limiting age of coverage under the group policy while insured as a dependent;
  - (III) to the spouse or former spouse of the employee or member upon divorce or annulment of marriage of employee or to the domestic partner or former domestic partner of the employee or member upon termination of the domestic partnership.
  - (IV) to other dependents who no longer qualify as an "other dependent" under section 4216(f).
- (iii) Notice of Conversion
 

Sections 3220(a)(8) and 4216(d) provide that notice to certificateholders is required in all cases when statutory conversion right is triggered, regardless of whether continuation or porting of coverage is also available. Notice shall be provided within the following periods:
- (iv) 31-Day Application Period - The certificateholder (and any person to whom conversion is available pursuant to Section 3220(a)(7)) must be notified of the conversion privilege and its duration within 15 days before or after the happening of the event. In the case of the death (or divorce) of the insured employee, the notice must be provided as required in Section 3220(a)(8) so that the dependent spouse can elect such conversion benefit.
- (v) 45-Day Period After Notice - If notice of conversion privilege is more than 15 days, but less than 90 days after the triggering of such event, the time allowed for the exercise of the conversion application privilege should be extended for 45 days after the giving of such notice.
- (vi) 90-Day Period - If no notice is provided within 90 days after the triggering of the event, the time allowed for the exercise of the conversion application privilege expires at the end of 90 days.
- (vii) Full Compliance with Notice requirements by
  - (I) written notice by group policyholder or insurer given to the certificateholder or mailed to the certificateholder at the last known address; or

- (II) written notice by insurer mailed to the certificateholder at last address furnished to the insurer by the policyholder.
- (viii) For notice of Continuation and Portability requirements, see below.
- (ix) The notice to the certificateholder of the right to convert should be provided in such a manner to ensure that the dependent spouse, children or other dependents can exercise their own independent right to convert as provided in Section 3220(a)(7). A separate notice would ensure that the required conversion right is available.
  - (I) Upon the death of the employee or member to the surviving spouse or other adult dependent with respect to such spouse or other adult dependent and children of the insured or other dependent children as are then insured by the group policy,
  - (II) To a child of the insured or other child dependent upon attaining the limiting age of coverage,
  - (III) Upon the divorce or annulment of the marriage of the employee or member or upon termination of a domestic partnership of the employee or member to the spouse, former spouse or former domestic partner of such employee or member.
- (x) Written notice can be provided by the insurer or group policyholder pursuant to Section 3220(a)(8). The group policy must indicate whether the notice will be provided by the group policyholder or the insurer. The certificate need not include this provision.
- (i) Group Life Continuation and Portability -- Circular Letter No. 3 (1996)
 

"Continuation" refers to continuing to provide group coverage under the same group policy. "Portability" refers to providing group coverage through a different group policy typically issued to a portability trust.

Continuation and Portability are permitted as options in addition to the statutorily required conversion right on the basis of being more favorable to the certificateholder or not less favorable to the certificateholder and more favorable to the policyholder. Circular Letter No. 3 (1996). We approve these benefits as more favorable based on the following being satisfied.

  - (i) Continuation and Portability options may be offered in addition to the conversion option (not as a substitute for conversion) when one or more of the events trigger statutory conversion rights. It is permissible to restrict the availability of the continuation or portability to only some of the instances where conversions are required to be available.
  - (ii) Portability may be provided through a group life portability trust established solely for the purpose of making group life insurance available to employees or members whose coverage would terminate under the group life policy.

- (I) This trust will qualify as a discretionary group under Section 4216 (b)(14). Accordingly, the group will be subject to the requirements of Regulation 123, including the benefit ratio requirements.
  - (II) Incontestability and suicide periods would relate back to the initial group life coverage.
  - (III) As this group comes under Section 4216 (b)(14), if rates exceed 133% of the corresponding net premium computed according to the 60 CSG Table at 3% interest, we will require the conversion option be available. Section 3220(a)(6).
  - (IV) Any provision restricting the portability option to healthy lives is not permitted. We will permit a restriction on insureds that are on a waiver of premium benefit.
  - (V) The submission of the forms that provide the portable coverage should include the filing memorandum required by Section 54.7 of Regulation 123.
- (iii) The insurance may be continued under the existing group life insurance policy.
    - (I) The group policy and certificate must indicate whether premiums must be paid during the continuation period and who (e.g., employer, employee) must pay those premiums.
    - (II) The group policy and certificate must indicate that an insured with continued coverage has the ability to elect the statutory conversion right at any time the coverage is continued.
  - (iv) The submission letter should include an explanation of how the rates for the continued lives are calculated. The calculation should be done in such a way that the rates are sustainable. By this we mean that in the absence of other considerations that as long as the actual experience follows expectations no rate schedule increases are necessary.
  - (v) The company should confirm in the submission letter that the rates and charges for the various options (i.e. Conversion, Continuation, Portability) will be provided to the insured upon request. Such information is necessary for the insured to make an informed decision as to which benefit to elect.
  - (vi) Notice periods taken from sections 3220(a)(6) and (8) - notice for availability of continuation and portability options is to be provided in the same manner with the same notice periods as required for conversion when the conversion right is triggered, and conversion notice must again be provided upon termination of continued or ported group coverage.

#### D.19) Termination, Discontinuation and Replacement

- (a) The group policy and certificate shall state specifically and clearly all events that would cause termination of the group policy, as well as all events that would cause termination or reduction of an insured employee or member's



coverage. Similarly, the group policy and certificate shall specifically identify any party that has the ability to terminate the group policy (e.g. policyholder, insurer) or terminate or reduce the insured's coverage (e.g. group policyholder, member/employee, participating employer in the multiple employer trust context). See Circular Letter No. 4 (1963), Guidelines for Examination of Group Life Forms at Section I.B.4.

(b) Discontinuance

- (i) A notice of discontinuance given by the insurer shall include a request to the group policyholder to notify certificateholders covered under the group policy of the date as of which the group policy will discontinue and to advise that, unless otherwise provided in the group policy or certificate the insurer shall not be liable for claims for losses incurred after the date of discontinuance and the subsequent conversion application period. The notice of discontinuance also shall advise, in any instance in which the plan involves certificateholder contributions, that if the group policyholder continues to collect contributions for the coverage beyond the date of discontinuance, the group policyholder may be held solely liable for the benefits with respect to which the contributions have been collected.
- (ii) The insurer shall prepare and furnish to the group policyholder at the same time it gives a notice of discontinuance a supply of notice forms to be distributed to the certificateholders concerned, indicating the discontinuance and the effective date of the discontinuance, and urging the certificateholders to refer to their certificates in order to determine what rights, if any, are available to them upon the discontinuance.
- (iii) This section is in addition to and not in substitution of the insurer's and/or the group policyholder's obligations under the conversion provisions outlined in Section 3220(a) of the Insurance Law and this outline.

(c) Replacement

- (i) The group policy and certificate may not exclude or restrict coverage for a loss incurred while the group policy and certificate is in-force merely because the claim for such loss is made after the replacement. The claim should not be lost as a result of the replacement. There may be instances where the original insurer and replacing insurer have entered into an agreement whereby the replacing insurer assumes liability for those claims arising under the original policy. In that event, the replacement group policy and certificate should reflect such an arrangement.
- (ii) The Department offers the following "best practice" suggestions for replacements. Please note that these suggestions are not required provisions. If possible, no group policy should be written replacing a plan of similar benefits of another or the same insurer unless all persons of the same class insured under the prior group policy and certificate are eligible, without evidence of insurability, under the new group policy and

certificate. Also, if possible there should be no gap in coverage between the prior and replacement group policy and certificate.

#### D.20) Right to Audit

The group policy shall contain a reserved right for the insurer to audit the policyholder's records as needed to administer the policy. The certificate need not include this provision.

### III.E) Nonforfeiture Provisions

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

- (a) Group variable universal life policies and certificates must provide cash surrender values that meet the requirements of Sections 54.7(a), 54.7(b)(2)(i) or 54.7(b)(2)(ii) of Regulation 77.
- (b) If Section 54.7(a) of Regulation 77 is used for compliance, then a group policy and certificate with additional amounts must comply with the minimum values required by Section 4221(n-1).
- (c) If Section 54.7(b)(2)(i) or 54.7(b)(2)(ii) of Regulation 77 is used for compliance, then the group policy and certificate must satisfy Sections 54.7(b)(3) and 54.7(b)(4) of Regulation 77. In addition, a group policy and certificate with a fixed account must comply with Section 54.7(b)(5) of Regulation 77.
- (d) An insurer may use different methods to compute minimum cash surrender values for different group variable universal life policies, but for any one group policy and certificate form, an insurer must use the same method for all issue ages. Section 54.7(c) of Regulation 77. An insurer may revise its method for new issues. Section 54.7(c) of Regulation 77.
- (e) If an additional rider or supplemental benefit has an identifiable additional premium not credited to the account value of the certificate, then the rider or supplemental benefit is subject to stand alone nonforfeiture requirements; see Section 54.5 of Regulation 77 and Section 4221(c)(2). If a rider or supplemental benefit is integrated with the certificate value for the payment of benefits or charges, the certificate and rider or supplemental benefit combined must comply with the nonforfeiture requirements of Section 54.7 of Regulation 77.
- (f) Certificate value (i.e., account value) is an amount equal to gross premiums paid under a certificate (excluding separately identified premiums for riders or supplementary benefits that are not credited to the certificate value) plus net investment income less the following as specified in the group policy and certificates: administrative charges (which may be taken in part from premiums and in part from certificate value), acquisition and other charges, deferred acquisition and other charges, benefit charges, service charges, partial withdrawals and partial surrender charges. See Section 54.7(b)(1)(i) of Regulation 77.

Please note the following:

- (i) Certificate value is intended to be the actual account value; hence, the items listed are interpreted to be mutually exclusive (i.e., no double counting) and exhaustive (i.e., capture all items of cash flow to and from the certificate holder other than those for riders or supplementary benefits based on separate premiums not credited to the certificate value).
- (ii) Net investment income may be positive or negative and may vary based on certificate loans. The regulation does not specifically provide for a percent of account value charge or premium bonuses; these items are considered part of net investment income. Nonforfeiture testing should ignore premium bonuses and include account value charges as negative investment income.
- (iii) Acquisition and other charges do not include any charges included as part of deferred acquisition and other charges.
- (iv) Benefit charges as defined in Section 54.7(b)(1) of Regulation 77 come from the certificate value. These charges may have an implicit expense or profit component as long as the charges are cost of insurance charges or charges for rider or supplemental benefits.
- (v) Service charges as defined in Section 54.7(b)(1) of Regulation 77 are for transactional cost and therefore must be reasonably related to actual cost. A group policy and certificate provision mandated by law can only have a service charge if explicitly allowed by law.
  - (I) Service charges are defined as being taken from the certificate value and therefore would not include a premium collection charge. Consistent with (i) above a premium collection charge would be captured as an acquisition and other charge for a flexible premium group policy and certificate and as either an acquisition and other charge or an administrative charge for a specified premium group policy and certificate.
  - (II) Charges related to a reduction in the death benefit without a partial surrender are surrender charges and not service charges.
  - (III) A reasonable service charge on a partial surrender is allowed in addition to a partial surrender charge.
- (vi) There are two types of acquisition and other charges, those that have been deferred from a prior year and those that have not. Such charges exclude charges defined in Section 54.7(b)(1)(i)(a), (d), (e), (f) and (g) of Regulation 77. Acquisition and other charges can only be taken in the forms stated (e.g., they are not permitted as a percent of account value or as a percent of net amount at risk). At the time of deduction, deferred expense charges are expense charges subject to any expense charge limitations. Consistent with Section 54.7(b)(2)(i)(c) of Regulation 77 that deferred acquisition and other charges can be imposed on a face increase, deferred acquisition and other charges can only be established for the issue amount and subsequent face increases. They cannot be

established just because the expense allowance in a year exceeds the expense charges. The deferral must relate to acquisition.

- (g) Excess first year acquisition and other charges means the greatest amount by which (A) can exceed (B) based, for scheduled premium group policies and certificates, on the premiums set forth in the group policy and certificates and, for flexible premium group policies and certificates, on the assumption that any premium (other than a single premium) payable in the first certificate year is also payable during the entire premium paying period, where:

(A) is the acquisition and other charges made in the first certificate year;  
and

(B) is the arithmetic average of the corresponding charges which the group policy and certificate states would be made.

Notes:

1. The "corresponding charges" are the charges stated in the group policy and certificate in the amounts stated (whether stated as maximum charges or otherwise). This usually means guaranteed charges.
2. Flexible premium group policies and certificates must consider all possible first year premium amounts permitted.
3. The charges in years 2 through 20 would include any first year deferred charges payable in years 2 through 20.

- (h) Net level whole life annual premium at issue means an annual premium based on face amounts of insurance set forth in the group policy and certificate and on the assumption of level annual premiums for life, the mortality table rate used to calculate the maximum mortality charges and an interest rate based on the higher of 4 percent or that specified in the group policy and certificate. Section 54.7(b)(1)(ix) of Regulation 77.

Notes:

1. The net level whole life annual premium may be determined using a fully continuous method.
2. If the certificate 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.

- (i) With respect to cash surrender values meeting the requirements of subparagraph 54.7(b)(2)(i) of Regulation 77, please note the following:

- (i) In Section 54.7(b)(2)(i)(a) of Regulation 77, we interpret the word "sum" to mean the allowance is cumulative and the cumulative allowance is compared to cumulative acquisition and other charges. This differs from the certificate year wording in Section 4221(n-1)(3)(A)(i).

- (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 certificate 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 54.7(b)(2)(i)(a)(2) of Regulation 77 excludes separately identified premiums for riders or supplementary benefits that are not credited to the certificate value.
  - (v) The ten dollars per one thousand dollars of initial face amount in the first certificate year referenced in Section 54.7(b)(2)(i)(a)(4) of Regulation 77 excludes face amounts paid by separately identified premium not credited to the certificate value.
  - (vi) Note the expense allowance of one dollar per one thousand dollars of face amount in subsequent certificate years is not capped as in Section 4221(n-1)(3)(A)(i)(V).
- (j) The following applies to group policies and certificates complying with subparagraph 54.7(b)(2)(ii) of Regulation 77:
- NOTE:** The expense allowance of § 54.7(b)(2)(ii)(a) can be \$10 per \$1000 of face amount less than the expense allowance provided in Section 4221(k)(2).
- The expense allowance in Section 54.7(b)(2)(ii)(a) is 1% of the face amount at issue plus the lesser of 125% of the net level whole life annual premium at issue and 4% of the initial face amount of insurance.
- 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 certificate 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 certificate years.
- (k) For nonforfeiture compliance based on Section 54.7(b)(2)(i) or Section 54.7(b)(2)(ii) of Regulation 77, Section 54.7(b)(3) of Regulation 77 limits the maximum allowable surrender charge for a year to the lesser of (1) the maximum initial allowable surrender charge reduced by the annuity factors and (2) the maximum initial surrender charge less all deferred first year expense charges made to the certificate. This limitation is applied separately to face increases. Surrender charges include any deferred acquisition expense charges accelerated on surrender. Regulation 77 has been amended to change the annuity factors from a 15 year amortization based on immediate annuities to a 20 year amortization based on annuities due.
  - (l) For nonforfeiture compliance based on Section 54.7(b)(2)(i) or Section 54.7(b)(2)(ii), Section 54.7(b)(4) of Regulation 77 limits the maximum mortality

tables for medically underwritten policies to those allowed in Section 4221(k) (e.g., for standard issues after January 1, 2009, the 2001 CSO tables).

- (m) Section 54.7(b)(5) of Regulation 77 provides additional nonforfeiture requirements to use Section 54.7(b) when a group policy offers both separate and general accounts.
- (i) Guaranteed rates must be specified for fixed funds.
  - (ii) The certificateholder must be provided an option to transfer all separate account funds to the general account and apply the certificate's cash surrender value to purchase a guaranteed fixed paid-up benefit at least once every five years for a private placement group variable universal life insurance policy and certificate and at least once each year for any other group variable universal life insurance policy and certificate.
    - (I) The minimum amount of paid-up is based on no expense charges, mortality on which maximum mortality charges have been calculated and the interest rate guaranteed in the group policy and certificate .
    - (II) The group policy and certificate must specify the purchase basis. Section 3204(a)(1); Section 54.5 of Regulation 77.
    - (III) The group policy and certificate 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 group policy and certificate, 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).

## E.2) Interest and Mortality Tables

- (a) The group policy and certificate must specify the mortality table, interest rate and method used in calculating paid-up nonforfeiture benefits available under the certificate. Section 3204. The group policy and certificate must state the guaranteed factors of mortality, expense and interest, Section 54.6(a)(1) and 54.7(b)(5)(i) of Regulation 77, and must include a statement of the method used in calculating actual certificate values. Section 54.6(b)(5) and 54.7 (introductory paragraph) of Regulation 77.

- (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 group policy and certificate based on the 1980 CSO table if the rider has its own separately identified premium and is treated as distinct for nonforfeiture. 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, then (i) non-smoker mortality tables are not available to determine minimum cash surrender values and (ii) smoker mortality tables are not available to determine minimum paid-up nonforfeiture benefits when such tables are limited by law. See Section 54.7(b)(4) of Regulation 77 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 must be credited no less frequently than annually. Section 3203(a)(14).
- (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. Section 3201(c)(2).
- (d) Disclosure must be made in the group policy and certificate when a credit, based on the equity index formula, is not applied on the date of death or any withdrawal (i.e., surrender or policy loan).

#### 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 group variable universal life policy and notes special attention would need to be given to ensure a variable 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 shown in a table or otherwise described in the group policy and certificate. Section 54.6(b)(5) and (9) of Regulation 77. The group policy and certificate must provide sufficient detail to allow the certificateholder 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 group policy and certificate must either provide a detailed statement of the method of computation of the values and benefits shown in the group policy and certificate or a statement that the method of computation of the values and benefits shown in the group policy and certificate has been filed with the insurance supervisory official of the state in which the group policy and certificate is delivered. If the latter, then the group policy and certificate must include a summary of the method for computing the certificate value and the cash surrender value under the certificate . Section 54.(7) of Regulation 77.
- (c) The group policy and certificate must explain how nonforfeiture benefits are affected by loans. Section 54.6(b)(10)(iii) and (iv) of Regulation 77.
- (d) For amounts to be paid from the general account, the group policy and certificate must state that the insurer reserves right to defer payment of loan value, except to pay premiums, for six (6) months. Section 4222; Section 54.6(b)(8)(ii) of Regulation 77.

#### E.6) Joint Life Group Policies and Certificates

- (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 group policy and certificate disclosures may be based on the use of joint life mortality throughout the lifetime of the certificate. Minimum nonforfeiture values and group policy and certificate disclosures on each possible status of the lives under the terms of the group policy and certificate are also acceptable if the disclosures and minimum value requirements of the Insurance Law are met for each possible status.

#### E.7) Deferral Provisions and Continuation under Nonforfeiture Benefit

The group policy and certificate must include a provision providing that:

- (a) if no premium is in default or if the certificate is being continued under a variable nonforfeiture benefit, payment of variable death benefits in excess of any minimum death benefits, cash surrender values, certificate 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 for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical; and
- (b) if the certificate 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 for up to six (6) months from the date of request.

Section 54.6(b)(8) of Regulation 77.

#### E.8) Nonforfeiture Insurance Options



For scheduled premium group policies and certificates, the group policy and certificate must include a provision for nonforfeiture insurance benefits. The insurer may establish a reasonable minimum cash surrender value below which any nonforfeiture insurance options will not be available, but the certificateholder shall have the right to receive a lump sum cash payment. Section 54.6(b)(9) of Regulation 77.

#### E.9) Payments Under a Private Placement Group Variable Universal Life Insurance Policy

For a private placement group variable universal life insurance policy and certificate, there must be a provision stating that the payment of cash surrender values, certificate loans, partial withdrawals or partial surrenders shall be made as expeditiously as possible but in no event later than fifteen (15) months from the date the request for payment is received. Section 54.6(b)(16) of Regulation 77.

### III.F) Other Provisions

#### F.1) Secondary Guarantees

- (a) Secondary guarantees are guarantees that the certificate 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 group policy and certificate 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 group policy and certificate must fully explain the effect, if any, on the calculation of cost of insurance charges and death benefits. In such case, the group policy and certificate 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 group policy and certificate language whether a secondary guarantee can be reinstated and the conditions for reinstatement. Based on Section 3204.
- (e) The group policy and certificate must explain how and when the insurer will verify that the secondary guarantee conditions continue to be met. It must state that the certificateholder 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 certificate remains in force. These provisions must be on a basis acceptable to the Superintendent.
- (f) The 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 certificate in force at the end of the no-lapse period. It must advise the certificateholder 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 group policy and certificate and annual report must describe in a prominent place any certificateholder 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 certificate in force, it is recommended that the annual report include an early warning notice to that effect. Section 54.11(d) of Regulation 77.
- (i) Section 4240(d)(3) excludes application of certain provisions of the law (e.g., Section 4221 on nonforfeiture) to group variable universal life policies and certificates. However, Section 4240(d)(3) states that it 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 on the certificate may require the certificate to comply with sections of the law that would otherwise not apply.
- (j) The submission of group policy and certificate forms with secondary guarantees must include a certification of compliance pursuant to Section 98.9(c)(2)(x)(j) of Regulation 147. See “Important Notice Regarding Universal Life Insurance with Secondary Guarantees” dated 03/08/2013, available on the Department's website.

## F.2) Partial Withdrawals

- (a) If the group policy and certificate provide for partial withdrawals, there must be a separate provision in the group policy and certificate 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); Section 54.6(c)(5) of Regulation 77.

- (b) Group policy and certificate language must ensure that a certificateholder cannot increase the net amount at risk by making a partial withdrawal. Based on Section 3201(c)(2).

**NOTE:** This is a solvency concern and, therefore, applies to out-of-state business as well.

- (c) For group policies and certificates 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, Certificate Loans

Group policy and certificate language, if any, regarding a deferral period on payment of surrenders or certificate 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 group policy and certificate may state that the interest rate will be at least equal to the rate required by the state in which the group policy and certificate were delivered. However, "rate required by law" language is not permitted.

#### F.4) Interest on Death Proceeds

Group policy and certificate 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 group policy and certificate may state that the interest rate will be at least equal to the rate required by the state in which the group policy or certificate was delivered. However, "rate required by law" language is not permitted.

#### F.5) Owner and Beneficiary Provisions

- (a) Designated Beneficiary. Section 3220(a)(5) of the Insurance Law requires a provision stating that the benefits payable under the certificate shall be payable to the beneficiary or beneficiaries designated by the insured.
- (b) Specified Beneficiary. If the group policy and certificate contain conditions pertaining to family status, the beneficiary may be the family member specified in the group policy and certificate. (See L.1959, c 464 "family status" amendment).
- (c) Absence of Designated or Specified Beneficiary. If no designated or specified beneficiary survives the insured, the insurer has the option to pay the amount of insurance to the estate of the insured or to surviving relatives in accordance with a specified order of taking set forth in the group policy and certificate. The surviving relatives in the order of taking may include the following: spouse or domestic partner, parents, children, or siblings.
- (d) Insurer may deduct from the death benefit an amount not to exceed \$500 to be paid to any person or persons appearing to the insurer to be equitably entitled

to such payment by reason of having incurred expenses on behalf of the insured or for his or her burial. Section 3220(a)(5).

- (e) For disclosure purposes, the group policy and certificate must describe how primary, secondary, and multiple beneficiary designations operate if such options are made available. See Sections 3220 (a)(2) and 3204.
- (f) If the group policy and certificate provide for an automatic survivorship provision in the event of simultaneous death the provision must include the phrase “unless otherwise provided” so that the certificateholder may choose another alternative.
- (g) 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).
- (h) For disclosure purposes, if irrevocable beneficiaries are expressly permitted in the group policy and certificate, 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 3220 (a)(2) and 3204.
- (i) Pursuant to Section 4216(b), the group policy and certificate shall provide for payment of all benefits thereunder, to the person insured or to some beneficiary or beneficiaries other than the policyholder except as provided in
  - (i) Section 4231(b). See Dividend and Rate Credits section of this outline.
  - (ii) Section 3220(a)(5) (Payment to specified family members).
  - (iii) Section 4216(i)(2) and Section 3205(d) (COLI).

#### F.6) Assignments

- (a) Unless the group policy and certificate expressly prohibit or restrict the right of assignment, an insured is permitted to make an assignment of all or any part of his/her incidents of ownership in such insurance, including any right to designate beneficiaries and any right to convert to an individual policy. Section 3220 (c).
- (b) If the group policy and certificate permit assignment of the insured person’s rights for any purpose, it may not restrict assignment for purposes of viatical or life settlements. Section 3220 (c)(3). Life insurance policies are freely assignable unless otherwise restricted under the policy for tax qualification purposes.
- (c) The insurer’s procedures on assignments (i.e., must be in writing, filed with the insurer, etc.) should be described in the group policy and certificate for disclosure purposes. See Sections 3220 (a)(2) and 3204.

- (d) 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

- (a) Certain life insurance proceeds may be exempt from claims of creditors. Policy language, if any, must be in compliance with Section 3212.
- (b) The group policy and certificate must include statements from Section 4240(a)(1) and (a)(12) if separate account assets are to be insulated from claims of insurance creditors.

#### F.8) Proof of Loss

The group policy and certificate 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 group policy and certificate must permit the insurer to require evidence of insurability if, at the time of death benefit 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 certificate and not by certificateholder request) must not be subject to evidence of insurability. Based on Section 3201(c)(2).
- (c) For a change being requested by the certificateholder 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 group policy and certificate must provide that it will refund the excess of any premium payment made over the maximum amount that could be paid without disqualifying the certificate as life insurance under Section 7702 of the Internal Revenue Code. Based on 3201(c)(2).
- (e) Any limitations on changes to coverage must be specified in the certificate (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 group life insurance policy and certificate 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).

#### F.12) Discretionary Clauses

- (a) Discretionary clauses are provisions which grant an insurer or plan administrator or claims administrator the unrestricted authority under a group policy or certificate to determine eligibility for benefits, resolve disputes or interpret the terms and provisions of a group policy or certificate, or reserves the right to an insurer, plan administrator or claims administrator to develop standards of interpretation or review. The Department believes that the use of discretionary clauses is contrary to sections 3201(c) and 4308(a) and Article 24 in that the provisions encourage misrepresentations and/or are unjust, unfair, inequitable, misleading, deceptive or contrary to law or to the public policy of this state. Circular Letter 14 (2006).
- (b) Discretionary clauses will be reviewed on a case-by-case basis in accordance with Circular Letter No. 14 (2006) and subsection (a) above. Accordingly, any group policy and certificate forms containing a discretionary clause may not be submitted to the Department for approval under a certified procedure. Examples of discretionary clauses that the Department has found and/or would find to be contrary to section 3201(c), 4308(a) and/or Article 24 include but are not limited to:
  - (i) "The company (or plan/claims administrator) has full, exclusive, and discretionary authority to determine all questions arising in connection with the group policy or certificate, including its interpretation."
  - (ii) "When making a benefit determination under the group policy or certificate, the company (or plan/claims administrator) has the discretionary authority to determine your eligibility for benefits and to interpret the terms and provisions of the policy."
  - (iii) "The insurer, as the claims administrator for life insurance benefits, has the discretionary authority to determine benefit eligibility, construe the terms of the plan and resolve any disputes which may arise with regard to the rights of any person under the terms of the plan, including but not limited to eligibility for participation and claims for benefits."

### III.G) Dependent Coverage - Section 4216(f)

#### G.1) Spouse Coverage

A group life policy and certificate may provide for payment of a life insurance benefit upon the death of the spouse of the insured employee or member, provided that insurance upon the life of the spouse shall not exceed the amount of insurance for which such employee or member is eligible at the time application is made for spouse coverage.

Insurers must recognize all legally married spouses including same-sex spouses married in New York and same-sex spouses whose marriage was legally performed outside of New York. The Marriage Equality Act of 2011 (Chapters 95 and 96 of the Laws of 2011) amended the Domestic Relations Law to authorize marriage of same-sex couples and to require that a same-sex marriage be treated the same as an opposite-sex marriage in all respects under New York law. See also Insurance Law Section 2607, Executive Law Section 296, Circular Letter No. 27 (2008) and *Martinez v. Monroe Community College*, 50 A.D.3d 189, 850 N.Y.S.2d 740 (4th Dep't).

#### G.2) Child Coverage

A group policy and certificate may provide for payment of a life insurance benefit upon the death of the insured employee's or member's child dependent upon him or her for support and maintenance, provided the insurance upon the life of each dependent child shall not exceed the lesser of the amount of insurance for which the insured is eligible or \$25,000.

(a) Natural children can be covered as dependents.

(b) Adopted children can be covered:

A child may be eligible for coverage on the same basis as a natural child during any waiting period prior to the finalization of the child's adoption.

#### G.3) Other Dependent Coverage

A group policy and certificate may provide for payment of a life insurance benefit upon the death of persons other than the insured's spouse or child where that other person is "dependent upon the insured employee or member" in accordance with Section 4216(f). We have interpreted this to mean dependent upon the insured employee or member for support and maintenance. Generally, if a dependent meets the definition of dependent for purposes of Section 4235(f) they will also meet the definition of dependent for purposes of Section 4216(f), except where law or public policy requires a different result.

(a) Unilateral economic dependency or mutual economic interdependency is required to insure an "Other Dependent." The group policy and certificate must set forth the complete terms and conditions of eligibility for "Other Dependents." Please note that while the insurer may delegate to the policyholder the responsibility of determining which dependents are eligible for coverage, the policyholder should make that determination based on eligibility criteria established by the insurer and set forth in the Policy/Certificate.

(b) Domestic Partners can be covered as “Other Dependents.”

- (i) While Domestic Partner coverage may be offered just to same-sex domestic partners or to both same-sex and opposite-sex domestic partners, it may not be offered just to opposite-sex domestic partners.
- (ii) The Marriage Equality Act of 2011 has not disturbed the ability to also offer domestic partner coverage pursuant to Section 4216(f).
- (iii) Note that if Domestic Partner coverage is terminated, conversion rights under Sections 3220(a)(6) & (a)(7) must be provided.
  - (I) Foster children cannot be covered due to public policy concerns for the safety of foster children.
  - (II) Stepchildren and children of the insured’s domestic partner can be covered. If coverage is offered for stepchildren and domestic partner coverage is offered, then coverage must also be offered for the domestic partner’s children. Section 2607.
  - (III) The amount of insurance upon the life of an adult “Other Dependent” may not exceed the amount of insurance for which the insured is eligible. The amount of insurance upon the life of a child “Other Dependent” may not exceed the lesser of the amount of insurance for which the insured is eligible or \$25,000.

(c) Avoidance of Substantial Adverse Selection

- (i) Section 4216(f) provides that insurers shall require evidence of insurability sufficient to protect against substantial adverse selection. For spouse coverage, the insurer should identify any guaranteed issue amount and describe how compliance with the requirement will be made.
- (ii) The adverse selection risks inherent in the coverage of “Other Dependents” must be considered when determining that the self-support requirements of section 4216(c) have been met.
- (iii) As part of the insurer’s efforts to avoid substantial adverse selection, the insurer may include in the group policy and certificate an eligibility provision which delays coverage for spouse and children (not newborn) who are hospital confined. The group policy and certificate may also contain a provision which commences coverage on newborns 14 days after birth. After the 14-day delay, newborns must be covered even if they continue to be hospital confined. (Note: these delays are permissible only for life insurance benefits. Delays are not permissible for Accident and Health benefits. Section 4235(f).)

III.H) Dividend Recognition Issues

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

H.1) Policies for the IRC Section 403(b) Market



- H.2) Compliance with Circular Letter No. 16 (1993).
  - H.3) Neither the group policy and certificate loan provisions of Section 3203(a)(8) nor the nonforfeiture provision of Section 4221 applies to any group 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.4) Certificate loan provisions should not be deleted but revised to comply with Section 72(p) of the Internal Revenue Code.
  - H.5) 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.6) The insurer must provide tax counsel certification that the group policy and certificate are in compliance with the Internal Revenue Code.
  - H.7) 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) Additional Insurance Amounts on the Life of the Same Insured
- I.1) An additional insurance amount is an additional death benefit on the same insured under the group policy and certificate 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 certificate or offered in a rider and then incorporated into the certificate at a specific age.
  - I.2) 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 whole life insurance are determined at the time of the term policy's issue. Section 42-2.12 of Regulation 149.
  - I.3) 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).
  - I.4) If an additional insurance amount is provided in the certificate or can be converted from a term rider to the certificate:
    - (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 certificate 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 group policy and certificate provisions must reference the additional insurance amount when required to comply with New York Law and Regulation.

### III.J) Eligibility Requirements

- J.1) Pursuant to Section 3220(a)(9) of the Insurance Law, all new employees of an employer or members of the labor union or other association or eligible group or classes eligible for such insurance must be added to such groups or classes for which they are eligible.
- J.2) For employer/employee groups described in Section 4216(b)(1) of the Insurance Law, classes must be determined by conditions pertaining to employment, or a combination of conditions pertaining to employment and conditions pertaining to family status.
  - (a) Conditions pertaining to employment include geographic situs, compensation, hours, and occupational duties. See Circular Letter No. 4 (1963), Guidelines for Examination of Group Life Forms at Section I.B.2.
  - (b) Age is not a condition pertaining to employment. *Dudrey v. Equitable Life Assur. Soc. of U.S.*, 170 Misc. 418, 10 N.Y.S.2d 639.
- J.3) For labor union groups described in Section 4216(b)(2) of the Insurance Law, all of the members of such union, or all of any class or classes thereof determined by conditions pertaining to employment or conditions pertaining to membership in the union or combination of both, who are actively engaged in their occupation must be eligible for coverage.
- J.4) For multiple employer trust groups described in Section 4216(b)(4) of the Insurance Law, all of the employees of the employers, or all of the members of the unions, or all of any class or classes determined by conditions pertaining to employment, or to membership in unions, or both must be eligible for coverage.
- J.5) For employer trade association groups described in Section 4216(b)(5) of the Insurance Law, all of the employees of the participating employers eligible for insurance, or all of any class or classes thereof determined by conditions pertaining to employment must be eligible for coverage.
- J.6) For association groups described in Section 4216(b)(10) of the Insurance Law, all members who have not attained any limiting age are eligible, or all such members and their employees, or all of any class or classes thereof determined by conditions pertaining to their employment or association membership or both must be eligible for coverage.
- J.7) Initial coverage and applied for increases in coverage may be subject to evidence of insurability requirements.

- J.8) An active work eligibility requirement is acceptable for coverage based upon employment. The group policy and certificate may establish a reasonable minimum number of hours per week required for eligibility. The Department would consider 40 hours per week or less to be reasonable.
- (a) Denial of coverage based on past lawful travel is not permitted. Section 2614.
  - (b) Citizenship may not be used as an eligibility factor. Section 2606.

III.K) Amounts Of Insurance

- K.1) Amounts of insurance must preclude individual selection by employees, policyholders, employers, or unions. Section 4216(b).

The maximum coverage for an individual employee, or limited number of employees, under a group policy must be reasonably related both to the total amount of insurance on the group and to the average amount of insurance on each member of the group. See Circular Letter dated July 19, 1962 and Circular Letter No. 4 (1963), Guidelines For Examination Of Group Life Forms at Section I.B.3

- K.2) A limited number of selections by employees or members are permitted if the selections offered utilize a consistent pattern of grading the amounts of insurance for individual group members so that the resulting pattern of coverage is reasonable. Section 4216(b). This issue is often best addressed through the explanation of variable material. The explanation should indicate the nature of the choices that will be offered (i.e. multiple of salary, specified amount, specified contribution) and the range of the choices.

Fully underwritten plans can offer an unlimited number of selections.

- K.3) The group policy and certificate must indicate whether, and if so when (e.g., automatic increases in basic coverage under specified circumstances versus elective increases in supplemental coverage), increases in face amount will be allowed only subject to evidence of insurability.

K.4) Age-Based Reductions

- (a) Group policies and certificates often provide for a reduction in benefits for insureds who reach a certain age, commonly 65 or 70, due to the high cost of providing benefits for older lives.
- (b) In the employment setting, any reduction schedule should be offered in a manner that will permit the group policyholder to comply with the Age Discrimination in Employment Act.

III.L) Other provisions:

L.1) Experience Rating and Experience Rate Credits

- (a) Pursuant to Section 4216(c)(2) of the Insurance Law, any group life policy and certificate may provide for readjustment of the rate of premium based on experience thereunder, at the end of the first policy year or of any subsequent year. Any such readjustment may be made retroactive only for such policy year. In addition, any such readjustment shall be computed on a basis which is equitable to all group insurance policies.

- (i) We have permitted insurers to experience rate group universal life insurance in limited circumstances, primarily in the employer/employee group context.

For multiple employer trust groups, we generally do not permit the use of experience rating of individual employers participating in the multiple employer trust.

- (ii) Circular Letter No. 3 (1977) states that the term “group dividend” refers to the payment of a refund of part of a redundant premium under a participating group life insurance policy and the term “group retrospective rate credit” is the similar payment under a nonparticipating group insurance policy.
  - (I) The amount returned or credited is based upon the actual experience of a particular group policyholder or of a class of group policyholders, or a combination of such experience.
  - (II) Such credits or refunds, like dividends, must be based upon an objective formula which is set forth explicitly in writing, is actuarially sound and which must be uniformly applied.
  - (III) A group retrospective rate credit must be approved by a board of directors in the same manner that a group dividend formula is required to be approved.

(b) Cost Plus No Claim Reserve Group Life not permitted. See Circular Letter dated September 8, 1960.

(c) Retrospective Rating. See Circular Letter dated December 21, 1949. Note that the prohibition in the December 21, 1949 Circular Letter in using retrospective rating in the first year is no longer enforced.

#### L.2) Use of Dividend and Retrospective Rate Credits

- (a) Any dividend apportioned in a participating group life policy and certificate or any rate reduction on any nonparticipating group policy and certificate issued to an employer may be applied to reduce the employer’s part of the cost of such policy, except that the excess, if any, of the employee’s aggregate contributions under the policy over the net cost of insurance shall be applied by the employer for the sole benefit of employees. Section 4231(b)(7).
- (b) Any Section 4216(b)(7) group (state troopers, policemen’s benevolent association, uniformed firemen or volunteer firefighter or volunteer ambulance worker association) currently holding premium dividends shall be permitted to maintain said dividends for the general purposes of the entire membership. Section 4216(b)(7)
- (c) For Section 4216(b)(10) groups (profession, trade or occupation association), if a policy dividend is declared or a reduction in rate is made, the excess, if any, of the aggregate dividends or rate reductions under the policy over the aggregate expenditure for insurance under such policy made from association or employer funds, including expenditures made in connection with the

administration of such policy, shall be applied by the policyholder for the sole benefit of the insured individuals. Section 4216(b)(10)

- (d) Section 4216(b)(12), (13) or (14) groups and New York residents insured under group policies delivered outside of New York to groups that are not described in Section 4216(b)(1)-(11).
  - (i) Any dividend apportioned on a participating group policy or any rate reduction on any non-participating group policy may be applied to reduce the group policyholder's part of the cost of such group policy, except that the excess, if any, of the insured's aggregate contribution under the policy over the net cost (gross premium less dividends or rate reductions) of insurance shall be applied at the discretion of the insurer either
    - (I) as a cash payment to the insured, or
    - (II) to reduce the insured's premium, unless the insured assigns the dividend or rate reduction to the policyholder
  - (ii) Upon group policy termination, the insurer shall either make payment
    - (I) to the insured, or
    - (II) to the group policyholder upon receipt of certification from the group policyholder that the dividend or rate reduction will be distributed by the group policyholder to the insureds or applied to reduce the insured's premium.

#### III.M) Annual Report to Policyholders

Annual reports must comply with Section 54.11 of Regulation 77.

See also Sections III.F.1(g) and III.F.1(h) of this Outline.

#### IV) Additional Death Benefits

These benefits are a special public policy exception to the general rule that both health and life insurance coverage must be broad-based and not dependent on the manner in which a disease, injury or death occurs.

To be considered life insurance the benefit must be in addition to, not in lieu of the general death benefit amount.

##### IV.A) Seat Belt Benefit

- A.1) Definition: This benefit provides for an additional death benefit if the insured dies as a result of accidental bodily injuries sustained in a motor vehicle accident while wearing a seat belt.
- A.2) Coverage: To be considered life insurance the amount of coverage is limited to 10% of the death benefit in a group life policy.

##### IV.B) Common Carrier Benefit (Public Transportation Benefit)

- B.1) Definition: provides a benefit if the insured dies as a result of a covered accident while a fare-paying passenger on a train, plane, bus, boat or other commercial carrier.
- B.2) Coverage: To be considered life insurance may not be for an amount in excess of five times the face amount of the policy.

#### IV.C) Non-Permitted Benefits

We have not permitted the payment of additional death benefits to be considered life insurance in the following instances because they are too limited:

- C.1) Felonious Assault Benefit.
- C.2) Day Care Benefit.
- C.3) Education Benefit.

#### IV.D) Accidental Death and Dismemberment

Accidental Death and Dismemberment are accident and health insurance under Section 1113(a)(3) of the Insurance Law and must be submitted to the Health Bureau of the Department in accordance with II.C.9 above.

#### IV.E) Accidental Death

Accidental death benefits are an additional benefit under life insurance policies pursuant to Section 1113(a)(1) of the Insurance Law and may be submitted to the Life Bureau as an additional benefit under a life insurance policy. This feature will be reviewed for compliance with section 52.9, 52.16 and 52.18 of Regulation 62. Exclusions from paying accidental death benefits due to terrorism are not permitted. Section 52.16(c) of Reg. 62 provides for the only permissible accidental death exclusions.

### V) Group Requirements

#### V.A) Eligible Groups

##### A.1) Insurer Responsibilities

- (a) It is the insurer's responsibility to determine whether the definitional requirements in Section 4216(b) for an eligible group are satisfied at the time of issue and thereafter.
- (b) The insurer should determine whether
  - (i) All employees or members eligible are covered where the coverage is non-contributory;
  - (ii) Classifications of employees or members is by conditions pertaining to employment, family status, membership in the association or union;
  - (iii) Individual selection is precluded or limited number of selections is reasonable;
  - (iv) Minimum number and minimum participation requirements are satisfied where the coverage is contributory;

- (v) The group policyholder is not the beneficiary, except in Section 3205(d) cases or with respect to dividends;
- (vi) Trust requirements satisfied, where applicable, including “established by” or “participated in” requirement.
- (vii) Seasoning and purpose requirements. Typically, the group must have been in existence for at least two years and formed for purposes principally other than obtaining insurance.
- (viii) With respect to the groups described by 4216(b)(12), (13) and (14) and out-of-state nonrecognized groups, the premiums charged must be reasonable in relation to the benefits provided. See Regulation 123.
  - (I) Where the group policy is delivered or issued for delivery in NY, the loss ratio requirements of Regulation 123 apply to the group policy as a whole.
  - (II) Where the group policy is delivered outside of NY, the loss ratio requirements of Regulation 123 apply to the subset of certificates deemed delivered in NY pursuant to Section 3201.
- (ix) See comparative bid requirement applicable to multiple employer trust groups with respect to union.
- (x) See Circular Letter No. No. 4 (1957) Code of Ethical Practices With Respect to the Insuring of the Benefits of Union or Union-Management Welfare and Pension Funds

#### A.2) Recognized Groups

- (a) Employer/Employee Group – Section 4216(b)(1)
- (b) Labor Union -- Section 4216(b)(2)
- (c) Creditor/Vendor Group – Section 4216(b)(3). Must comply with Regulation 27-A See also Credit Insurance product outline.
- (d) Multiple Employer Trust -- Section 4216(b)(4)
  - (i) Same Industry
  - (ii) Different Industry
- (e) Trade Association Group -- Section 4216(b)(5)
- (f) CSEA -- Section 4216(b)(6)
- (g) Police & Firefighters -- Section 4216(b)(7)
- (h) Municipal corporation or public housing authority -- Section 4216(b)(8)
- (i) Managerial or Confidential Employees -- Section 4216(b)(9)
- (j) Professional Association -- Section 4216(b)(10)
- (k) National Guard -- Section 4216(b)(11)
- (l) Affinity Association Group -- Section 4216(b)(12). Must comply with Regulation 123.

- (m) Financial Institution Groups -- Section 4216(b)(13). Must comply with Regulation 123.
- (n) Discretionary Groups -- Section 4216(b)(14). Must comply with Regulation 123.
  - (i) In seeking approval of a discretionary group, the company must show that:
    - (I) There is a common enterprise or economic or social affinity or relationship;
    - (II) The group should not have been founded primarily for the purpose of obtaining insurance.
    - (III) The premiums charged are reasonable in relation to the benefits provided; and
    - (IV) The issuance of the group policy would result in economies of acquisition or administration, would be actuarially sound, and would not be contrary to the best interest of the public.
    - (V) The discretionary group should not be used by a group that would otherwise qualify as a recognized section 4216(b) group in order to circumvent statutory requirements pertaining to that recognized group.
  - (ii) The following have been accepted as qualifying pursuant to Section 4216(b)(14):
    - (I) Customers of a Life Insurance Brokerage firm specializing in corporate-owned life insurance.
    - (II) Group policy issued to a college to cover full-time students of the college. The full-time students are the certificateholders.
    - (III) Group policies issued to Intergovernmental Relations Councils as described in Section 239-n of New York General Municipal Law based on the public policy and legislative intent behind section 239-n as stated in section 1 (c) of Article IX of the New York State Constitution.
  - (iii) The Department has not accepted the following:
    - (I) Financial Services & Advisory Services Organization because it would mean circumventing Section 4216(b)(13).
    - (II) A group of doctors and other health care providers, where the participating providers would have qualified under Section 4216(b)(2).
    - (III) A group consisting of children or grandchildren of members of an association where the children and grandchildren were not members of the association because there was not a common enterprise or economic or social affinity or relationship.



- (iv) The forms to be used with the proposed discretionary group may not be submitted via a certified process until the Superintendent has exercised discretion under Section 4216(b)(14) and approved the group. A pre-submission inquiry may be submitted to the Department seeking approval of the group as a discretionary group.

#### A.3) Non-Recognized Groups

Groups that fail to satisfy the definitional requirements in Section 4216(b) of the Insurance Law are not recognized groups under the Insurance Law. Such group life policies cannot be delivered in this state. However, certificates covering New York residents under group policies delivered outside of New York will be deemed to be delivered in this State pursuant to Section 3201(b)(1) and are subject to the requirements of Regulation 123. (11 NYCRR 59).

#### A.4) Extraterritorial Jurisdiction

##### (a) Group Life Certificates Deemed to be Delivered in New York

Pursuant to Section 3201(b)(1), certificates evidencing insurance coverage on a resident of this state are deemed to be delivered in this state, regardless of the actual place of delivery, where the master policies or contracts were lawfully issued without this state in a jurisdiction where the insurer was authorized to do an insurance business, if the insured group is one of the following:

- (i) Different-Industry Multiple Employer Trust Groups-Section 4216(b)(4) where the employer is principally located in New York. The use of the Standard Industrial Classification (SIC) Manual Codes or the North American Industry Classification System (NAICS) classifications are inappropriate to determine “same industry.”
- (ii) Association Groups-Section 4216(b)(12)
- (iii) Financial Institution Groups-Section 4216(b)(13)
- (iv) Discretionary Groups-Section 4216(b)(14)
- (v) Group Not Specifically Described in Section 4216(b).

(b) Purpose of the Section 3201(b)(1) Extraterritorial Jurisdiction Provision - The purpose of extraterritorial jurisdiction is to extend the basic protection of New York law and regulations to residents of the state when they purchase insurance coverage through out-of-state group arrangements where the individual insured has no close association or affiliation with the group policyholder.

(c) Recognized Group Certificates. Pursuant to Section 59.4(a) of Regulation No. 123, certificates evidencing coverage under a policy delivered outside of New York to a group recognized under New York law must “afford insureds protections substantially similar” to those provided by group policies and certificates actually delivered in New York. Certificates must include or satisfy:

- (i) all mandated coverages at reasonable levels, not necessarily at the same level prescribed by law;

- (ii) conversion and continuation rights;
  - (iii) cannot include a prohibited provision or benefit;
  - (iv) minimum benefit ratio standards.
- (d) Non-Recognized Group Certificates. Pursuant to Section 59.4(a) of Regulation No. 123, certificates evidencing coverage under a policy delivered outside of New York to a group not recognized under New York laws must comply with the contract and loss or benefit ratio requirements of individual or group insurance whichever affords the certificateholder the greatest protection. The contract standards and loss or benefit ratio standards may not be the same.
- (e) Group Life Insurance Benefit Ratio for Contributory Coverage. Section 59.5 of Regulation No. 123 generally requires a 60% minimum benefit ratio for term life insurance and an actuarial memorandum demonstrating that the minimum benefit ratio will be met for a period of 10 years must be filed. The minimum benefit ratio will be 5% higher or lower depending on the expected average annual premium.
- (f) Monitoring Requirement - Detailed reporting and monitoring standards are provided to ensure compliance with the rate regulation. The insurer is expected to cure any deviation from the minimum ratios by corrective plan of rate reductions, benefit increases or refunds to insureds. Section 59.7 of Regulation No. 123.
- (g) The benefit ratio and monitoring requirements in Section 59.5 and Section 59.7 apply to certificates delivered in New York under groups described in Section 4216(b)(12), (13) and (14) as well as certificates deemed to be delivered in this State.

#### A.5) Out-of-State Group Insurance Business of Insurers

##### (a) Domestic Insurers

- (i) Section 3201(b)(2) was revised in 2006 no longer requires group life insurance policy and certificate forms issued by a domestic insurer for delivery outside the state to be filed with the superintendent.
- (ii) Section 3201(c)(6)(a) provides that the Superintendent may disapprove any policy form issued by a domestic life insurer or fraternal benefit society for delivery outside the state if its issuance would be prejudicial to the interest of its policyholders or members.
- (iii) Section 3201(c)(6)(b) provides that except for the policy forms specified in Section 3201(b)(2), every domestic insurer and fraternal benefit society shall file annually with the Superintendent a list identifying and describing the policy forms issued by the insurer or fraternal benefit society for delivery outside the state in a form prescribed by the Superintendent. If the Superintendent determines that the issuance of a policy form has been or may be prejudicial to policyholders or members, the Superintendent may take any action he or she deems appropriate,

including issuing an order, after hearing, to cease and desist issuing the policy form.

(b) Foreign Licensed Insurers

- (i) Generally, we do not review the out-of-state group insurance business of foreign licensed insurers, especially if no New York residents are covered. However, such coverage may be subject to Section 1106 constraints if the coverage is prejudicial to the interests of group policyholders or certificateholders. The requirement of Section 4216(c) that each group policy issued be expected to be self-supporting would apply.
- (ii) We generally apply comity principles and follow the group exception to the mail order prohibition with respect to out-of-state group business which covers New York residents, except as modified by Section 3201(b)(1).

VI) Special Filing Situations

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

Compensation filing should be made separately from the group policy and certificate form submissions.

- A.1) Applicability: filings are required by all licensed insurers for all group life insurance transactions within and without the state.
- A.2) General Contents
  - (a) Agent Compensation. Schedule of rates, commission, compensation and other fees or allowances to agents pertaining to the solicitation or sale of group life insurance.
  - (b) Service/Administration Expense. Schedule of any fees, or allowances to any individuals, firms or corporations pertaining to the service or administration of group life insurance, exclusive of amounts payable to regular employees of the insurer other than agents.
  - (c) Revised schedules must be filed.
- A.3) Limitations: Payments to an agent for services provided cannot exceed schedules filed with the Department, but computation of dividends or experience rating credits will not be affected.
- A.4) Schedules Or Independent Commission Manual

Schedules or Independent Commission Manual shall contain the following Section III.B. of Circular Letter No. 6 (1963).

  - (a) The schedule of rates payable.
  - (b) The factors to which they are applicable, clearly stated, (e.g. a percentage of the annual premium or a dollar amount per certificate, or a dollar amount per \$100 of weekly indemnity).

- (c) Where rates are applicable to premiums, the filing shall state the premiums to which they apply, as for instance, monthly, yearly, first year or renewal.
- (d) Where different rates are payable for different types of coverage, agents, and areas, etc., the filing shall clearly indicate the nature of such classes.
- (e) The nature of administrative services shall be set forth, together with the allowances therefor.
- (f) Where rates are varied by policy year, the filing shall explicitly state the rates and policy years. Where such rates can be payable under an alternate scale, the formula for converting to such alternative scales shall be stated or the alternate scale included.
- (g) Where rates are graded, the complete scale shall be included or the nature and factors of the graduation shall be stated.

#### A.5) Filing Requirements

Schedules of rates of commissions and compensation and other fees or allowances required to be filed in triplicate separate from the cover letter, also in triplicate – Circular Letter 1963-6; Circular Letter 1969-4. Contents of filing letter:

- (a) A specific reference to the section, page numbers and edition dates being submitted.
- (b) The area and nature of any revisions, the pages on file being replaced, and the new pages being submitted.
- (c) The filing should be separate from all other material not pertaining directly to the compensation payable including the transmittal letter.
- (d) The Company's name should appear on each and every page of the filing.
- (e) The product the filing is to be used with should be clearly indicated.
- (f) If compensation is to vary by year, then the meaning of year should be clear. In the group setting year could mean Group Policy Year, Certificate Year, Year of Participating in a Trust or possibly some other meaning.
- (g) The actual level of compensation to be paid should be filed and not just some possible maximum.
- (h) Adequate description and information should be presented in the filing that the amount of compensation payable is reasonably determined.

#### A.6) Group Life Compensation Filings may be made through SERFF

Please use the following:

SERFF TOI: Group Life

SERFF Sub-TOI: General

SERFF Filing Type: Compensation

### VI.B) Regulation 123

#### B.1) Applicability

- (a) Regulation 123 is applicable to group certificates deemed to have been delivered in New York under section 3201(b)(1).
- (b) The minimum benefit ratio requirements of Sections 59.5 and 59.7 are applicable to group life certificates on New York residents covered under a Section 4216(b)(4)-(employers not in the same industry), (12), (13), or (14) group regardless of where the group policy is delivered.

B.2) Filing Requirements – Separate From Form Filings

(a) Minimum Standards for Form, Content and Sale

Certificates evidencing coverage under a group policy delivered outside of New York to a group recognized under New York law must “afford insureds protections substantially similar” to those provided by group policies and certificates actually delivered in New York. Certificates must include or satisfy:

- (i) all mandated coverages at reasonable levels, not necessarily at the same level prescribed by law;
  - (ii) conversion and continuation rights;
  - (iii) cannot include a prohibited provision or benefit;
  - (iv) the minimum benefit ratio standards.
- (b) Certificates deemed delivered to New York residents evidencing coverage under a group policy delivered outside of New York to a group not recognized under New York laws must comply with the contract and loss or benefit ratio requirements of individual or group insurance whichever affords the certificateholder the greatest protection. The contract standards and loss or benefit ratio standards may not be the same.
- (c) Actuarial memorandum demonstrating that the minimum benefit ratio standard in Section 59.5(a) is expected to be met over a period of 10 years or longer. For this product it is generally expected that a period longer than 10 years will be used. The cash surrender value at the end of the projection period should be treated as an endowment.
- (d) Monitoring Requirement: The Superintendent must approve the plan for monitoring the experience of the certificates. Section 59.7 of Regulation No. 123.
- (i) The monitoring plan must include provisions for combining experience of similar certificates and for demonstrating compliance with the minimum benefit ratio standards.
  - (ii) Corrective action may be required if the minimum benefit ratio may not be met or where premiums are not reasonable in relation to benefits. This can result in the distribution of past gains if the required benefit ratio has not been met.

VI.C) Guaranteed Interest Rates

Any change in the guaranteed interest rate requires a change to the group policy and certificate 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 group policy and certificate, 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.

VI.D) Changes to Other Policy Cost Factors and Other Changes

Any changes to the guaranteed maximum cost factors set forth 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, 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.

VI.E) Separate Account Plan of Operations

New York domiciled and foreign insurers must file and receive approval for their plan of operations or amendment to an approved plan of operations 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. However, a policy form may be approved contingent upon the insurer's receipt of the approval of the plan of operations. The insurer should forward a copy of the approval letter to be added to the file.

All plan of operation filings should be made directly to Mr. Roy Mensch, Assistant Chief Life Actuary, Life Bureau, NYS Department of Financial Services, One State Street, New York, New York 10004.