

Bulletin 2009-xx

**TO: Insurers Offering Group Life and Group Annuity Products to Entities
Situsued in Massachusetts**

FROM: Nonnie S. Burnes, Commissioner of Insurance

DATE: June xx, 2009

**RE: Group Life Insurance Policies and Group Annuity Contracts as Permitted
Under G.L. c. 175, §§132A1/2 and 133A**

This Bulletin informs life insurers regarding requirements for group life insurance policies and group annuity contracts issued to so-called “discretionary groups”¹ under the provisions of G.L. 175, §§ 132A1/2 and 133A. Insurance companies wishing to offer discretionary group products in the Commonwealth shall submit materials to the Division of Insurance (“Division”) according to the guidelines described in this bulletin.

I. Allowable Discretionary Groups

G.L. c. 175, §132A1/2 permits the issuance of a group annuity contract to a group other than one enumerated in G.L. c.175, §132A and G.L. c. 175, §133A permits the issuance of a group life insurance policy to a group other than one enumerated in G.L. c.175, §133 if the commissioner finds the issuance of the group contract or policy satisfies the following:

it is not contrary to the best interests of the public;
it would result in economies of acquisition or administration; and
the benefits are reasonable in relation to the premiums charged.

The Commissioner will consider that a discretionary group contract or policy is not contrary to the best interests of the public for the purposes of G.L. c. 175, §132A1/2 and G.L. c. 175, §133A and provided that it satisfies the two following criteria:

- (1) Discretionary group members have group conversion rights if the member leaves or is no longer eligible for the discretionary group or if the discretionary group terminates; and
- (2) It is a policy or contract issued to one of the following types of groups:
 - A group annuity contract issued to the trustees of one or more trusts which permits any specified class or classes of plaintiffs or claimants to become annuitants with respect to amounts paid or payable on their behalf by way of settlement, judgment or other award;

¹ Groups other than ones described in G..L. c. 175 §132A or G.L. c. 175 §133 that are situsued in Massachusetts.

- A group life insurance policy or group annuity contract issued on behalf of a group of independent contractors or sales persons of a business;
- A group life insurance policy issued to a credit union or to a trustee or trustees or agent designated by two or more credit unions, which credit union, trustee, trustees or agent shall be deemed policyholder, to insure members of the credit union or credit unions for the benefit of persons other than the credit union or credit unions, trustee or trustees, or agent or any of their officials;
- A group life insurance policy issued to a trustee under a trust established by an insurer for the purpose of providing continued group life insurance coverage to those former employees, former members, or former members and the employees of such members, and their spouses and dependent children, who were previously covered under policies of group life insurance issued by the insurer to employers, associations or to trustees of employers or associations pursuant to G.L.c.175, §133, provided (1) that it is evidenced by the issuance of a certificate of insurance to such former employees or members, and (2) that the amount of the continued life insurance coverage made available to a former employee or member and to the employee's or member's spouse and dependents shall not exceed the amount of the group life insurance coverage previously provided to the employee or member and the employee's or member's eligible dependents at the time of the employee's separation; or
- A group annuity contract issued to the trustees of any charitable or religious association which meets the requirements of chapter one hundred and eighty and which has been in existence for at least one year and not formed for the exclusive purpose of procuring insurance that permits a specified class or classes of persons to become covered as an annuitant.

II. Discretionary Group Life Insurance Filing Requirements

Discretionary group products shall comply with 211 CMR 55.00 and all other group filing requirements. In addition, any group policy that utilizes any type of individual underwriting shall comply with the privacy and notice disclosures found in G.L.c.175I.

A. Discretionary Group Life Insurance Policy Form Requirements

All discretionary group life insurance policy forms issued to entities situated in Massachusetts and offered to a Massachusetts resident are subject to the requirements of G.L. c. 175, §134.

B. Discretionary Group Life Insurance Rates/Premiums

Each filing must be accompanied by actuarial documentation that the rates/premiums are based upon sound actuarial principles and the experience of the group, rather than the individual's health, activities, hobbies, or mortality. Although an individual's insurability may be used to determine eligibility for the product or the amount of coverage available, individual insurability may **not** be used to determine rates.

C. Discretionary Group Life Insurance Marketing Materials

Except in cases where the group life insurance is guaranteed issue, all marketing materials designed for use with a group product offered to Massachusetts residents pursuant to G.L. c. 175, §133A shall clearly and conspicuously disclose that the product is **not** guarantee issue to members of the group and that a member may be excluded or the amount of coverage limited due to his/her individual insurability.

III. Discretionary Group Annuity Filing Requirements

Insurers must comply with 211 CMR 55.00 with respect to any waiver of surrender charge provisions included in the master contract, certificate, or any riders/endorsements.

A. Discretionary Group Annuity Contract Form Requirements

The contract must contain the standard provisions required for traditional group annuity contracts issued in Massachusetts pursuant to G.L. c. 132B. The contract must contain a provision that in the event of a conflict between the terms of the master contract and the terms of the certificate, the terms of the certificate shall govern.

B. Discretionary Group Annuity Marketing Materials

Except in those cases in which the group annuity is guaranteed issue, all marketing materials designed for use with a group annuity product offered to Massachusetts residents pursuant to G.L. ch.175, §132A1/2 shall clearly and conspicuously disclose that the product is **not** guarantee issue to members of the group.

IV. Other Discretionary Groups

Groups seeking approval other than those noted above must demonstrate to the Commissioner how the group meets the requirements of 175:132A½ or 175:133A or and must gain approval of the group before a policy or contract is submitted to the Division for approval.

Any request for approval shall include the following information:

A copy of the group's constitution and by-laws, if appropriate;

A copy of the trust agreement, if appropriate;

A copy of the master group life insurance policy to be issued to the group policyholder situated in Massachusetts;

A copy of the certificate intended to be delivered to Massachusetts residents covered under the group's group life insurance policy;

A copy of the application(s) intended to be used with the policy and/or certificate;
and

Copies of any and all marketing material for the discretionary group life insurance product intended to be offered to residents of Massachusetts.

If you have any questions involving the subject matter of this bulletin, please consider contacting Kevin Beagan, Director, State Rating Bureau at (617) 521-7323.