

## New Procedure and Filing Guidance for Approval of Memorandum of Variable Material.

### I) Approval of the Memorandum of Variable Material:

The Memorandum of Variable Material for policy forms will no longer be filed for informational purposes. The Memorandum will be subject to approval by the Department as it defines the scope of approval for the corresponding policy form.

### II) Applicability:

This applies to all Life Bureau submission methods, including the expedited process pursuant to Circular Letter 6 of 2004. This also applies to all product types where a Memorandum of Variable Material is permitted. Please note the use of any variable material in individual life and annuity products is limited. Please refer to specific guidance available on the website for the use of variable material in individual annuity products with respect to the annuity minimum nonforfeiture interest rate change, guidance available in the applicable individual annuity or life product outlines, or contact the Department directly.

The existing process and rules for fund changes for variable life insurance and variable annuity contract remains unchanged and are unaffected by this guidance.

### III) Text of Memorandum:

The Statement of Variable Material should indicate how variable material is denoted in the policy forms (e.g. bracketed, underlined).

Substantively, the Memorandum of Variable Material should still be drafted in accordance with the Department product outline applicable to the type of product being submitted.

All variations appearing in actual issues of any forms must be included in the Statement of Variable Material. The use of any other variation would be considered to be the use of an unapproved form.

If a form is submitted without a Statement of Variable Material but does include areas denoted as variable then only the use of the form as it was submitted complies with the approval requirements.

### IV) Preparation of Memorandum for Submission:

A) It is not necessary for the Memorandum of Variable Material to have its own form number. If you choose to give the Memorandum of Variable Material its own form number the Department will consider it to be only for your internal use. Any form number you choose to give to the memorandum must not appear in the lower left corner as this area is reserved for Department form numbers.

However, the Memorandum should contain a caption at the top of the form which indicates by form number each form to which it applies. For Example: "Memorandum of Variable Material for form: XYZ-123".

B) The Memorandum must contain a revision date to distinguish it from past or future versions of the Memorandum.

V) Initial Submission of Memorandum with the Form:

A) The Submission Letter:

The "Re" of the submission letter should reference the Memorandum of Variable Material form along with the other forms. For example consider group life certificate GC01 being submitted along with the Memorandum of Variable Material. The Re should include:

Re: GC01 Group Term Insurance Certificate  
GC01 Group Term Insurance Variable Material

This will allow the Department to verify that actual issues of Certificate Form GC01 are based on the approved version of GC01 as modified by the Memorandum of Variable Material for GC01. Any internal form number used by an insurer on the Memorandum of Variable Material will not appear on the policy forms actually issued.

While an explanation of how variable material is denoted is required to be in the Statement of Variable Material, it is recommended that it also be included in the submission letter.

B) Attachments:

All required Certifications should reference the Memorandum of Variable Material in addition to the policy forms to which it applies.

For example using the same example from V)A) above the Certification of Compliance under Circular Letter 6 of 2004 should list GC01 and the Memorandum of Variable Material for GC01.

VI) Subsequent Submission of Revised Memorandum:

A) Submission Letter:

- 1) The "Re" of the letter should be completed as described above. As the Form has already been approved it would not be shown in the "Re". For the example above:

Re: GC01 Group Term Insurance Variable Material

- 2) The letter must indicate the Department file number of the previously approved or filed Memorandum and the form number(s) to which the Memorandum applies.

B) Attachments:

- 1) The Revised Memorandum should be accompanied by all required certifications as if a revision to an already approved form was being submitted.
- 2) A red-lined/black-lined version of the Memorandum must be provided showing the changes or, in the alternative, the submission letter must clearly identify the changes. The company must confirm in the submission letter or the Memorandum that no other changes have been made.
- 3) A copy of the form that will be modified by the revised Memorandum must be included.

VI) Special Consideration for Readability Certification:

§3102(c)(4) requires a Readability (Flesch Score) Certification be included with the submission of some forms. Section 3102(c)(1)(D) requires that the forms actually issued or delivered in this state that are subject to Section 3102 achieve a minimum score of 45 on the Flesch reading ease test. As such the required certification under Section 3102(c)(4) by an officer of your company must consider all the possible variations allowed by the Memorandum of Variable Material.

This would also apply when only a revised Memorandum of Variable Material is being submitted. As such a Readability Certification should be included for the affected form or an explanation why such certification is not required should be provided. For example the proposed revision only affects the table of values.

A Flesch reading ease test should not be performed on the Memorandum of Variable Material.