

Regulatory Impact Statement for the Second Amendment to 11 NYCRR 103 (Insurance Regulation 213)

1. Statutory authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301, 308, 4217, and 4517.

Financial Services Law Section 202 establishes the office of the Superintendent of Financial Services (“Superintendent”). Financial Services Law Section 302 and Insurance Law Section 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other law, and to prescribe regulations interpreting the Insurance Law.

Insurance Law Section 308 authorizes the Superintendent to request special reports from authorized insurers and authorized officers thereof regarding their transactions, condition, or any matter connected therewith.

Insurance Law Section 4217 sets forth rules for the valuation of insurance policies and contracts. Insurance Law Section 4217(d) provides that reserves for all individual and group accident and health insurance policies must reflect a sound value placed on the liabilities of such policies and permits the Superintendent to issue, by regulation, guidelines for the application of reserve valuation provisions for such policies. Insurance Law Section 4217(g) requires authorized life insurance companies and fraternal benefit societies (collectively, “life insurers”) to use principle-based reserving (“PBR”) for certain individual and group life insurance policies and annuity contracts upon the Superintendent’s approval of the National Association of Insurance Commissioners’ (“NAIC’s”) valuation manual (the “Manual”), subject to the Superintendent’s adopting any amendment to the Manual by regulation.

Insurance Law Section 4517 makes Insurance Law Section 4217 applicable to the valuation of life insurance and annuity certificates issued by fraternal benefit societies.

2. Legislative objectives: Insurance Law Section 4217 sets forth rules for the valuation of insurance policies and contracts. In December 2018, Governor Andrew M. Cuomo signed into law a bill that added a new Insurance

Law Section 4217(g) to allow PBR for certain individual and group life insurance policies and annuity contracts beginning in 2019.

This amendment accords with the public policy objectives that the Legislature sought to advance in Insurance Law Section 4217(g) when it adopted PBR for life insurers by clarifying, and making certain adjustments to, the regulation and prescribing additional minimum standards for valuing statutory reserves that in the Superintendent's opinion are necessary to comply with the Manual adopted by the Superintendent and with Insurance Law Section 4217(g).

3. Needs and benefits: The Department of Financial Services ("DFS") adopted its first amendment to 11 NYCRR 103 in February 2020 to conform to the 2009 revisions to the NAIC's model Standard Valuation Law and comply with the NAIC's accreditation standards.

This proposed amendment clarifies, and makes certain adjustments to, the regulation and prescribes additional minimum standards for valuing statutory reserves that in the Superintendent's opinion are necessary to comply with the Manual to best serve the policyholders of New York State by ensuring that the minimum standards for valuing statutory reserves are set at a level appropriate for the payment of future claims.

4. Costs: The amendment may impose compliance costs on life insurers because a life insurer must adjust its reserves as the Superintendent deems necessary to comply with the amendment, including new minimum valuation requirements.

DFS also may incur costs to implement this amendment, because DFS will need to monitor reserves to ensure conformance with this amendment, the Manual, and Insurance Law Section 4217(g). However, any additional costs incurred should be minimal and DFS should be able to absorb the costs in its ordinary budget.

This amendment does not impose compliance costs on any local government.

5. Local government mandates: This amendment does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: This amendment imposes reporting requirements, including the VM-31 PBR Actuarial Report, related to the insurance policies and contracts subject to the minimum valuation standards prescribed by this amendment.

7. Duplication: This amendment does not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: A significant alternative considered by DFS was to maintain the current valuation requirements prescribed by the first amendment to the regulation as the minimum valuation standards. However, as discussed with the life insurance industry, the Superintendent has determined that this amendment is necessary to best serve the policyholders of New York State by ensuring that the minimum standards for valuing statutory reserves are set at a level appropriate for the payment of future claims.

9. Federal standards: The rule does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: A life insurer must comply with the rule upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis for Small Businesses and Local Governments for Proposed Second Amendment to 11 NYCRR 103 (Insurance Regulation 213)

1. Effect of the rule: SAPA section 102(8) defines a small business to mean “any business which is resident in this State, independently owned and operated, and employs one hundred or less individuals.” The amendment affects life insurance companies and fraternal benefit societies (collectively, “life insurers”). There may be life insurers affected by the amendment that may be small businesses.

The amendment does not affect local governments because the regulation does not apply to any local government.

2. Compliance requirements: Insurance Regulation 213 currently imposes reporting requirements related to insurance policies and contracts that are subject to the minimum valuation standards prescribed by the regulation. This amendment to the regulation prescribes additional minimum standards for valuing statutory reserves, and thus may impose additional reporting requirements, including the VM-31 PBR Actuarial Report.

No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with the amendment because the regulation does not apply to any local government.

3. Professional services: A life insurer, including one that is a small business, may need to retain professional services, such as actuaries, to comply with the amendment.

No local government will need professional services to comply with the amendment because the regulation does not apply to any local government.

4. Compliance costs: The amendment may impose compliance costs on life insurers, including any life insurer that is a small business, because a life insurer must adjust its reserves as the Superintendent of Financial Services deems necessary to comply with the amendment, including new minimum valuation requirements.

No local government will incur any costs to comply with the amendment because the regulation does not apply to any local government.

5. Economic and technological feasibility: Life insurers, including any that is a small business, should not incur any economic or technological impact as a result of the amendment.

The regulation does not apply to any local government; therefore, no local government should experience any economic or technological impact as a result of the amendment.

6. Minimizing adverse impact: The amendment uniformly affects all life insurers, including any that is a small business. The rule should not have an adverse impact on any life insurer that is a small business.

No local government should be adversely impacted by the amendment because the regulation does not apply to any local government.

7. Small business and local government participation: The Department of Financial Services (“Department”) complied with SAPA section 202-b(6) by posting the proposed rule on its website for informal outreach and notifying trade organizations that represent the interests of small businesses that the proposed rule had been posted. The Department also will comply with SAPA section 202-b(6) by publishing the proposed amendment in the State Register and posting the proposed amendment on its website again.

Rural Area Flexibility Analysis for the Second Amendment to 11 NYCRR 103 (Insurance Regulation 213)

1. Types and estimated numbers of rural areas: Life insurance companies and fraternal benefit societies (collectively, “life insurers”) affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act section 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: Insurance Regulation 213 currently imposes reporting requirements, including the VM-31 PBR Actuarial Report, related to insurance policies and contracts that are subject to the minimum valuation standards prescribed by the regulation. This amendment to the regulation prescribes additional minimum standards for valuing statutory reserves. Therefore, a life insurer in a rural area may need to retain professional services, such as actuaries, to comply with this rule.

3. Costs: The amendment may impose compliance costs on life insurers, including any life insurer located in a rural area, because a life insurer must adjust its reserves as the Superintendent of Financial Services deems necessary to comply with the amendment, including new minimum valuation requirements.

4. Minimizing adverse impact: This rule uniformly affects life insurers that are located in both rural and non-rural areas of New York State. The rule should not have an adverse impact on rural areas.

5. Rural area participation: Life insurers in rural areas will have an opportunity to participate in the rule making process when the notice of proposed rulemaking is published in the State Register and posted on the Department of Financial Services’ website.

Statement Setting Forth the Basis for the Finding that the Second Amendment to 11 NYCRR 103 (Insurance Regulation 213) Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities

This amendment should not adversely impact jobs or employment opportunities in New York State.

In February 2020, the Department of Financial Services adopted an amendment to 11 NYCRR 103 to conform to the 2009 revisions to the National Association of Insurance Commissioners' ("NAIC's") Standard Valuation Law and comply with the NAIC's accreditation standards. This amendment makes certain clarifications and adjustments to the present regulation, and prescribes additional minimum standards for valuing statutory reserves that in the Superintendent's opinion are necessary to comply with the Manual.

This amendment may create new jobs or employment opportunities because life insurance companies and fraternal benefit societies may need to hire additional personnel, such as actuaries, to comply with the regulation.