

Assessment of Public Comments for the First Amendment to 11 NYCRR 103 (Insurance Regulation 213).

The New York State Department of Financial Services (“DFS”) received one submission of comments from an association of life insurers (“association”).

Comment: The association requested that the regulation include a small company exemption consistent with the principle-based reserving (“PBR”) exemption for life insurance policies provided in the valuation manual (the “Manual”) published by the National Association of Insurance Commissioners (“NAIC”).

Response: The regulation does not disallow the Manual’s PBR exemption for life insurance policies. Insurers that qualify for the exemption may utilize it accordingly. Therefore, DFS did not make any changes in response to this comment.

Comment: The association requested that section 103.1 state that the regulation is not applicable to non-New York domestic companies that meet the definition of “reinsurers” under the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) due to federal law pre-emption.

Response: DFS did not make any changes in response to this comment because 15 U.S.C. § 8222 already provides that a reinsurer’s domiciliary state is solely responsible for regulating the financial solvency of the reinsurer if the domiciliary state is an NAIC accredited state or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation.

Comment: The association requested that insurers be provided additional time to implement the new variable annuity reserving requirements and to elect the option to use linear grading over three years for variable annuity reserves on policies issued prior to January 1, 2020, because the date by which insurers must determine whether to select the grade-in option, set forth in section 103.6(b)(2)(ii) as March 31, 2020, provides insufficient time to make such a determination.

Response: DFS considered the request and determined that no additional time is necessary to implement the new variable annuity reserving requirements, because the regulation does not require insurers to make a

determination about the grade-in option by March 31, 2020. If elected, insurers must first establish the excess grade-in reserves by December 31, 2020 pursuant to section 103.6(b)(2)(ii)(a). Therefore, DFS did not make any changes in response to this comment.

Comment: The association proposed revising section 103.4(a), which provides that section 103.4 applies to all individual term life insurance policies, whether directly written or assumed through reinsurance, issued on or after January 1, 2019, to include an explicit reference to section VM-20 of the Manual.

Response: DFS did not make any changes in response to this comment because the scope of section 103.4 sets forth the appropriate insurance policies to which the section applies at present. DFS will consider future changes if the scope of VM-20 in the Manual is updated.

Comment: The association recommended revising “50.0/3%” to “50.0%/3” within section 103.5(c)(3)(i)(a)(2)(ii)(A)(III) when describing the credit quality percentage allocation to A bonds.

Response: DFS agrees with this comment and has made the requested non-substantive change to the regulation.

Comment: The association proposed revising section 103.5(c)(3)(i)(a)(2)(ii)(B) such that the 200 basis points cap on spreads apply to the average credit quality at the level of Aa/AA and A/A, rather than at the more granular level of Aa1/AA+, Aa2/AA, Aa3/AA-, A1/A+, A2/A, and A3/A-.

Response: DFS has considered the comment but remains confident that the methodology detailed in the regulation produces the necessary amount of conservatism. Therefore, DFS did not make any changes in response to this comment.

Comment: The association noted that the quarterly valuation rate, I_q , applied within the daily valuation interest rate formula for jumbo contracts referenced in section 103.5(c)(3)(i)(b)(1) has been adjusted to remove Baa/BBB spreads; whereas, the other elements of the referenced formula, the change observed in a series of indexes between the prior quarter and the immediately prior day, are based on indexes that have 40-50%

investment in Baa/BBB bonds. The association proposed adjusting the indexes to a higher credit quality benchmark to avoid the basis risk noted and then removing the cap on the daily valuation interest rate for jumbo contracts defined in section 103.5(c)(3)(i)(b)(2).

Response: DFS has considered the comment but remains confident that the methodology detailed in the regulation produces the necessary amount of conservatism. Therefore, DFS did not make any changes in response to this comment.

Comment: The association proposed revisions to section 103.5(c)(3)(i)(b)(1) to clarify that the quarterly valuation rate, denoted by I_q , is the unrounded quarterly rate.

Response: The quarterly valuation rate, denoted by I_q , is the final rate determined in accordance with section 103.5(c)(3)(i)(a). Therefore, DFS did not make any changes in response to this comment.

Comment: The association requested clarification that the credit quality weights used to calculate the default cost in “D” defined in section 103.5(c)(3)(i)(b)(2)(ii) are based on the credit quality distribution listed in section 103.5(c)(3)(i)(a)(2).

Response: The association’s interpretation is correct. DFS has made a non-substantive revision to section 103.5(c)(3)(i)(b)(2)(ii) to clarify that “D” is based on the portfolio credit quality distribution defined in section 103.5(c)(3)(i)(a)(2)(ii)(A).

Comment: The association commented that section 103.5(c)(3)(ii) appears to be superfluous as section 103.5(c)(3)(i)(a) is already defined in such a way that the discount rate cannot exceed the rate defined in the Manual. The association further suggested renumbering section 103.5(c)(3)(ii) to 103.5(c)(3)(i)(b)(3) if DFS feels it necessary to apply such cap to the jumbo rates.

Response: DFS considered the comment; however, no changes were made as DFS finds it necessary for the regulation to explicitly state that the cap imposed by section 103.5(c)(3)(ii) applies to both non-jumbo and jumbo valuation interest rates.

Comment: The association proposed adding a title heading to section 103.5(d).

Response: DFS does not believe that a title heading for this section is necessary. Therefore, DFS did not make any changes in response to this comment.

Comment: The association commented that the option value floor detailed in section 103.6(e)(5) should be removed. The association requested, however, that if the option value floor must remain, it should be an aggregate calculation, not a seriatim calculation. Furthermore, the association requested that the option value floor not apply to policies that use the “Alternate Methodology” under Section 7 of VM-21 of the Manual.

Response: DFS did not make any changes in response to this comment because the option value floor is intended to be a seriatim calculation.

Comment: The association proposed reorganizing section 103.6(b)(2) and 103.6(b)(3) to clarify that the minimum reserve calculated in accordance with the Manual should be determined in aggregate for contracts issued prior to, on or after January 1, 2020.

Response: The minimum reserve calculated in accordance with the Manual is determined in aggregate for policies issued prior to, on or after January 1, 2020. This amount is then allocated to each contract, which is used in section 103.6(b)(2) and 103.6(b)(3) to calculate the minimum reserve. Since the minimum reserve calculated in accordance with the Manual is an aggregate calculation, no change to the regulation is necessary.

Comment: The association proposed replacing the references to 11 NYCRR 99 (Insurance Regulation 151) in section 103.6(e)(2) with the 2017 Actuarial Guideline XLIII. The association believes that the inclusion of such reference will lead to the use of valuation standards of updated versions of Actuarial Guideline XLIII, as adopted by the NAIC’s Accounting Practices and Procedures Manual (“APPM”).

Response: The references to Insurance Regulation 151 included in section 103.6(e)(2)(i) and 103.6(e)(2)(i)(a) will not lead to the use of valuation standards of the APPM because such references only apply

to contracts without, or disregarding any, guaranteed benefits. Therefore, DFS did not make any changes in response to this comment.

Comment: The association believes that the reference to section 103.6(e)(2)(ii)(b) within section 103.6(e)(2)(iii)(c)(1) is a typographical error and should instead reference section 103.6(e)(2)(ii)(a).

Response: DFS agrees with this comment and has made the non-substantive change to the regulation.

Comment: The association proposed deleting the requirement of section 103.6(e)(2)(iv) that implies that a contract with more than one guaranteed benefit will require multiple model runs.

Response: Insurers may save on model run-times and decrease the operational burden where intuitive arguments or demonstrations support doing so. Therefore, DFS did not make any changes in response to this comment.

Comment: The association proposed revising section 103.6(e)(3)(vi)(d) to reference section 6.C.5 of VM-21 of the Manual with certain adjustments for the guaranteed minimum withdrawal benefit election rates.

Response: DFS considered the comment and did not make any changes because the regulation appropriately reflects the intended differences from the Manual.

Comment: The association commented that section 103.6(e)(3)(vi)(d)(2) implies that election rates must be redetermined for each policy at each valuation date and contradicts section 103.6(e)(3)(vi)(d)(6), which states that “the calculations prescribed by this clause only shall need to be performed once for a given set of contracts with a certain issue age, guaranteed benefit product, and tax status”.

Response: DFS has considered this comment and has determined that the wording is unnecessary and therefore has removed it from section 103.6(e)(3)(vi)(d)(2), as a clarification.

Comment: With respect to variable annuity contracts issued on or after January 1, 2020, the association expressed concerns about the different mortality assumptions made for projection periods before and after benefit

election as prescribed by section 103.6(e)(3)(viii). The association recommended using the 2012 Individual Annuity Mortality Basic Table with adjustment factors throughout the projection.

Response: DFS has considered the comment but remains confident that the methodology detailed in the regulation produces the necessary amount of conservatism. Therefore, DFS did not make any changes in response to this comment.