VARIABILITY GUIDE

Life & Health Product Filing Bureau

OFFICE OF SUPERINTENDENT OF INSURANCE

Purpose

The purpose of this guidance document is to clarify and formalize the position of the Life and Health Product Filing Bureau regarding the use of variable items in insurance forms. The Bureau is sensitive to speed to market considerations and recognizes the need to include variable items in certain submissions. However, limited bracketed information is strongly encouraged.

Forms Requirements

- Any information appearing in the form that is considered variable and subject to change must be bracketed to denote variability. The submission must include a Statement of Variability that will discuss the conditions under which each variable item may change as well as all alternative content. For specific language that is variable, the exact language as it will appear in the form that will be issued to the consumer, along with the explanation for language variability, must be included in the Statement of Variability. If contract language is bracketed because it will either be included or removed, the Statement of Variability must provide such information and explain under what circumstances the information will be included or removed.

- The Statement of Variability must present reasonable and realistic ranges for each item. For all numeric values, minimum and maximum amounts must be presented. **All variable items must be defined sufficiently so that compliance with statutory or regulatory requirements can be determined.**

- Each variable item must be denoted in square [ ] brackets. Use of another character may be requested with an explanation. Any character must be consistently used.

- Each variable item must be bracketed correctly. If an entire section of a form is bracketed, the statement should indicate that this section will be included or excluded. If information within a section may change, each variable piece of information must be bracketed and addressed in the statement of variability.

- The Statement of Variability must include an explanation of the variability provided in the same order in which it appears in the form (i.e. by page number and paragraph).

- General and vague explanations are insufficient. Use of phrases such as “as necessary,” “as negotiated by the policyholder,” “flexibility in plan design,” “but not limited to” or “will comply with statutory requirements” are too vague and non-descript and are not allowed.

- Different types of benefits may be variable only for inclusion or exclusion within the form. The use of brackets within brackets is not permitted, except when variability is necessary to identify a period of time or other numeric values.

Filing Requirements

- Any change to a variable item that was previously approved must be filed and approved. Any requested change subsequent to approval shall be limited to new issues of policy forms and shall not be applied retroactively. Companies using forms with any variations not included in the Statement of Variability will be considered to have used an unapproved form.

- Requests for revisions to the Statement of Variability contained in a previously approved filing shall be accomplished by notification in the original filing unless the revision affects previously approved rates, in which case a new rate filing will need to be made.

- The Statement of Variability should only include information applicable to the form being filed. Each policy form must be accompanied by its own Statement of Variability. The form number of the applicable form must be stated at the top of the Statement of Variability.

- If the Statement of Variability exceeds one page, an annotated version of the form should be provided. This version of the form should only be attached under Supporting Documentation. No annotations should appear in the form attached under the Form Schedule. The Statement of Variability that corresponds to the annotated version must identify, in order, each variable item that appears in the form and describe specifically how that item will vary from the text as presented.

Permissible Variable Items

The following are examples of permissible variable items. This list is not intended to be all inclusive. Except as noted, changes to the information is not allowed without notice or prior approval.

- Company logos – If the company logo is denoted as a variable item, it must be submitted within brackets and the basis of the variation must appear in the Statement of Variability. The Bureau must be notified of a change in the logo through an informational filing. It should be noted that company name changes must be approved by the Company Licensing Bureau. Therefore, a logo that includes a company name change may not be submitted until the company name change has been approved by the Bureau.

- Company contact information – This includes home office, administrative office and service office addresses, telephone numbers, e-mail address and internet address. Note that when bracketing this information, it should be bracketed throughout the entire form.

- Officer Titles and Signatures.

- Illustrative items – This includes the name of the policyholder, insured, policyholder number and effective and issue dates. Changes to these illustrative items do not require prior approval.

- Separate accounts and funds – This applies to variable life insurance and variable annuity products.

- Guaranteed minimum interest rates – This applies to annuities and life insurance. A range of values must be provided in the Statement of Variability.

- Guaranteed maximum charges or expenses – A range off values must be provided in the Statement of Variability.

- The C.S.O. Mortality Table and related information – The Statement of Variability must include the basis for the variation.

- Table of Guaranteed Values – The Statement of Variability must include the basis for the variation.

- Participation rates for indexed products – A range of values must be provided in the Statement of Variability.

Impermissible Variable Items

- Full licensed name of company, with exception of applications (see Application Forms below).

- Form number in the bottom left-hand corner of the form.

- Only the text or information subject to change may be identified as variable. Entire sections and paragraphs may not be identified as variable unless the entire section or paragraph will be in or out of the document.

- Language required for statutory or regulatory compliance.

- Full licensed name of company, with exception of applications (see Application Forms below) or other forms that will be issued under more than one company name. In this instance, each company must submit the same form for review and approval and the company name must be listed in the SOV the exact way it will appear on the form. If multiple company names appear and are variable but only one particular company writes business in New Mexico, only that company must submit the advertisement and specify in the SOV that that company name will appear in all New Mexico ads.

- Variable Material – the SOV cannot contain variable material.

Application Forms

The following are examples of permissible variable items in application forms.

- In the case of applications for use by more than one company, the full licensed name of the company can only be variable to permit deletion should the company cease to issue business under the application. A separate application must be submitted on behalf of the other Companies.

- Type of Insurance – Identify in the Statement of Variability all the policies or contracts that could appear on the application form and explain when they will appear or not appear (for example, "10 Year Term" will appear only if used in the direct response market).

- Plan Information, including Plan marketing name.

- Amounts of Insurance – Identify in the Statement of Variability all amounts or range of amounts that could appear on the form and explain when they will appear or not appear.

- Guaranteed Periods.

- Rider or Other Features – Identify in the Statement of Variability all riders currently available that could appear on the application and explain when they will or will not appear. Be advised that optional riders should not be listed in the application until after they have been filed and approved by the Bureau.

- Payment Options/Methods – Identify all payment options/methods that could appear in the application.

- List of investment sub-accounts/funds.

- Special disclosure language – Explain when the language will or will not appear. If the language is subject to change, provide the specific language in the Statement of Variability that could appear in the form. The Statement of Variability may include identification of variable items that are not known or available. The insurer must indicate in the Statement of Variability that the company will file for approval any changes to the variable items or range of values prior to issuance.

- State-specific disclosures – May be considered variable if the language pertains to states other than New Mexico. New Mexico-specific disclosure language cannot be denoted as variable.

Table of Contents

In the Table of Contents section of the policy or certificate, only those provisions that are variable should be bracketed. Any provisions required by law shall not be variable. Any page numbers that may change shall also be bracketed.

Outline of Coverage for an Excepted Benefits plan

Outlines of Coverage meant to present final plan variations referenced in 13.10.34.8(Y) NMAC shall not contain any variability.

Specification/Data Page/Schedule of Benefits Page

The entire page or entire sections of a page may not be variable unless the page or section will be in or out. Only policy-specific information may be variable. Examples include the following:

- Hypothetical data – This includes John Doe and other information that varies by customer. The data should be bracketed and denoted as variable. The Statement of Variability should clearly indicate that this information varies with each customer.

- Guaranteed periods – The Statement of Variability must identify all guaranteed periods that could appear on the page.

- Variable loan interest rate – A range of values must be presented in the Statement of Variability.

- Death benefit options – The Statement of Variability must identify all death benefit options available and when they will or will not appear in the form.

- The payout option, if elected at time of application.

- Eligible Classes – The Statement of Variability must provide any alternate description(s) and definition(s) that may appear in the form.