



MEMORANDUM

TO: MANAGEMENT COMMITTEE
FROM: RULEMAKING COMMITTEE
DATE: NOVEMBER 15, 2022
SUBJECT: RECOMMENDATION TO THE MANAGEMENT COMMITTEE FOR CHANGES TO THE *GROUP OPERATING PROCEDURE* AND FRAMEWORK IN RESPONSE TO COMMENTS SUBMITTED DURING FORMAL RULEMAKING PROCESS

On June 28, 2022, the Rulemaking Committee recommended to the Management Committee a framework and proposed *Operating Procedure to Accommodate Use of Compact-Approved Products for Other than Employer Groups* (“*Group Operating Procedure*”). The Management Committee issued these items for notice and comment and held a public hearing during the in-person meeting in Portland, Oregon in August. The Management Committee requested the Rulemaking Committee review the submitted comments and provide feedback on changes to its recommendation, if any, based on these comments.

The Rulemaking Committee has reviewed the written comments of the Vermont Department of Financial Regulation (Vermont) and the American Council of Life Insurers (ACLI) as well as the comments made during the public hearing on August 12, 2022. The Rulemaking Committee recommends to the Management Committee that it make the following changes to the *Group Operating Procedure* and Framework before considering for approval.

Changes to the Group Operating Procedure

Section 102. Definitions

The Rulemaking Committee recommends the Management Committee remove subsections (b), (c) and (d) from Section 102(2) and relocate and reword the Drafting Note to the end of Section 102. See suggested redlined edits attached as Appendix B.

Vermont expressed its concerns with inclusion of categories other than an employer or the trustees of a fund established by an employer in the “Employer Group” definition in the proposed *Group Operating Procedure*. Vermont indicated the other categories in the proposed definition—especially portability trusts and Professional Employer Organizations—are partially prohibited or considered “non-employer groups” subject to distinct requirements and prior approval in Vermont. Vermont proposed removing the categories of “trusts and portability trusts” and “Professional Employer Organization” from Section 102(2) of the “Employer Group” section such that they automatically fall under Section 102(3) of the “Non-Employer Group” section.

ACLI put forth several questions and concerns about how the inclusion of trusts and portability trusts, labor unions and Professional Employer Organizations in the “Employer Group” definition would work especially if a group’s eligibility remained subject to state determination. ACLI expressed concern with keeping this information consistent between the Compact and current state laws and whether the companies could rely upon the information published at the Compact.

The Rulemaking Committee believes it is more straightforward, and frankly cleaner, to remove all categories from Section 102(2) other than the “employer or the trustees of a fund established by an employer,” which matches the scope of the current group Uniform Standards. Thereby, all other groups, including labor unions, trusts and portability trusts, and Professional Employer Organizations, would fall under Section 103 and remain subject to the current process in state law for eligibility and authorization including, if applicable, prior approval of the specific group(s).

These suggested changes are to address and minimize the confusion and uncertainty around the requirements and process that apply to approval of a group other than employer groups in a given state. Vermont has indicated if these changes being recommended to Section 102 are made, it will address their concerns, and their recommendation to limit the scope of the *Group Operating Procedure* to exclude disability income would no longer be needed.

Even with the removal of these categories to Section 103, the *Group Operating Procedure* will achieve the speed-to-market goal of the industry, which is to file the group product forms for approval with the Compact on a general use basis. As indicated in the ACLI comment letter, the industry understands it must follow state law for approval, if applicable, of the specific non-employer group before it can issue the Compact forms.

The Rulemaking Committee discussed the ACLI’s request with respect to Sections 102(3)(b) and (c), which are factors listed for the sole purpose of describing what types of groups fall under the category of “Non-Employer” in the *Group Operating Procedure*. ACLI is concerned that not all state laws have these provisions and would create additional requirements to satisfy at the state level where none may exist today. The Rulemaking Committee does not recommend removing these provisions but strengthening the Drafting Note to clarify the definitions in Sections 102(3)(b) and (c) do not alter or expand state law and are only for the purpose of implementing the *Group Operating Procedure* and Framework.

The Rulemaking Committee recommends moving and updating the Drafting Note that currently follows Section 102(2). The Drafting Note would move to the end of Section 102. The further suggestion is to revise in part to emphasize that the provisions for describing “Employer Group” and “Non-Employer Group” in the *Group Operating Procedure* do not create or alter state statutory definitions for these groups. This Drafting Note is repeated at the end of Section 103 and would need to be revised in the same manner for consistency.

Section 104. Compact Product Filing Requirements for Group Policies and Certificates Approved by the Commission and To Be Issued to Non-Employer Groups

Both Vermont and ACLI posed several questions about how the filing process would work in terms of filing the group product forms for approval through the Compact and filing the specific group type documentation for approval, as applicable, in the Compacting States.

Appendix A is a Proposed Workflow for Compact Products for Non-Employer Groups. Vermont indicated based on its review of Appendix A, it was comfortable with the workflow process and would no longer seek its suggested changes to Section 104.

The Rulemaking Committee recommends two changes to Section 104 – delete Section 104(4) and revise Section 104(5).

ACLI has expressed concern with Section 104(4) requirement to maintain a chart at the Compact Office level of the filing requirements for all non-employer group types across the Compacting States. The concern is that a chart would be difficult to keep accurate and updated across all states and group types. ACLI indicated its member companies are well versed in the group type filing requirements across the states. The Rulemaking Committee agreed these were legitimate concerns shared by some Compacting States. The Rulemaking Committee recommends deleting this mandate for the Compact Office to maintain a listing of Compacting States' requirements for seeking eligible group authorization.

The Rulemaking Committee suggests revising Section 104(5) to be consistent with the Proposed Workflow in Appendix A. Companies will use the Statement of Intent Schedule within a Compact filing to list the state SERFF filings where the authorization or approval for the specific group has been given by the Compacting States. The Statement of Intent Schedule is the location in a Compact SERFF filing currently used for a company to identify the state forms or filings that will be used in conjunction with the product submitted in the Compact filing and is an appropriate location for this information. The revision would be to allow the companies a 90-day period to enter this information on the Compact product filing post-approval by the Compacting State(s) with respect to specific non-employer groups.

Framework for Implementation of Non-Employer Group Use of Compact-Approved Group Products

The Proposed Workflow in Appendix A is an important part of the Framework, and the Rulemaking Committee suggests it be incorporated into the framework as Section D. The Framework was attached as Appendix A in the Rulemaking Committee's [original transmittal letter dated June 28, 2022](#).

The Rulemaking Committee recommends the Management Committee and Commission consider and adopt the full Framework with the workflow in Appendix A in conjunction with the consideration of the *Group Operating Procedure*. For this reason, the Framework for Implementation of Non-Employer Group Use of Compact-Approved Products is now a stand-alone document accompanying this transmittal letter.

In conclusion, the Rulemaking Committee recommends further changes to the *Group Operating Procedure* as redlined in Appendix B. Further, the Rulemaking Committee recommends the adoption of the Framework for Implementation of Non-Employer Group Use of Compact - Approved Products with the Proposed Workflow inserted as Section D.

APPENDIX A

PROPOSED WORKFLOW FOR GROUP COMPACT PRODUCTS FOR OTHER THAN EMPLOYER GROUPS

(to be inserted as Section D of the Framework)

STEP ONE:

Company submits a group product filing to the Compact for review and approval.

- a. A new submission requirement identifying all group types intended to be issued the product and an acknowledgement the filer will not issue to a specific group in a Compacting State unless filer is authorized (including complying with applicable filing requirements) to issue to that group under state law.
- b. Only if a filer has received approval from a Compacting State for authorization of a non-employer group, if applicable, it will list the filing information in the Statement of Intent which will have a hotlink for the state to the state filing in SERFF.
- c. Filers will list all specific groups to which the product will be issued in all applicable Compacting States.
- d. If a filer has not yet filed or received approval of the specific group in the Compacting State, as applicable, it must wait for approval by the Compacting State before it can add to the Statement of Intent Schedule.
- e. Certification signed by an Officer on the Statement of Intent Schedule – “The company certifies the eligibility of specific groups listed on the Statement of Intent Schedule meets the definitions and requirements of each applicable Compacting State on this filing. The company further certifies the Compact-approved product will not be issued to a specific group unless it has met the definitions and requirements of each applicable Compacting State and is added to the Statement of Intent Schedule within 90 days of action by the Compacting State, if applicable.”

STEP TWO:

Upon Compact filing, the Compact Office (Intake Coordinator) will notify the designated representative(s) in the Compacting States that a group product filing has been submitted with the

Compact Office and the filer has indicated it will be issued to non-employer groups and list the group type identified under the new submission requirement described in Step One.

STEP THREE

The Compact Office will maintain a listing of group product filing submissions where the filer has indicated it will be issued to non-employer groups. Approved, pending, and withdrawn group filings will be listed on the regulatory-only Collaboration Space. The Compact Office will send a listing to each Compacting State on a quarterly basis of the group product filing submissions where the filer has indicated it will be issued to non-employer groups with a listing of group type identified.

STEP FOUR

- a. The filer submits a separate state filing for approval, if required under state law, of the specific group type and provides the SERFF Tracking No. for the Compact-approved group product filing so that the Compacting State may access the filed forms.
- b. The Compacting State can view the Compact-approved product through SERFF and follow-up with the Compact Office regarding questions and concerns with the group product filing submission.

STEP FIVE

When a group product filing already approved by the Compact will be used for additional non-employer groups, in states requiring the approval of specific non-employer groups, the filer is required to follow the state-specific requirements in place before it can add the non-employer group to the Compact product filing and issue accordingly. The filer is subject to Step One, items b through e, for any additional non-employer group to which a Compact-approved product filing will be issued. Additional groups may be added to the Statement of Intent schedule of the applicable Compact product filing. The filer is not required to submit a new Compact product filing for use with an additional group.

APPENDIX B

OPERATING PROCEDURE FOR THE USE OF COMPACT-APPROVED PRODUCTS FOR OTHER THAN EMPLOYER GROUPS

§ 101. Purpose.

Pursuant to Article X of the Model Interstate Insurance Product Regulation Compact (“Compact”), as enacted into law by each Compacting State, and Article III of the Bylaws of the Interstate Insurance Product Regulation Commission, this Operating Procedure (the "Rule") authorizes the Commission to establish appropriate filing and review processes and procedures for products approved by the Commission. The purpose of this Operating Procedure is to establish the procedures for filing and review of Product Filings which upon approval by the Interstate Insurance Product Regulation Commission (Commission) may be issued to Non-Employer Groups in the Compacting States. This Operating Procedure shall apply to require further action by a Compacting State, as applicable pursuant to each jurisdiction’s requirements, before a Product Filing approved by the Commission can be issued to a Non-Employer Group

§ 102. Definitions.

- 1) The terms as defined in Article II of the Compact and in Section 102 of the Operating Procedure for the Filing and Approval of Product Filings shall have the same meaning in this Rule as if such definitions were set forth fully herein.
- 2) The term “Employer Group” for purposes of this Operating Procedure and the Uniform Standards is defined to include the following:
 - a) An employer, or the trustees of a fund established by an employer, which shall be deemed to be the policyholder to insure employees of the employer, and if applicable their dependents, for the benefit of persons other than the employer and must be authorized under the laws of the jurisdiction where the policy or certificate is delivered or issued for delivery;
 - ~~b) Trusts or portability trusts established by the insurer and must be authorized under the laws of the jurisdiction where the policy or certificate is delivered or issued for delivery, and are for the sole purpose of continuing group coverage under another group policy that has been issued specifically for, and limited to, providing portability coverage when coverage under an Employer Group plan ends;~~
 - ~~c) Labor unions, or similar employee organizations, which shall be deemed to be the policyholder, to insure members of the union or organization, and if applicable their dependents, for the benefit of persons other than the union or organization and must be authorized under the laws in the jurisdiction where the policy or certificate is delivered or issued for delivery; or~~

~~d) “Professional Employer Organization” or “PEO” means a business entity that enters into agreements with other businesses, under which the PEO assumes or shares employment responsibilities for all or a significant number of the worksite employees of the other business, which PEO shall be deemed to be the policyholder, to insure employees, and if applicable their dependents, for the benefit of persons other than the PEO and must be authorized under the laws in the jurisdiction where the policy or certificate is delivered or issued for delivery.~~

MOVED TO BELOW SECTION 102~~DRAFTING NOTE: The laws in the Compacting State where the policy or certificate is delivered or issued for delivery applies to whether the groups defined above are authorized to operating in the Compacting State. By categorizing these groups as “Employer Groups” for purposes of this Operating Procedure and Uniform Standards, there is no intent to create statutory definitions for these groups where none existing in the laws of the Compacting State where the policy or certificate is delivered or issued for delivery.~~

- 3) The term “Non-Employer Group” for purposes of this Operating Procedure and the Uniform Standards is defined to include group types that do not fall under the Employer Group definition provided that, in the exclusive determination of the State,
 - a) The eligibility and qualification for the group type is permitted under the laws of the state where the policy or certificate are delivered or issued for delivery.
 - b) The group shall not be formed solely for the purpose of providing or obtaining insurance.
 - c) The group has a substantive commonality of interests and purpose apart from, and independent of, providing or obtain insurance with the policyholder interests aligning more closely with the certificateholder than with the interests of the insurance company.
 - d) The term Non-Employer Group does not include creditor groups which are outside the scope of this Operating Procedure.
- 4) “Product Filing” means a Product, Rate or Advertisement, or combination thereof, submitted to the Commission for review in accordance with the Commission’s Rules and Operating Procedures.

DRAFTING NOTE: The laws in the Compacting State where the policy or certificate is delivered or issued for delivery applies to whether the groups defined above are authorized to operating in the Compacting State. ~~By categorizing these groups as “Employer Groups” for purposes of this Operating Procedure and Uniform Standards,~~ **The definitions in this Section do not** ~~there is no intent to create~~ **or alter** statutory definitions for these groups ~~where none existing~~ in the laws of the Compacting State where the policy or certificate is delivered or issued for delivery.

§ 103. Scope of Authority of Compact Approval of Group Product Filing

- 1) A Product Filing approved by the Commission shall not be deemed as approval that the type of group meets the definition of an Employer Group or Non-Employer Group in Section 102 of this Operating Procedure.
- 2) The authority of whether a group fits the definition of an Employer Group or Non-Employer Group is subject to the exclusive determination of the State and governed by applicable state law in the jurisdiction where the policy or the certificate is delivered or issued for delivery.
- 3) A Product Filing approved by the Commission pursuant to the applicable group Uniform Standards may be issued to an Employer Group that meets the definition in Section 102(1) of this Operating Procedure.
- 4) A Non-Employer Group must be approved or permitted by the Compacting State as required under the applicable state laws and procedures before a Product Filing approved by the Commission pursuant to the applicable group Uniform Standards may be issued to a Non-Employer Group.

DRAFTING NOTE: The laws in the Compacting State where the policy or certificate is delivered or issued for delivery applies to whether the groups defined above are authorized to operating in the Compacting State. ~~By categorizing these groups as “Employer Groups” and “Non-Employer Groups” for purposes of this Operating Procedure and Uniform Standards,~~ **The definitions in Section 102 do not** ~~there is no intent to create or alter statutory definitions for these groups where none existing in the laws of the Compacting State where the policy or certificate is delivered or issued for delivery.~~

§ 104. Compact Product Filing Requirements for Group Policies and Certificates Approved by the Commission and To Be Issued to Non-Employer Groups

- 1) The Commission will review and approve group insurance products for compliance with Uniform Standards, which permit the use of variability and terminology to address differences among non-employer group types.
- 2) When an Insurer intends to issue a policy or certificate in a Product Filing approved by the Commission to a Non-Employer Group, the Insurer shall include in the Product Filing both of the following:
 - a. A certification that the Insurer has for the Non-Employer Group as applicable under the Compacting State’s filing laws and procedures before it issues the policy or certificate approved by the Commission in the Compacting State, and that the Insurer will administer the Product Filing only in accordance with the statement of intent.
 - b. A statement of intent to issue a policy or certificate in the Product Filing to a specific Non-Employer Group(s), which identifies the Compacting State(s) wherein the policy or certificate will be issued, and which sufficiently identifies for each Compacting State(s) the type of group and applicable state tracking information.

- 3) The Commission shall notify the representative(s) designated by the Compacting State(s) prior to approval of a Product Filing where the Compacting State is included and where the filer has indicated the policy or certificate will be issued to a Non-Employer Group.
- 4) ~~The Compacting States shall provide, and the Commission shall publish, a listing of each Compacting State's requirements for seeking authorization.~~
- 5) ~~Before the Insurer can issue a policy or certificate in a Product Filing approved by the Commission to an additional Non-Employer Group, it shall update its statement of intent, if applicable, to include the added Non-Employer Groups within ninety (90) days of action by the Compacting State, and the original certification to seek authorization from the Compacting State(s) with respect to the Non-Employer Group shall apply.~~

§ 105. State Law on Non-Employer Group Sales

Nothing in this Operating Procedure shall be construed to preclude or limit the enforcement of any laws of a Compacting State regarding the legitimacy or authorization of a Non-Employer Group that is issuing a Product approved by the Commission.

§ 106. Adoption and Effective Date.

This Operating Procedure was adopted by the Commission on _____, pursuant to the procedures set forth in the Rule for Adoption, Amendment and Repeal of Rules for the Interstate Insurance Product Regulation Commission. This Operating Procedure is effective on _____.