



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
25 BEAVER STREET
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**David A. Paterson
Governor**

**Eric R. Dinallo
Superintendent**

**Circular Letter No. 7 (2008)
April 10, 2008**

TO: All Authorized Life Insurers and Licensed Fraternal Benefit Societies

**RE: Compliance with Section 3211 and Regulation 77 Notice Requirements for
Variable Life Insurance Policies**

STATUTORY REFERENCE: Insurance Law Section 3211, Regulation 77

The purpose of this circular letter is to provide guidance about the application and interpretation of the premium-due notice required by Insurance Law Section 3211 for variable life insurance policies. The premium-due notice requirement in Section 3211(a) applies to all variable life insurance policies, including variable universal life policies delivered or issued for delivery in this state by an authorized life insurer or a licensed fraternal benefit society. The report to be sent to policyholders of flexible premium variable life insurance policies pursuant to Section 54.11(c) of 11 NYCRR 54 (Regulation 77) is a separate and distinct requirement. An insurer must satisfy both the report requirements of Section 54.11(c) and the premium-due notice requirement of Section 3211(a).

Section 3211(a) provides:

§ 3211. Notice of premium due under life or disability insurance policy;
notice to assignees of non-payment of premium.

(a) (1) No policy of life insurance or non-cancellable disability insurance delivered or issued for delivery in this state, and no life insurance certificate delivered or issued for delivery in this state by a fraternal benefit society, shall terminate or lapse by reason of default in payment of any premium, installment, or interest on any policy loan in less than one year after such default, unless a notice shall have been duly mailed at least fifteen and not more than forty-five days prior to the day when such payment becomes due. A separate notice shall not be required for insurance that is

supplemental to a policy of life insurance.

(2) If a life insurance policy or life insurance certificate provides that the policyholder or certificate holder may vary the amount and frequency of premiums to be paid to the insurer, premiums, installments and interest on loans will be considered due on the day when the failure of the insurer or fraternal benefit society to receive an amount of premium, installment or interest on loan would cause such policy or certificate to terminate or lapse, and the failure to pay such amount shall be considered a default.

Thus, the premium-due notice must be mailed at least 15 and not more than 45 days prior to the day when a premium payment becomes due. For flexible premium policies, the payment is considered due on the day when the failure of the insurer to receive the payment would cause such policy to terminate or lapse and the failure to pay such amount would be considered a default.

Pursuant to the grace period provision in Section 54.6(b)(3)(i) of Regulation No. 77, the grace period must end on a date not less than 61 days after the policy processing day on which the insurer determined that the total charges necessary to keep the policy in force (until the next policy processing day) exceed the net cash surrender value under the policy.

Reliance solely on the report required by Section 54.11(c) of Regulation No. 77 (stating the minimum premium payment due and the length of the grace period) to satisfy the premium-due notice requirement of Section 3211 is not sufficient. The time period in which the Section 54.11(c) report must be mailed (i.e., no earlier than, and within 30 days after, the policy processing day on which the insurer determined that an insufficiency had occurred) is not the same as the time period in which the Section 3211 premium-due notice must be mailed.

The Section 3211 notice must specify the amount of the payment due, the date when due, the place where and the person to whom it is payable, and state that, unless the payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to a cash surrender value or nonforfeiture benefit, if any.

For flexible premium policies with the minimum 61-day grace period, insurers may satisfy both the Section 3211 notice requirement and the Section 54.11(c) report requirement by mailing one notice during the 15-day period from the 16th through the 30th day after the policy processing day on which the insurer determines that an insufficiency has occurred. The single notice must contain all information required by both Section 3211 and Section 54.11(c).

For example, consider an insufficiency determined by the insurer on November 1. The grace period ends 61 days later (January 1). The Section 3211 notice must be mailed at least 15 and not more than 45 days prior to January 1 (i.e., no earlier than November 17 and no later than December 17). The Section 54.11(c) report must be mailed no earlier than, and within 30 days after, the policy processing day on which the insurer determined that an insufficiency had occurred (i.e., no earlier than November 1 and no later than December 1). An insurer may satisfy both notice requirements by mailing one notice during the 15-day period from the 16th through the 30th day after the policy processing day on which the insurer determined that an insufficiency had

occurred (i.e., no earlier than November 17 and no later than December 1).

Unless the Section 54.11(c) report complies with both the timing requirement and content requirement of Section 3211 or a separate Section 3211 premium due notice is provided, the coverage under the policy would not terminate or lapse by reason of default for up to one year.

Any questions concerning this circular letter may be directed by mail to Kathleen Ryan, Associate Insurance Attorney, Life Bureau, New York Insurance Department, One Commerce Plaza, Albany, NY 12257 or by e-mail to KRyan@ins.state.ny.us.

Very truly yours,

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Assistant Deputy Superintendent
and Chief
Life Bureau