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Use of the 2001 CSO Mortality Table for Nonforfeiture purposes for:

Policies subject to Section 4221(n-1) of the New York Insurance Law; And

Policies subject to Regulation 77.

With the adoption of Regulation 179, Life Insurers and Fraternal Benefit Societies may elect to use the 2001 CSO Table for purposes of calculating nonforfeiture values and reserves for policies issued starting January 1, 2004. The 2001 CSO Table must be used for policies issued on or after January 1, 2009. Regulation 179 was promulgated in accordance with the provisions of section 4221(k)(9)(B)(vi) that provides:

'Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners (or any modifications thereof for any specified class or classes of risks), that are approved by the superintendent for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table.'

- A. Any life insurance policies that credits additional amounts subject to Section 4232 of the New York Insurance Law must comply with the nonforfeiture requirements of section 4221(n-1) of the New York Insurance Law.

Section 4221(n-1) allows for nonforfeiture compliance to be under either paragraphs (A) or (B) of 4221(n-1)(3).

There are four areas where the mortality table comes into play.

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1. If nonforfeiture compliance is under 4221(n-1)(3)(A), then the maximum annual charges are subject to the limits expressed in section 4221(n-1)(3)(A)(iv). This Section includes the provision that:

'Maximum charges may also be based on any other table (or modification thereof for the specified class of risk) approved by the superintendent pursuant to item (vi) of subparagraph (B) of paragraph nine of subsection (k) of this section.'

Based on the adoption of Regulation 179 a life insurance company or a fraternal benefit society that has chosen to comply with section 4221(n-1)(3)(A) may elect to have their maximum cost of insurance charges limited by the 2001 CSO Table instead of the 1980 CSO Table as of January 1, 2004, but must limit them to the 2001 CSO Table by January 1, 2009.

2. The calculation of the "net level whole life annual premium" either at issue or for an increase in the amount of insurance is affected by the mortality table used. The net level whole life annual premium is used by both paragraphs (A) and (B) of 4221(n-1)(3), although in quite different ways. The mortality table used for the calculation is required to be the table that the maximum annual cost of insurance charges are based on but not in excess table(s) in section 4221(n-1)(3)(A)(iv).

As indicated in A.1. above, section 4221(n-1)(3)(A)(iv) is subject to the discretion granted in section 4221(k)(9)(B)(vi).

3. Section 4221(n-1)(C) applies to both 4221(n-1)(3)(A) and (B) policies. Section 4221(n-1) provides:

'The surrender charge in policy years after the first shall not exceed the maximum initial surrender charge permitted under this subsection multiplied by the ratio of (i) the value of a life annuity due of \$1 per year for the balance of the amortization period to (ii) the corresponding annuity value at issue, based on the mortality table and interest rate used in calculating the net level whole life annual premiums. For all policies the maximum amortization period is 20 years.'

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And as noted above, the net level whole life annual premium is affected by the mortality table used.

4. Section 4221(n-1)(3)(B)(iii) requires that the insured be given the right at least once each year to purchase guaranteed paid-up life insurance. This section specifies that the purchase rates for this paid-up coverage must be at least as favorable as those based on the mortality basis specified for an insured not medically underwritten in section 4221(n-1)(3)(A)(iv) and 4.00% interest. This allowed the 1980 CET Table to be used for this calculation as long as it was specified in the policy for the purpose of calculating the amount of paid-up coverage. As the 2001 CSO Table does not have a CET version the 2001 CSO table would have to be used.
- B. Any variable life insurance policy subject to Regulation 77 must comply with the nonforfeiture requirements of section 54.7 of Regulation 77.

Section 54.7 of Regulation 77 allows for nonforfeiture compliance to be under either subdivisions (a) or (b) of 54.7. Our Discussion here is limited to compliance under 54.7(b). Under 54.7(b) there is the additional choice showing compliance under either subparagraph (i) or (ii) of paragraph 54.7(b)(2).

There are four areas where the mortality table comes into play.

1. Section 54.7(b)(4) provides:

'In the case of standard medically underwritten lives, the mortality charges for life insurance on any insured under the policy may not exceed, prior to the operative date of subsection (k) or section 4221 of the Insurance Law, the 1958 CSO table; and on or after such operative date, the 1980 CSO with or without 10-year select mortality factors or any other table approved by regulation promulgated by the superintendent, in accordance with section 4221(k)(9)(B)(vi) as substitutes for such tables.'

So for variable life products the 2001 CSO Table may be used for maximum mortality charge starting January 1, 2004 and must be used starting January 1, 2009. This applies to policies subject to either subparagraph (i) or (ii) of 54.7(b)(2).

2. The calculation of the "net level whole life annual premium" either at issue or for an increase in the amount of insurance is affected by the mortality table used. Both subparagraphs (i) and (ii) of 54.7(b)(2) use the net level whole life annual premium, although in quite different ways. The mortality

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table used for the calculation is required to be the table that the maximum annual cost of insurance charges are based on (54.7(b)(1)(ix) and (x) of Regulation 77).

3. Section 54.7(b)(3) of Regulation 77 provides:

'Any surrender charge in paragraph (2) of this subdivision must be such that at the end of any policy year it does not exceed the maximum initial surrender charge that would be allowed multiplied by the ratio of $ax+t:15-t$ to $ax:15$ based on the mortality table and interest rate used in calculating the net level whole life annual premiums.'

And as noted above, the net level whole life annual premiums are affected by the mortality table used.

4. Section 54.7(b)(5)(iii) requires that at least once each year, that the insured has the right to transfer all separate account funds to the general account and apply his cash surrender value to purchase a guaranteed fixed paid-up benefit.

Section 54.7(b)(5)(iv) then goes on to provide:

'Any amount of paid-up whole life insurance provided under subparagraph (iii) of this paragraph shall be at least as great as that computed using the mortality table on which the maximum mortality charges have been calculated and the interest rate guaranteed in the policy. Any period of extended term insurance provided under subparagraph (iii) shall be at least as long as that using an extended term insurance mortality table appropriate to the mortality table for the maximum mortality charges and the interest rate guaranteed in the policy.'

Once the 2001 CSO Table is used for the maximum mortality charges it would also need to be used if paid-up extended was provided as an option under 54.7(b)(5)(iii).

In summary Regulation 179 in conjunction with section 4221(k)(9)(B)(vi) would allow for a life insurance company or fraternal benefit society to elect to use the 2001 CSO Table starting January 1, 2004 and require it by January 1, 2009. But in practice the election of the 2001 CSO Table for these policy may only really be done on a prospective basis since the forms would need to reflect that the values are based on the 2001 CSO Table.

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Please note Regulation 179 requires that the 2001 CSO Table be used for both Reserve and Nonforfeiture purposes. This makes the retroactive election of the 2001 CSO Table for reserving purposes not practical for products with nonforfeiture values or where the reserve basis is specified in the policy form.