§ 3206. Policies which provide for an adjustable maximum rate of interest on policy loans. (a) In this section:

(1) The term "policy" includes: (i) life insurance policies subject to the provisions of item (ii) of subparagraph (F) of paragraph eight of subsection (a) of section three thousand two hundred three of this article, and (ii) annuity contracts subject to the provisions of subsection (c) of section three thousand two hundred nineteen of this article, and (iii) certificates issued by a fraternal benefit society subject to the provisions of paragraph six of subsection (a) of section four thousand five hundred ten of this chapter, and (iv) annuity certificates subject to section four thousand five hundred thirteen of this chapter, when such policies, contracts, or certificates provide for loans with adjustable rates of interest.

(2) The term "policy loan" includes any cash loans and any premium loans made under a policy to pay one or more premiums that were not paid to the life insurer as they fell due.

(3) The term "policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the insurer.

(4) The term "published monthly average" means:

(A) the Monthly Average Corporates yield shown in Moody's Corporate Bond Yield Averages published by Moody's Investors Service Inc., or any successor thereto; or

(B) in the event that the Moody's Corporate Bond Yield Averages -- Monthly Average Corporates is no longer published, a substantially similar average, established by regulation issued by the superintendent.

(b) The adjustable maximum rate of interest on policy loans for each policy will be determined at the regular intervals specified in the policy. At the intervals specified in the policy:

(1) the rate being charged may be increased whenever such increase as determined under subsection (c) hereof would increase that rate by one-half per centum or more per annum; and

(2) the rate being charged must be reduced whenever such reduction as determined under subsection (c) hereof would decrease that rate by one-half per centum or more per annum.

(c) The rate of interest charged on a policy loan made under such a policy shall not exceed the higher of the following:

(1) the published monthly average for the calendar month ending two months before the date on which the rate is determined; or

(2) the rate used to compute the cash surrender values under the policy during the applicable period plus one per centum per annum.

(d) The insurer shall for any such policy:

(1) notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;

(2) notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in paragraph three hereof;

(3) send to policyholders with loans reasonable advance notice of any increase in the rate; and

(4) include in the notices required above the substance of the pertinent policy provisions permitting an adjustable maximum interest rate on policy loans established from time to time by the insurer as permitted by law, and specifying the frequency at which the interest rate is to be determined by the insurer as permitted by law.

(e) No policy shall terminate in a policy year as the sole result of change in the interest rate during that policy year, and the insurer shall maintain coverage during that policy year until the time at which it would otherwise have terminated if there had been no change during that policy year.

(f) Participating policies issued under the provisions of this section shall constitute one or more dividend classifications, as established by the board of directors of the insurer, separate from dividend classifications established for other participating policies issued by the insurer.

(g) No provision of law regulating the maximum rate of interest which may be charged, taken or received, other than section 190.40 or section 190.42 of the penal law shall apply to any loan made pursuant to the provisions of this section.

(h) The provisions of this section shall not be made to apply to any policy issued before January first, nineteen hundred eighty-three unless the policyholder agrees in writing to the applicability of such provisions. Any holder of a policy issued before January first, nineteen

hundred eighty-three which is of a classification determined by the insurer as eligible may request the insurer to make the provisions of this section applicable to such policy; the superintendent may require justification of the eligibility standard determined by the insurer.