

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
PROPOSED
SECOND AMENDMENT TO 11 NYCRR 103
(INSURANCE REGULATION 213)**

PRINCIPLE-BASED RESERVING

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 308, 4217, and 4517 of the Insurance Law, do hereby promulgate the Second Amendment to Part 103 of Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (Insurance Regulation 213), to take effect upon publication of the Notice of Adoption in the State Register, to read as follows:

(New Matter is Underscored; Matter in Brackets is Deleted)

The title of section 103.3, and section 103.3(a) and (b), are amended as follows:

§ 103.3 Superintendent's authority to require [reserve] adjustments from the valuation manual.

(a) The superintendent may require a life insurance company to change an assumption or method that in the superintendent's opinion is necessary to comply with the requirements of the valuation manual or Insurance Law section 4217(g), and the life insurance company shall adjust the reserves as required by the superintendent. Pursuant to Insurance Law section 308, the superintendent may request information from a life insurance company in addition to the information specified in the valuation manual. The superintendent may take other disciplinary action as permitted by the Insurance Law, Financial Services Law, and any other applicable laws and regulations.

(b) For purposes of this Part, *valuation manual* shall have the meaning set forth in Insurance Law section 4217(g)(5).¹

Section 103.5(a) is amended as follows:

(a) Scope.

(1) This section applies to the following, whether group or individual, including both life contingent and term certain only contracts, directly written or assumed through reinsurance[, with the exception of benefits arising from variable annuities]:

(i) immediate annuity contracts issued on or after January 1, 2019;

(ii) deferred income annuity contracts issued on or after January 1, 2019;

¹ The [2019] 2020 Valuation Manual, published by the National Association of Insurance Commissioners, is hereby incorporated by reference in this Part. The [2019] 2020 Valuation Manual is readily available without charge at the following internet address: https://www.naic.org/pbr_data.htm. The [2019] 2020 Valuation Manual is also available for public inspection and copying at the New York State Department of Financial Services, One State Street, New York, NY 10004.

- (iii) structured settlements in payout or deferred status issued on or after January 1, 2019;
- (iv) fixed payout annuities resulting from the exercise of settlement options or annuitizations of host contracts [issued], for which the fixed payout annuities commence on or after January 1, 2019;
- (v) supplementary contracts, excluding contracts with no scheduled payments (such as retained asset accounts and settlements at interest), issued on or after January 1, 2019;
- (vi) fixed income payment streams attributable to guaranteed living benefits associated with deferred annuity and variable annuity contracts [issued], for which the fixed income payment streams commence on or after January 1, 2019, once the contract funds are exhausted; and
- (vii) certificates with premium determination dates on or after January 1, 2019, under non-variable group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuity contracts under Internal Revenue Code section 408.

Section 103.5(c)(3)(i)(b)(1) is amended as follows:

(1) is the Daily Valuation Rate defined by Section 3.C.5 of VM-22 of the valuation manual[, where the quarterly valuation rate, denoted by I_q , is] less the amount determined in accordance with clause (a)(2) of this subparagraph for the calendar quarter preceding the business day immediately preceding the premium determination date;

The title of section 103.6 is amended as follows:

Valuation of variable annuity and hybrid annuity reserves.

Section 103.6(a)(1)(iii) is amended, (iv) is renumbered as (v), and a new (iv) is added as follows:

(iii) individual and group annuity contracts with guarantees similar in nature to GMDBs, VAGLBs, or any combination thereof; [and]

(iv) hybrid annuities; and

(v) all other insurance policies or annuity contracts that contain guarantees similar in nature to GMDBs or VAGLBs, even if the insurer does not offer the mutual funds or variable funds to which these guarantees relate, where there is no other explicit reserve requirement. If an insurer offers such a guarantee as part of an insurance policy or annuity contract that has an explicit reserve requirement and that guarantee does not currently have an explicit reserve requirement, then the minimum reserve held for the insurance policy or annuity contract shall equal the sum of:

(a) the reserve for the guarantee where for purposes of the reserve calculation, the guarantee is treated as a separate contract; and

(b) the reserve for the underlying insurance policy or annuity contract determined according to the explicit reserve requirement.

Section 103.6(b) is amended to read as follows:

(b) Effective dates and minimum valuation standards.

(1) This section is effective for all valuations on or after [January 1] December 31, 2020, regardless of when the insurance policies and annuity contracts were issued.

(2) For those insurers that do not elect to apply the optional phase-in methodology of paragraph (3)(i)(b) of this subdivision and for all valuations after the phase-in period if elected, the minimum aggregate reserve shall be the greater of:

(i) the sum of:

(a) the minimum reserve calculated in accordance with the methodology and assumptions prescribed by subdivision (d) of this section for insurance policies and annuity contracts issued prior to January 1, 2020; and

(b) the minimum reserve calculated in accordance with the methodology and assumptions prescribed by subdivision (e) of this section for insurance policies and annuity contracts issued on or after January 1, 2020; or

(ii) the minimum reserve calculated in accordance with the methodology and assumptions prescribed by the valuation manual prior to reflecting any reinsurance ceded.

(3) Minimum valuation standards during the phase-in period for those insurers that elect to apply the optional phase-in methodology prescribed by subparagraph (i)(b) of this paragraph.

(i) For insurance policies and annuity contracts issued prior to January 1, 2020:

[(i)] (a) The minimum reserve shall be the greater of:

[(a)] (1) the minimum reserve calculated in accordance with the methodology and assumptions prescribed by subdivision (d) of this section; and

[(b)] (2) the minimum reserve calculated in accordance with the methodology and assumptions prescribed by the valuation manual prior to reflecting any reinsurance ceded.

[(ii)] (b) At the insurer's election, any positive amount equal to the excess of the [sum of the aggregate minimum reserves determined in accordance with [subparagraph (i)(a) of this paragraph] clause (a) of this subparagraph over [the greater of] the aggregate minimum reserves determined in accordance with the 2017 Actuarial Guideline XLIII [and the aggregate minimum reserves determined in accordance with the valuation manual] may be established [over a three-year period beginning on

January 1, 2020] as follows. To comply with the requirements of this paragraph, such excess reserve amount shall be calculated each year and established in the following manner:

[(a)] (1) [one-third] one-fifth of the excess reserve amount shall be established by December 31, 2020;

[(b)] (2) [two-thirds] two-fifths of the excess reserve amount shall be established by December 31, 2021; [and]

(3) three-fifths of the excess reserve amount shall be established by December 31, 2022;

(4) four-fifths of the excess reserve amount shall be established by December 31, 2023; and

[(c)] (5) the entire minimum reserve determined in accordance with [subparagraph (i) of this paragraph] clause (a) of this subparagraph shall be established by December 31, [2022] 2024.

[(3)] (ii) The minimum reserve for insurance policies and annuity contracts issued on or after January 1, 2020 shall be the greater of:

[(i)] (a) the minimum reserve calculated in accordance with the methodology and assumptions prescribed by subdivision (e) of this section; and

[(ii)] (b) the minimum reserve calculated in accordance with the methodology and assumptions prescribed by the valuation manual prior to reflecting any reinsurance ceded.

Section 103.6(c)(5) through (13) are renumbered as section 103.6(c)(6) through (14) and a new section 103.6(c)(5) is added as follows:

(5) Actuarial Guideline XXXV means the “Actuarial Guideline XXXV – The Application of the Commissioners Annuity Reserve Method to Equity Indexed Annuities” published in the National Association of Insurance Commissioners’ Accounting Practices and Procedures Manual as adopted by Part 83 (Insurance Regulation 172) of this Title.

Section 103.6(c)(14) through (19) are renumbered as section 103.6(c)(16) through (21) and a new section 103.6(c)(15) is added as follows:

(15) Hybrid annuity means an annuity contract with an investment option where the rate of return is based on an index, such as the S&P 500, and for which such return may be less than zero.

Section 103.6(d)(1)(iv) and (v) are amended and a new section 103.6(d)(1)(vi) is added as follows:

(iv) the discount rate as defined by section A3.1(B)(2) of the 2017 Actuarial Guideline XLIII shall equal the series of one-year U.S. Treasury forward rates implied by the U.S. Treasury yield curve as of the valuation date plus 150 basis points. Forward rates beyond 30 years shall equal the thirtieth year forward rate; [and]

(v) for all guaranteed living benefits that are in the money, the lapse rates prescribed by section A3.3(C)(3) of the 2017 Actuarial Guideline XLIII shall be 3 percent per annum for each projection interval where the benefit is less than 20 percent in the money, and 1.5 percent per annum for each projection interval where the benefit is 20 percent or more in the money[.]; and

(vi) for hybrid annuities, the amounts determined in section A3.3(B)(1) and A3.3(B)(2)(a) of the 2017 Actuarial Guideline XLIII shall be determined by applying Part 99 (Insurance Regulation 151) of this Title and Actuarial Guideline XXXV. Section A.3.3(B)(2) of the 2017 Actuarial Guideline XLIII shall only be calculated for those hybrid annuity contracts with guaranteed living benefits or guaranteed death benefits.

Section 103.6(e)(1) is amended as follows:

(1) The minimum reserve for each contract is the greater of the standard scenario reserve, the cash surrender value, and the option value floor. The option value floor shall not apply to those contracts reserved for in accordance with the alternative methodology prescribed by VM-21 of the valuation manual.

Section 103.6(e)(2)(i) is amended as follows:

(i) for annuity contracts without any guaranteed benefits, the standard scenario reserve shall be determined by applying [section 99.9 of] Part 99 (Insurance Regulation 151) of this Title and Actuarial Guideline XXXV, as applicable;

Section 103.6(e)(2)(ii)(a) is amended as follows:

(a) is the amount determined by applying Part 99 (Insurance Regulation 151) of this Title and Actuarial Guideline XXXV, as applicable, to the annuity contract disregarding any GMDBs or VAGLBs;