

Commonwealth of Virginia  
Bureau of Insurance  
Life and Health Division

**Variability Guidance Document**

Purpose

The purpose of this guidance document is to clarify and formalize the position of the Bureau of Insurance regarding the use of variable items in insurance forms. The Bureau is sensitive to speed to market considerations and recognizes the benefit to customize group policies to the policyholder's needs to include variable items in certain submissions. However, limited bracketed information is 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.

- For specific language that is variable, the 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. Either exact or descriptive language may be used as indicated below. If 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.
- 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). A recurring item may be explained only the first time it appears if clearly identified as recurring.
- Except for descriptive variability content, general and vague explanations are insufficient. For example, 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 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.
- The use of brackets within brackets shall be limited to period of time; numeric values, such as dollar amounts, percentage, and plan numbers; dates; references to the year, such as calendar year, plan year, fiscal year. Minimum and maximum values should be identified.

#### Filing Requirements

- **Any change to a variable item that was previously approved shall be filed using a supplement to the originally approved Statement of Variability in the original SERFF filing.** Once approved, any requested change subsequent to the original approval of the Statement of Variability may only take effect for new issues of the forms and existing issues of the forms at renewal. Companies using forms with any variations not included in the Statement of Variability will be considered to have used an unapproved form. For third-party submissions, requests for revisions to the Statement of Variability contained in a previously approved filing shall include the SERFF tracking number for the original filing in the new SERFF submission. If the revision affects previously approved rates, a new rate filing will also need to be made.
- The Statement of Variability should only include information applicable to the form being filed. Each 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 two pages, an annotated version of the form should be provided. 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. This version of the form should only be attached under Supporting Documentation.

#### 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 are 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 Bureau's Financial Regulation Division. Therefore, a logo that includes the name of a company may not be changed if a change in the name has not yet been approved by the Bureau.

- Company contact information – This includes home office, administrative office and service office addresses, telephone numbers, e-mail address and website address. Note that when bracketing this information, it should be bracketed throughout the entire form.
- Officer Titles and Signatures.
- Name of the policyholder, insured, policyholder number and effective and issue dates.
- Illustrative language may be used where precise language would be too excessive to provide exact language and a description of the content can instead be provided. Illustrative variability is permitted for class descriptions, periods of time, percentages, numerical values, eligibility rules (*i.e.*, optional items in a list, such as inclusive definitions of “child of an insured employee;” references to active work or active membership) and a description of the enrollment process. The Bureau may at any time request additional information on illustrative language when clarification is needed.
- Names of government programs that may be renamed, such as FMLA, USERRA, Joint Commission; references to 401(k) and 403(b); multiple choice language, for example is/is not, are/are not; and references to customized names by employers, such as PTO, sick leave, and salary continuance.
- 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 of 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.
- State-specific disclosures – May be considered variable if the language pertains to states other than Virginia. Virginia-specific disclosure language may be variable only to allow for future changes to statutory or regulatory requirements.

#### Impermissible Variable Items

- Full licensed name of company, with exception of applications (see Applications Forms below).
- Form number in the bottom left-hand corner of the form.
- Policy definitions
- 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.

#### 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.
- 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 all amounts or range of amounts.
- 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 option riders should not be listed in the application until after they have been filed and approved by the Bureau.

- Payment Options/Methods – Include a description of any lawful payment method preferred by the policyholder.
- List of investment sub-accounts/funds.
- Special disclosure language – Explain when the language will or will not appear.
- State-specific disclosures – May be considered variable if the language pertains to states other than Virginia; Virginia-specific disclosure language cannot be denoted as variable.
- Medicare supplement plans except Plan A.

#### 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.

#### Specification/Data Page/Schedule of Benefits Page

The entire page or entire sections of a page may not be variable. 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.