

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE OFFICE OF LIFE AND HEALTH

Actuarial Services

Life/Health/Annuity Forms; Standards for Individual Life Insurance Policy Forms; Individual Annuity Contract Form Standards

Adopted Amendments: N.J.A.C. 11:4-40.2, 40.3, 41.8 and 43.3

Proposed: October 16, 2006 at 38 N.J.R. 4392

Adopted: April 3, 2007 by, Steven M. Goldman, Commissioner, Department of Banking and Insurance.

Filed: April 3, 2007 as R. 2007 d.131, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and 17B:25-18.g.

Effective Date: May 7, 2007

Expiration Date: March 14, 2011

Summary of Public Comment and Agency Response:

The Department of Banking and Insurance (Department) received a timely written comment from Metropolitan Life Insurance Company.

COMMENT: The commenter commended the Department for this adoption and recommends that it should be extended slightly to include group private placement variable life products in the list of exempt products. The commenter asserts that since the Federal criteria imposed on the sale of individual forms supersedes any benefits afforded to the consumer through the form filing process, the Federal criteria are equally applicable to group private placement variable life products and the individuals who may purchase coverage under them.

RESPONSE: The Department disagrees with the commenter's assumption that all group private placement variable life products should be added to this exemption. The Department is

aware of two distinct types of group plans that may be issued in the private placement market. One type is corporate owned life insurance (COLI) where the corporation is the “accredited investor” and the proceeds of the plan are used solely by the corporation to fund employee benefits. The other type is the formation of a group consisting of individual accredited investors, where the only purpose for the group is to purchase life insurance.

The Department believes that group COLI plans warrant continued review since this type of coverage has unique requirements that require monitoring. These requirements include signed affirmative consent from the individual whose life is to be insured, but whose estate or designated beneficiaries would never directly receive the death benefits, along with written notice to the individual of the amount of insurance in force on his life. The plan must also be 100 percent non-contributory, may not include split-funded programs, and must limit the use of the funds to offset future employee benefits.

The other type of group life insurance, where the group consists of individual accredited investors formed for the purpose of obtaining insurance, is not an eligible group as defined in New Jersey’s group life statutes. This group would be a discretionary group subject to review by the Department pursuant to N.J.S.A. 17B:27-69. For this plan, each accredited individual covered would be paying 100 percent of the premium attributable to him or her, as would be the case in an individual contract. It is the Department’s position that all ownership rights for this coverage should belong to the covered individuals, and that the certificate provisions should provide rights to the covered individuals that are at least as favorable as those contained in the individual life insurance provisions located at N.J.S.A. 17B:25. These requirements are enforced through regulation and policy form review. The Department is of the opinion that exempting group life plans issued to

groups of individual accredited investors from review would result in the inappropriate deregulation of what is essentially individual life insurance coverage administered on a group basis.

Limiting the exemption established through the adopted amendments to individual policies should afford insurers and purchasers sufficient flexibility in a developing market without compromising the rights of individual purchasers. The provisions of N.J.S.A. 17B:25-1 et seq. must continue to be implemented and adhered to by the insurers even in the absence of policy form review by the Department.

The Department thanks the commenter for its commendation and recommendation. However, for the reasons stated above no changes are being made upon adoption.

Federal Standards Statement

Except for the references in the proposed definition of “private placement form” to the definition of “accredited investor” in Rule 501 of Regulations D under the Securities Act of 1933, 15 U.S.C. §77b.(15) and to the definition of “qualified purchaser” set for in Section 1(a)(51) of the Investment Company Act of 1940, 15 U.S.C. §80a-2(a)(51), the adopted amendments do not contain standards or requirements that are the subject of any Federal standards or requirements.

Full text of the adoption follows: