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JULIANNE M. BOWLER
COMMISSIONER OF INSURANCE

BULLETIN No. 2003-01

To: Insurers Offering Life Insurance and Annuity Products in Massachusetts

From: Julianne M. Bowler, Commissioner of Insurance Julianne M Bowler

Date: February 27, 2003

RE: Non-forfeiture requirements pursuant to G.L. ch. 175, §144A

The standard non-forfeiture law ("SNFL"), found at G.L. ch. 175, §144A provides for the determination of an annuity contract's required minimum cash values. Specifically, G.L. ch. 175, §144A(2) gives the mathematical equations that must be used to determine the contract's non-forfeiture amounts.

The SNFL states, "With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments *shall be equal* to an accumulation up to such time at a rate of interest of three per cent per annum of *percentages of the net considerations*...decreased by the sum of...any prior withdrawals...and the amount of any indebtedness to the company on the contract...." (italics added) The industry practice has been to credit an interest rate of at least 3% to the policyholder's entire premium payment. Consequently, contracts that provided for an interest rate of 3% in the computation of the accumulated values have been disapproved, unless they contained a statement, on the cover page, that policy values do not comply with Massachusetts's requirements.

However, the Division has accepted the so-called "actuarial equivalence" of a 3% annual interest rate. The Division may now approve life insurance and annuity products that do not provide a stated 3% annual interest rate in the computation of the accumulated values in the terms of the contract, provided that the minimum non-forfeiture values nonetheless meet or exceed the values required by the SNFL. Contracts that provided for an interest rate of less than 3% in the computation of the accumulated values and that meet the minimum non-forfeiture values will not have to contain a disclosure on the cover page. Please be advised that any company wishing to file a life insurance or annuity product that utilizes less than 3% in the computation of the accumulated values must provide an actuarial demonstration that the use of the lower interest rate nonetheless satisfies the minimum non-forfeiture values. Additionally, a company wishing

to utilize an interest rate of less than 3% must file a new contract. A lower interest rate will not be approved if it is intended to be attached to a previously approved contract by rider or endorsement.

Furthermore, all submissions must still adhere to the Massachusetts interpretation of "maturity value" in the non-forfeiture law's prospective test. Massachusetts interprets "maturity value" to mean the accumulated value at maturity. Consequently, so-called "rolling surrender charges" may lead to a violation of the prospective test. If the prospective test cannot be met, the contract must contain a statement, on the cover page, that policy values do not comply with Massachusetts's requirements.

Finally, many insurers are submitting General Account fixed account contracts that reserve the insurer's right to restrict, either in part or in whole, a policyholder's transfers and/or payments into the fixed account. The Division prohibits this practice of making a General Account fixed account inaccessible to the policyholder. The Division considers it an unfair and deceptive practice to offer a General Account fixed account option and to then prohibit the use of such option. Any contract that is submitted for approval and that contains this type of provision will be disapproved by the Division.