

# 11 CRR-NY 95.1NY-CRR

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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK TITLE 11. INSURANCE CHAPTER IV. FINANCIAL CONDITION OF INSURER AND REPORTS TO SUPERINTENDENT SUBCHAPTER B. LIFE INSURERS PART 95. REGULATIONS GOVERNING AN ACTUARIAL OPINION AND MEMORANDUM Current through June 30, 2021

Table of Contents 11 CRR-NY IV B 95 Notes s 95.0 (Repealed) s 95.1 Purpose. s 95.2 Authority. s 95.3 Scope. s 95.4 Definitions. s 95.5 General requirements. s 95.6 Required opinions. s 95.7 Statement of actuarial opinion not including an asset adequacy analysis. s 95.8 Statement of actuarial opinion based on an asset adequacy analysis. s 95.9 Description of an actuarial memorandum. s 95.10 Additional considerations for analysis. s 95.11 Minimum reserve requirements with and without an acceptable actuarial opinion and memorandum. s 95.12 Severability. s 95.13 -- 95.16 (Repealed) s 95.17 (Repealed) s 95.18 -- 95.19 (Repealed)

## 95.1 Purpose.

The purpose of this Part is to prescribe:

- (a) guidelines and standards for statements of actuarial opinion and for memoranda in support thereof; and
- (b) guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from certain filing requirements; and
- (c) rules applicable to the appointment of an appointed actuary.

11 CRR-NY 95.1 Current through June 30, 2021

## 95.2 Authority.

This Part is issued pursuant to the authority granted to the Superintendent of Financial Services of the State of New York under sections 107, 201, 301, 308, 310, 1303, 1304, 4217, 4232 and 4240 of the Insurance Law and section 202 of the Financial Services Law.

11 CRR-NY 95.2 Current through June 30, 2021

## 95.3 Scope.

- (a) This Part shall apply to all life insurance companies and fraternal benefit societies doing business in this State and all insurers holding a certificate from the superintendent as being accredited for the reinsurance of life insurance, annuities or accident and health insurance.
- (b) This Part shall be applicable to all annual statements filed with the office of the superintendent after the effective date of this Part. Except with respect to companies which are exempted pursuant to section 95.6 of this Part, a statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with section 95.8 of this Part, and

a memorandum in support thereof in accordance with section 95.9 of this Part, shall be required each year. Any company so exempted must file a statement of actuarial opinion pursuant to section 95.7 of this Part.

- (c) Notwithstanding the foregoing, the superintendent may require any company otherwise exempted pursuant to this Part to submit a statement of actuarial opinion and to prepare a memorandum in support thereof in accordance with sections 95.8 and 95.9 of this Part.

11 CRR-NY 95.3 Current through June 30, 2021

## 95.4 Definitions.

- (a) Actuarial opinion. Actuarial opinion means:
  1. with respect to sections 95.8, 95.9 and 95.10 of this Part, the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with section 95.8 of this Part and presently accepted actuarial standards to the extent not inconsistent with this Part; and
  2. with respect to section 95.7 of this Part, the opinion of an appointed actuary regarding the calculation of reserves and related items, in accordance with section 95.7 of this Part and with those presently accepted actuarial standards of practice and actuarial compliance guidelines to the extent not inconsistent with this Part which specifically relate to such opinion.
- (b) Actuarial Standards Board. Actuarial Standards Board is the board established by the American Association of Actuaries to develop and promulgate standards of actuarial practice and actuarial compliance guidelines.
- (c) Adequate provision. Adequate provision means that the assets supporting the reserves are adequate to cover obligations under moderately adverse, but not all, conditions.
- (d) Annual statement. Annual statement means the statement required by section 4233 of the Insurance Law to be filed by the company with the superintendent annually.
- (e) Appointed actuary. Appointed actuary means any individual who is appointed or retained in accordance with the requirements set forth in section 95.5(d) and (e) of this Part to provide actuarial opinion and supporting memorandum.
- (f) Asset adequacy analysis. Asset adequacy analysis means an analysis that meets the standards and other requirements referred to in section 95.5(f) of this Part. It may take many forms, such as cash flow testing, sensitivity testing or applications of risk theory.
- (g) Capital and surplus. Capital and surplus means:
  1. In the case of a domestic company, the amount of capital and surplus reported on page 3 of the annual statement filed with the superintendent; or
  2. In the case of a foreign or alien company or an accredited life reinsurer, the capital and surplus on a New York basis reported on page 2 of the New York supplement to the annual statement and filed with the annual statement with the superintendent.
- (h) Company. Company means any life insurance company, fraternal benefit society or reinsurer as defined in section 95.3 of this Part.
- (i) Line of business. Line of business means the:
  1. life insurance;
  2. annuity; or
  3. accident and health insurance kind of business as defined in section 1113(a)(1), (2) and (3) of the Insurance Law. Funding agreements are to be included in the annuity line of business.

- (j) Noninvestment grade bonds. Noninvestment grade bonds are those designated as class 3, 4, 5 or 6 by the National Association of Insurance Commissioners (NAIC) Securities Valuation Office.
- (k) Qualified actuary. Qualified actuary means any individual who meets the requirements set forth in section 95.5(d) of this Part.

11 CRR-NY 95.4 Current through June 30, 2021

## 95.5 General requirements.

### (a) Submission of statement of actuarial opinion for page 1 of annual statement.

1. There is to be included on or attached to page 1 of the annual statement for each year beginning with the year in which this Part becomes effective the statement of an appointed actuary, entitled "Statement of Actuarial Opinion" setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with section 95.8 of this Part; provided, however, that any company exempted pursuant to section 95.6 or section 95.11 of this Part from submitting a statement of actuarial opinion in accordance with section 95.8 of this Part shall include or attach to page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary in accordance with section 95.7 or section 95.11 of this Part.
2. If in the previous year a company provided a statement of actuarial opinion in accordance with section 95.7 of this Part, and in the current year fails the exemption criteria of section 95.6(c)(1), (2) or (5) of this Part (whichever is applicable) and is required to again provide an actuarial opinion in accordance with section 95.8 of this Part, the statement of actuarial opinion in accordance with section 95.8 of this Part shall not be required until August 1st following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with section 95.7 of this Part with appropriate qualification noting the intent to subsequently provide a statement of actuarial opinion in accordance with section 95.8 of this Part.
3. In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the superintendent may accept the statement of actuarial opinion filed by such company with the insurance supervisory regulator of a state accredited by the NAIC if the superintendent determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.
4. Upon written request by the company, the superintendent may grant an extension of the date for submission of the statement of actuarial opinion.
5. If the superintendent requires more information, the company shall comply with requests for such information. Failure of the appointed actuary to furnish within 30 days of the date of request either:
  - (i) the requested information; or
  - (ii) an explanation of why preparation of such information may take longer, together with the expected date of submission, shall be considered as "lack of cooperation" and may subject the insurer to a penalty.
6. Any company requesting any exception from or waiver of any of the requirements of this Part, or that is required to file any statement or memorandum pursuant to section 95.9 or 95.11 of this Part, shall submit such request, statement or memorandum to the superintendent on or before the time it files its annual statement with the superintendent pursuant to section 307 of the Insurance Law, attention of: Life Bureau, Actuarial Valuation Unit New York State Department of Financial Services One Commerce Plaza Albany, NY 12257

### (b) Annual submission to Actuarial Valuation Unit.

Each company subject to this Part shall submit to the superintendent, attention of the Life Bureau, Actuarial Valuation Unit, each year on or before it files its annual statement with the superintendent pursuant to section 307 of the Insurance Law:

1. a copy of the actuarial opinion, clearly noting whether it is in accordance with section 95.7, 95.8 or 95.11 of this Part; and
2. a copy of the actuarial memorandum for a section 95.8 actuarial opinion; or
3. if not required to submit the memorandum in accordance with section 95.9(a)(1) of this Part, a statement noting the basis for such exemption along with a copy of a letter of approval for the prior year's memorandum from the regulator of the accredited state; or
4. a request for a waiver of the filing deadline along with reasons for such request.

(c) An actuarial opinion and memorandum and any supporting documentation

An actuarial opinion and memorandum and any supporting documentation will be a record of the superintendent available for public inspection and copying except as provided in section 95.9(d) of this Part. At the time of submission of an actuarial opinion and memorandum or at time of submission of any subsequent supporting documentation, however, a company may, in accordance with section 241.6 of this Title, request the superintendent to except from disclosure any nonpublic information contained in the actuarial memorandum or subsequent supporting documentation respectively in accordance with section 4217(e)(4)(H) of the Insurance Law. Each page covered by such request should be clearly marked "Confidentiality Requested."

(d) Qualified actuary.

A qualified actuary is an individual who either:

1. [intentionally blank]
  - (i) is a member in good standing of the American Academy of Actuaries; and
  - (ii) is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements; and
  - (iii) is a fellow by examination of either the Society of Actuaries or the Institute of Actuaries and states that he or she is familiar with current valuation guidelines of the American Academy of Actuaries and the current valuation procedures in the State of New York, including those involving cash flow projections of assets and liabilities; and
  - (iv) has not been found by the superintendent (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing to have:
    - (a) violated any provision of, or any obligation imposed by, the Insurance Law of this State or any other state or other law in the course of his or her dealings as a qualified actuary; or
    - (b) been found guilty of fraudulent or dishonest practices; or
    - (c) demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary; or
    - (d) submitted to the superintendent over the past five years, pursuant to this Part, an actuarial opinion or memorandum that the superintendent rejected because it did not meet the provisions of this Part or standards of practice and/or compliance guidelines set by the Actuarial Standards Board; or

- (e) resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally accepted actuarial standards; and
  - (v) has not failed to notify the superintendent of any action taken by the insurance regulator of any other state similar to that under subparagraph (iv) of this paragraph; or
- 2. meets the requirements of subparagraphs (1)(i), (ii), (iv) and (v) of this subdivision and is so designated in writing by the superintendent after written application to the superintendent providing evidence of his or her actuarial knowledge and experience in the valuation of life insurance company annual statement liabilities.

#### (e) Appointed actuary.

An appointed actuary is a qualified actuary who is appointed or retained to prepare the statement of actuarial opinion required by this Part; either directly by the board of directors or by the authority of the board of directors through an executive officer of the company.

1. The company shall give the superintendent timely written notice of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall certify in such notice that the person meets the requirements set forth in subdivision (d) of this section.
2. Once notice is furnished, no further notice is required with respect to such person, provided that the company shall give the superintendent timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in subdivision (d) of this section.
3. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.
4. The person appointed or retained as an appointed actuary shall consult with the company's previously appointed actuary, if only to determine if there are any reasons not to accept the appointment. If there are any such reasons, either the situation should be rectified to such person's satisfaction or the appointment should not be accepted.

#### (f) Standards for asset adequacy analysis.

The asset adequacy analysis required by this Part:

1. shall conform to section 4217(e)(3) of the Insurance Law and to any additional standards under this Part, which standards are to form the basis of the statement of actuarial opinion in accordance with section 95.8 of this Part;
2. shall be based on such methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board; and
3. shall meet the requirements of the Insurance Law.

#### (g) Liabilities to be covered.

1. The statement of actuarial opinion shall apply to all in force business on the statement date regardless of when or where issued, e.g., reserves in exhibits 8, 9 and 10, and claim liabilities in exhibit 11, Part 1, and equivalent items in the separate account statement or statements.
2. If the appointed actuary determines, as the result of asset adequacy analysis, that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with

methods set forth in section 4217 of the Insurance Law and applicable regulations, the company shall establish such additional reserve.

3. For years ending prior to December 31, 1996, the company may, with respect to products other than annuities or single premium life products, in lieu of establishing the full amount of the additional reserve in the annual statement for that year, set up an additional reserve in an amount not less than the following: December 31, 1994: The additional reserve divided by three. December 31, 1995: Two times the additional reserve divided by three.
4. Additional reserves established under paragraph (2) or (3) of this subdivision and deemed not necessary in subsequent years may be released. Any amounts released must be disclosed in the actuarial opinion for the applicable year. The release of such reserves shall not be deemed an adoption of a lower standard of valuation.

11 CRR-NY 95.5 Current through June 30, 2021

## 95.6 Required opinions.

### (a) General.

Every company doing business in this State shall annually submit the opinion of an appointed actuary as provided for by this part. The type of opinion submitted shall be determined by the provisions set forth in this section and shall be in accordance with the applicable provisions of this Part.

### (b) Company categories.

For purposes of this Part, companies shall be classified as follows based on their admitted assets as of the end of the calendar year for which the actuarial opinion is applicable:

1. category A shall consist of those companies whose admitted assets do not exceed \$20 million;
2. category B shall consist of those companies whose admitted assets exceed \$20 million but do not exceed \$100 million;
3. category C shall consist of those companies whose admitted assets exceed \$100 million but do not exceed \$500 million;
4. category D shall consist of those companies whose admitted assets exceed \$500 million.

### (c) Exemption eligibility tests.

1. Any category A company that, for any year beginning with the year in which this Part becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with section 95.8 of this Part for the year in which these criteria are met. The ratios in subparagraphs (i), (ii) and (iii) of this paragraph shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.
  - (i) the ratio of the sum of capital and surplus to the total admitted assets is at least equal to.10;
  - (ii) the ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than.30;
  - (iii) the ratio of the book value of the noninvestment grade bonds to the sum of capital and surplus is less than.50; and
  - (iv) the examiner team for the NAIC has not designated the company as a first priority company in any of the two calendar years coincident with and immediately preceding the calendar year end for which the actuarial opinion is applicable, or a second priority company in each of the

two calendar years coincident with and immediately preceding the calendar year end for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the insurance regulator of the state of domicile and such insurance regulator has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office. Note: when the examiner team in the spring of a calendar year designates a priority, such designation is generally based on the preceding year. For example, to determine whether an actuarial opinion and memorandum is required for the 1994 year end under this test, the actuary should look at the examiner designation made in 1993 and 1994 generally based on the 1992 and 1993 year end data.

2. Any category B company that, for any year beginning with the year in which this Part becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with section 95.8 of this Part for the year in which the criteria are met. The ratios in subparagraphs (i), (ii) and (iii) of this paragraph shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.
  - (i) the ratio of the sum of capital and surplus to the sum of total admitted assets is at least equal to .07;
  - (ii) the ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .40;
  - (iii) the ratio of the book value of the noninvestment grade bonds to the sum of capital and surplus is less than .50; and
  - (iv) the examiner team for the NAIC has not designated the company as a first priority company in any of the two calendar years coincident with and immediately preceding the calendar year end for which the actuarial opinion is applicable, or a second priority company in each of the two calendar years coincident with and immediately preceding the calendar year end for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the insurance regulator of the state of domicile and such insurance regulator has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office. Note: When the examiner team in the spring of a calendar year designates a priority, such designation is generally based on the preceding year. For example, to determine whether an actuarial opinion and memorandum is required for the 1994 year end under this test, the actuary should look at the examiner designation made in 1993 and 1994 generally based on the 1992 and 1993 year end data.
3. Any category A or category B company that meets all the criteria set forth in paragraph (1) or (2) of this subdivision, whichever is applicable, is exempted from submission of a statement of actuarial opinion in accordance with section 95.8 of this Part.
4. Any category A or category B company that, for any year beginning with the year in which this Part becomes effective, is not exempted under paragraph (3) of this subdivision shall be required to submit a statement of actuarial opinion in accordance with section 95.8 of this Part for the year for which it is not exempt.
5. Any category C company that, after submitting an opinion in accordance with section 95.8 of this Part, meets all of the following criteria shall not be required, unless required in accordance with paragraph (6) of this subdivision, to submit a statement of actuarial opinion in accordance with section 95.8 of this Part more frequently than every third year. Any category C company which fails to meet all of the following criteria for any year shall submit a statement of actuarial opinion in accordance with section 95.8 of this Part for that year. The ratios in subparagraphs (i), (ii) and (iii) of

this paragraph shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

- (i) the ratio of the sum of capital and surplus to the total admitted assets is at least equal to .05;
- (ii) the ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .50;
- (iii) the ratio of the book value of the noninvestment grade bonds to the sum of the capital and surplus is less than .50; and
- (iv) the examiner team for the NAIC has not designated the company as a first priority company in any of the two calendar years coincident with and immediately preceding the calendar year end for which the actuarial opinion is applicable, or a second priority company in each of the two calendar years coincident with and immediately preceding the calendar year end for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the insurance regulator of the state of domicile and such insurance regulator has so notified the chair of the NAIC Life and Actuarial Task Force and the NAIC Staff and Support Office. Note: when the examiner team in the spring of a calendar year designates a priority, such designation is generally based on the preceding year. For example, to determine whether an actuarial opinion and memorandum is required for the 1994 year end under this test, the actuary should look at the examiner designation made in 1993 and 1994 generally based on the 1992 and 1993 year end data.

6. Any company which is not required by this section to submit a statement of actuarial opinion in accordance with section 95.8 of this Part for any year, shall submit a statement of actuarial opinion in accordance with section 95.7 of this Part for that year unless as provided for by section 95.3(c) of this Part the superintendent requires a statement of actuarial opinion in accordance with section 95.8 of this Part.

#### (d) Large companies.

Every category D company shall submit a statement of actuarial opinion in accordance with section 95.8 of this Part for each year beginning with the year in which this Part becomes effective.

11 CRR-NY 95.6 Current through June 30, 2021

## 95.7 Statement of actuarial opinion not including an asset adequacy analysis.

### (a) General description.

The statement of actuarial opinion required by this section shall consist of:

1. a paragraph identifying the appointed actuary and his or her qualifications; and
2. a regulatory authority paragraph stating that the company is exempt pursuant to this Part from submitting a statement of actuarial opinion based on an asset adequacy analysis and that the opinion, which is not based on an asset adequacy analysis, is rendered in accordance with section 95.7 of this Part;
3. a scope paragraph identifying the subjects on which the opinion is expressed and describing the scope of the appointed actuary's work; and
4. an opinion paragraph expressing the appointed actuary's opinion.

### (b) Recommended language.



The following language provided is that which in typical circumstances would be included in a statement of actuarial opinion in accordance with this section. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

1. The opening paragraph shall indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion.
  - (i) For a company actuary the opening paragraph of the actuarial opinion shall contain a statement such as: "I, [name of actuary, initials of actuarial organizations that actuary belongs to, e.g., M.A.A.A. and F.S.A., and title of actuary], was appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Superintendent dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements of the State of New York applicable to life and health insurance companies."
  - (ii) For a consulting actuary, the opening paragraph of the actuarial opinion shall contain a statement such as: "I, [name of actuary, initials of actuarial organizations that actuary belongs to, e.g., M.A.A.A. and F.S.A., and title of actuary], am associated with the firm of [insert name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Superintendent dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements of the State of New York applicable to life and health insurance companies."
2. The regulatory authority paragraph shall include a statement such as the following: "Said company is exempt pursuant to 11 NYCRR 95 (New York Insurance Regulation 126) from submitting a statement of actuarial opinion based on an asset adequacy analysis. This opinion, which is not based on an asset adequacy analysis, is rendered in accordance with section 95.7 of the regulation."
3. The scope paragraph shall contain a sentence such as the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, [ ]." The paragraph shall list items and amounts with respect to which the appointed actuary is expressing an opinion. The list shall include but not be necessarily limited to:
  - (i) aggregate reserve and deposit funds for policies and contracts included in exhibit 8;
  - (ii) aggregate reserve and deposit funds for policies and contracts included in exhibit 9;
  - (iii) deposit funds, premiums, dividend and coupon accumulations and supplementary contracts not involving life contingencies included in exhibit 10; and
  - (iv) policy and contract claims-liability end of current year included in exhibit 11, Part I.
4. If the appointed actuary has examined the underlying records, the scope paragraph shall also include a statement such as the following: "My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic records, which records, to the best of my knowledge and belief, are substantially accurate and complete, and such tests of the actuarial calculations as I considered necessary."
5. If the appointed actuary has not examined the underlying records, but has relied upon the company or a third party for the preparation of listings and summaries of policies in force and for the substantial accuracy of such records, the scope paragraph shall include a statement such as one of the following:

- (i) "I have relied upon [name and title of company officer certifying in force records] for the preparation of listings and summaries of policies and contracts and other liabilities in force and for the substantial accuracy of such records, as certified in the attached statement. I have reviewed such listings and summaries for reasonableness and consistency and I am so satisfied. In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary and I am satisfied as to their reasonableness and consistency." or
- (ii) "I have relied upon [name of accounting firm] for the substantial accuracy of the in force records inventory and information concerning other liabilities, as certified in the attached statement. I have reviewed such inventories and information for reasonableness and consistency and I am so satisfied. In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary and I am satisfied to their reasonableness and consistency." The statement of the person certifying shall follow the form indicated by paragraph (11) of this subdivision.

6. The opinion paragraph shall include a statement such as the following: "In my opinion the amounts carried in the balance sheet on account of the actuarial items identified above:

- (i) Are computed in accordance with those presently accepted actuarial standards of practice and actuarial compliance guidelines that specifically relate to the opinion required under section 95.7 of New York Insurance Regulation 126 to the extent not inconsistent therewith and in accordance with the requirements of such regulation, and which are consistently applied;
- (ii) Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;
- (iii) Meet the requirements of the insurance law and regulations of the State of [state of domicile] and are at least as great as the minimum aggregate amounts required by the State of New York;
- (iv) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year- end (with any exceptions as noted below); and
- (v) Include provision for all actuarial reserves and related statement items which ought to be established. The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice and Compliance Guidelines as promulgated by the Actuarial Standards Board, to the extent not inconsistent with New York Insurance Regulation 126 and conform to the requirements of such regulation."

7. A paragraph should document the eligibility for the company to provide an opinion as provided by this section. It shall include the following: "This opinion is provided in accordance with section 95.7 of Insurance Regulation 126. As such it does not include an opinion regarding the adequacy of reserves and related actuarial items when considered in light of the assets which support them. Eligibility for section 95.7 is confirmed as follows based on the annual statement for the year ended December 31, 20 \_:

- (i) The ratio of the sum of capital and surplus to the total admitted assets is [insert amount], which equals or exceeds the applicable criterion based on the admitted assets of the company.
- (ii) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is [insert amount], which is less than the applicable criteria based on the admitted assets of the company.

- (iii) The ratio of the book value of the noninvestment grade bonds to the sum of capital and surplus is [insert amount], which is less than the applicable criteria of .50
  - (iv) To my knowledge, based on such inquiry as I considered reasonable, the NAIC Examiner Team has not designated the company as a first priority company in either 20 \_ or 20 \_ generally based on the annual statements for 20 \_ and 20 \_, or a second priority company in each of such years or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile.
  - (v) To my knowledge, based on such inquiry as I considered reasonable, there is not a specific request from the insurance regulator in any jurisdiction in which the company does business requiring an asset adequacy analysis opinion."
8. The concluding paragraph may state purposes for which the opinion is rendered, for example: ☐ and does not cover new business issued subsequent to this date. Signature of Appointed Actuary. Address of Appointed Actuary. Telephone Number of Appointed Actuary. Date Opinion is Signed."
9. If there has been any change in the actuarial assumptions from those previously employed, that change should be described in the annual statement and in a paragraph of the statement of actuarial opinion, and the reference in subparagraph (6)(iv) of this subdivision to consistency should read as follows: ☐ of the annual statement (or in a separate paragraph in this opinion)." The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this paragraph.
10. If the appointed actuary is unable to form an opinion, he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reasons for such opinion. Any statements for any adverse or qualified actuarial opinion should follow the scope paragraph and precede the opinion paragraph.
11. If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force, there shall be attached to the opinion the statement of a company officer or accounting firm who prepared such underlying data similar to the following: "I [name of officer], [title] of [name and address of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of December 31, [ ], prepared for and submitted to [name of appointed actuary], were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete. Signature of the Officer of the Company or Accounting Firm. Address of the Officer of the Company or Accounting Firm. Telephone Number of the Officer of the Company or Accounting Firm. Date Signed." 11 CRR-NY 95.7 Current through June 30, 2021

## 95.8 Statement of actuarial opinion based on an asset adequacy analysis.

### (a) General description.

The statement of actuarial opinion submitted in accordance with this section shall consist of:

1. a paragraph identifying the appointed actuary and his or her qualifications;
2. a scope paragraph identifying the subjects on which an opinion is expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis, and

identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed;

3. a reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios) supported by a statement of each such expert in the form prescribed by subdivision (e) of this section;
4. an opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities; and
5. one or more additional paragraphs may be needed in individual company cases as follows:
  - (i) If the appointed actuary considers it necessary to state a qualification of his or her opinion.
  - (ii) If the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis.
  - (iii) If the appointed actuary must disclose reliance upon any portion of the assets supporting the Asset Valuation Reserve (AVR), Interest Maintenance Reserve (IMR) or other mandatory or voluntary statement reserves for asset adequacy analysis.
  - (iv) If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion.
  - (v) If the appointed actuary must disclose whether additional reserves as of the prior opinion date are released as of this opinion date, and the extent of the release.
  - (vi) If the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion.

#### (b) Recommended language.

The following language provided is that which in typical circumstances would be included in a statement of actuarial opinion in accordance with this section. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

1. The opening paragraph shall indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion.
  - (i) For a company actuary, the opening paragraph of the actuarial opinion shall contain a statement such as: "I [name of actuary, initials of actuarial organizations that actuary belongs to, e.g., M.A.A.A. and F.S.A., and title of actuary], was appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Superintendent dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements of the State of New York applicable to life and health insurance companies."
  - (ii) For a consulting actuary, the opening paragraph shall contain a statement such as: "I, [name of actuary, initials of actuarial organizations that actuary belongs to, e.g., M.A.A.A. and F.S.A., and title of actuary], am associated with the firm of [insert name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Superintendent dated [insert date]. I meet the academy qualification standards for rendering the opinion and am familiar with the valuation requirements of the State of New York applicable to life and health insurance companies."

2. The scope paragraph shall include a statement such as the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials as of December 31, 19[ ]. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis and those not so subjected. Image 1 within 11 CRR-NY 95.8Image 2 within 11 CRR-NY 95.8"
3. If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph shall include a statement such as the following: "I have relied on [name], [title] for [e.g., "anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios" and/or, "certain critical aspects of the analysis performed in conjunction with forming my opinion"] as certified in the attached statement(s). I have reviewed the information relied upon for reasonableness and consistency and I am so satisfied." Such a statement of reliance on other experts shall be accompanied by a statement by each of such experts in the form prescribed by subdivisions (e)(2) and (f) of this section.
4. If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph shall also include a statement such as the following: "My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records, which records to the best of my knowledge and belief are substantially accurate and complete, and such tests of the actuarial calculations as I considered necessary."
5. If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force and/or asset records) prepared by the company or by a third party, the reliance paragraph should include a sentence such as the following: "In forming an opinion on [specify types of reserves] I relied upon data prepared by [name and title of company officer(s) or third parties (name, title and firm) certifying in-force records and/or other data] as certified in the attached statements. I evaluated that data for reasonableness and consistency. I also reconciled that data to [Exhibits and Schedules to be listed as applicable] of the company's current annual statement. In other respects, my examination included such review of the actuarial assumptions and actuarial methods used and such tests of the calculations as I considered necessary and I am so satisfied as to their reasonableness and consistency." Such a section must be accompanied by a statement by each person relied upon in the form prescribed by paragraph (e)(1) of this section.
6. The opinion statement shall include a statement such as the following: "In my opinion the reserves and related actuarial values concerning the statement items identified above:
  - (i) Are computed in accordance with those presently accepted actuarial standards of practice that specifically relate to the opinion required under section 95.8 of New York Insurance Regulation 126 to the extent not inconsistent therewith and in accordance with the requirements of such regulation, and that are consistently applied and fairly stated, in accordance with sound actuarial principles;
  - (ii) Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;
  - (iii) Meet the requirements of the insurance law and regulations of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the State of New York;
  - (iv) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions

noted below);

- (v) Include provision for all actuarial reserves and related statement items which ought to be established; and
- (vi) Make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts. The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, to the extent not inconsistent with Insurance Regulation 126 and conform to the requirements of such regulation. This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion." or "The following material change(s) that occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: [Describe the change or changes.]" Note: Choose one of the above two paragraphs, whichever is applicable. ☐ and does not cover new business issued subsequent to this date. This opinion does not cover all matters needed to assess the future capital and surplus adequacy of the company. The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis. Signature of Appointed Actuary. Address of Appointed Actuary. Telephone Number of Appointed Actuary. Date Opinion is Signed."

#### (c) Assumptions for new issues.

The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this section.

#### (d) Adverse opinions.

If the appointed actuary is unable to form an opinion, he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reasons for such opinion. Any statement for any adverse or qualified actuarial opinion shall follow the scope paragraph and precede the opinion paragraph.

#### (e) Reliance on data furnished by other persons.

1. If the appointed actuary does not express an opinion as to the accuracy and completeness of the data (e.g., listings and summaries of policies and contracts in force and/or asset oriented information) used in the analysis, there shall be attached to the opinion the statement of a company officer who prepared the underlying data similar to the following: ☐ and other liabilities and/or asset oriented information) prepared for and submitted to [name of appointed actuary], were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete. Signature of the Officer of the Company. Address of the Officer of the Company. Telephone Number of the Officer of the Company. Date Signed."

2. If the appointed actuary does not express an opinion as to the accuracy and completeness of asset oriented information, including asset cash flows under different interest rate scenarios, but excluding listings and summaries of assets, there shall be attached to the opinion the statement of the person relied upon who provided the analysis similar to the following: "I [name of person relied upon], [title], [professional designation], of [name of company] hereby affirm that the analysis relating to information including asset cash flows prepared for and submitted to [name of appointed actuary] in support of the asset oriented aspects of the opinion were prepared under my direction, and to the best of my knowledge and belief, is substantially accurate and complete. Signature. Address. Telephone Number. Date Signed."

(f) Reliance on the analysis of other experts.

If the appointed actuary relies upon personnel for certain critical aspects of the analysis, there shall be attached to the opinion the statement of the person relied upon who provides the analysis similar to the following: "I [name of the person relied upon], [title], of [name of the company] hereby affirm that the analysis relating to information prepared for and submitted to [name of appointed actuary] in support of the opinion were prepared under my direction and to the best of my knowledge and belief, is substantially accurate and complete. Signature. Address. Telephone Number. Date Signed."

11 CRR-NY 95.8 Current through June 30, 2021

## 95.9 Description of an actuarial memorandum.

(a) General.

1. [Intentionally blank]
  - (i) Except as exempted in this Part, a memorandum, in form and substance acceptable to the superintendent as specified in this Part shall be prepared to support each actuarial opinion submitted pursuant to section 95.8 of this Part.
  - (ii) Except as provided in subparagraph (iii) of this paragraph, each company required to prepare the memorandum shall submit the memorandum to the superintendent as part of the actuarial opinion.
  - (iii) If a foreign or alien company has submitted to the insurance regulator of a state accredited by the NAIC a memorandum in support of an opinion of an appointed actuary for the prior year, which was in form and substance acceptable to such insurance regulator as evidenced in writing and was in support of an opinion of an appointed actuary that was required by laws or regulations of that state to meet standards adopted from time to time by the Actuarial Standards Board and such additional standards as such insurance regulator has prescribed, such foreign or alien company need submit the memorandum required by this section only at the request of the superintendent.
2. In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified actuaries within the meaning of section 95.5(d) of this Part, with respect to the areas covered in such memoranda, and so state in their memoranda.
3. If the superintendent finds that the analysis described in any such memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this Part, the superintendent may designate a qualified actuary (the "reviewing actuary") to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary

expenses of the independent review shall be paid by the company but the review shall be directed and controlled by the superintendent.

4. The reviewing actuary shall have the same status as an examiner for the purposes of obtaining data from the company, and the work papers and documentation of the reviewing actuary shall be retained by the superintendent; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the superintendent and shall be kept confidential to the same extent as is prescribed by law and in this Part with respect to other material provided by the company to the superintendent pursuant to the statute governing this Part. The reviewing actuary shall not be a current or past employee of the company or an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the company pursuant to this Part for any one of the current year or the preceding three years.

(b) Details of the memorandum section documenting asset adequacy analysis.

When an actuarial opinion under section 95.8 of this Part is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in section 95.5(f) of this Part and any additional standards under this Part. It shall specify:

1. For reserves:

- (i) product descriptions, including market description, underwriting, expenses (underwriting, marketing, commissions, administration, etc.) lapses, loan provisions, loan utilization, mortality, and other aspects of a risk profile and the specific risks the appointed actuary deems significant;
- (ii) sources and liabilities in force;
- (iii) reserve methods and bases;
- (iv) investment reserves;
- (v) reinsurance arrangements;
- (vi) description of assumptions made for:
  - (a) lapse rates (both base and excess), including a comparison of assumed lapse rates with actual lapse rates, provided lapse experience studies have been performed;
  - (b) interest crediting rate methodology;
  - (c) mortality bases, including a description of any base table used that is not published in any publication of the Society of Actuaries. Such a description should include a comparison of any significant deviations in mortality rates between the two;
  - (d) policyholder and shareholder dividends;
  - (e) competitor or market interest rate;
  - (f) annuitization rates;
  - (g) commissions and expenses, including a comparison of assumptions with recent actual commissions and expenses; and
  - (h) the extent to which the appointed actuary uses assumptions in the asset adequacy analysis which are materially different than the assumptions used in the previous asset adequacy analysis.

2. For assets:

- (i) portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets, call provisions, prepayment provisions, default, hedges, puts;
- (ii) investment and disinvestment assumptions;



- (iii) sources of asset data;
- (iv) asset valuation bases;
- (v) description of assumptions made for:
  - (a) default costs;
  - (b) bond call function;
  - (c) mortgage prepayment function;
  - (d) determining market value for assets sold due to disinvestment strategy;
  - (e) anticipated yield on assets acquired through the investment strategy; and
  - (f) the extent to which the appointed actuary uses assumptions in the asset adequacy analysis which are materially different than the assumptions used in the previous asset adequacy analysis.

### 3. Analysis basis:

- (i) methodology, e.g., cash flow testing, duration analysis, gross premium reserve tests, loss ratio methods, development methods, follow-up studies, analysis of products where all significant risks have been transferred to policyholder;
- (ii) rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed;
- (iii) rationale for degree of rigor in analyzing different blocks of business;
- (iv) criteria for determining asset adequacy;
- (v) methodology to recognize the impact of reinsurance on the company's cash flows; including both assets and liabilities, under each of the scenarios tested;
- (vi) effect of Federal income taxes, and other relevant factors;
- (vii) the amount of reserves and the identity of the product lines which had been subjected to asset adequacy analysis in the prior opinion but were not subject to such analysis for the current opinion; and
- (viii) if sensitivity testing was performed, identify the assumptions tested and describe the variation in ending surplus values on a market value basis from the base case values.

### 4. Impact of changes in assumptions used in asset adequacy analysis.

### 5. Summary of results.

### 6. Conclusions.

## (c) Conformity to standards of practice.

The memorandum shall include a statement: "The actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board to the extent, not inconsistent with 11 NYCRR 95 (Insurance Regulation No. 126) and conform to the requirements of such regulation."

## (d) Confidentiality.

Nonpublic information (meaning information not otherwise available from public documents or records) contained in any memorandum in support of the opinion, or in any other material provided by the company to the superintendent in connection therewith, shall at the written request of the company be kept confidential by the superintendent as, and to the extent, prescribed by section 4217 of the Insurance Law or by this Part. The request for confidentiality may be satisfied by any reasonable method, including, but not limited to: by marking "confidentiality requested" any page for which confidentiality is claimed or by designating specific pages of the memorandum or other material as "confidentiality requested" within the

letter to the superintendent requesting confidentiality, which shall accompany such memorandum or other material.

11 CRR-NY 95.9 Current through June 30, 2021

## 95.10 Additional considerations for analysis.

### (a) Aggregation.

For the asset adequacy analysis for the statement of actuarial opinion provided in accordance with section 95.8 of this Part, reserves and assets may be aggregated as follows:

1. Aggregation of the results of asset adequacy analysis of one or more products within a line of business as defined in section 95.4(i) of this Part, the reserves for which prove through analysis to be redundant, with the results of one or more products within a line of business, the reserves for which prove through analysis to be deficient. Where two or more products within a line of business are aggregated because they are backed by an investment segment, the rationale for each such segment shall be provided. The liability cash flows shall be projected separately for at least products with cash settlement options and products without cash settlement options.
2. With the prior written approval of the superintendent, based on the following guidelines, aggregation of the results of asset adequacy analysis for one or more lines of business, the reserves for which prove through analysis to be redundant, with the results of one or more lines of business, the reserves which prove to be deficient.
  - (i) In order to aggregate one or more lines of business, any cash-flow testing of assets and liabilities must be performed separately and the results reported for each line of business being aggregated.
  - (ii) If the asset adequacy analysis is done on an aggregate basis for lines of business with different testing periods, the common reference date shall be the valuation date.
  - (iii) If aggregation is used for one or more lines of business, the appointed actuary must provide, to the satisfaction of the superintendent, the following in the memorandum:
    - (a) a demonstration that the asset adequacy results for the various products or lines of business are developed using consistent economic scenarios or are subject to mutually independent risks, e.g., the likelihood of events impacting the adequacy of the assets supporting the redundant reserves is generally unrelated to the likelihood of events impacting the adequacy of the assets supporting the redundant reserves is generally unrelated to the likelihood of events impacting the adequacy of the assets supporting the deficient reserves;
    - (b) detailed descriptions of the assumptions used to develop the asset and liability cash flows; and
    - (c) where reserve redundancies of participating products or products with nonguaranteed elements are used to offset deficiencies, in addition to a description of dividends, experience rating or declaration of additional amounts, the memorandum shall include for the level scenario, a comparison of the modeled dividends and additional amounts to those actually paid over the recent past.

### (b) Selection of assets for analysis.

1. The determination or selection of assets should consider the investment allocation method used by the company (e.g., segmentation, dedicated or allocated assets and/or a proration of segmented, dedicated, or allocated assets in the general account). In allocating or assigning assets to the reserve liabilities (for asset adequacy analysis purposes) for which an opinion is rendered, the appointed actuary shall ascertain and report whether or not such selection is such that the adequacy of assets for other liabilities is prejudiced or endangered and shall include an appropriate statement as to such ascertainment. For example, if the assets remaining after such selection were long term assets with market value below book value or were bonds in danger of default, and the other liabilities were short term liabilities where cash is needed, the selection of the assets could have an adverse effect on the other liabilities.
2. The appointed actuary shall analyze those assets held in support of the reserves which are the subject of specific analysis, hereafter called "specified reserves."
  - (i) Assets shall be assigned or allocated to each line of business so that any asset adequacy analysis may be performed for each line separately.
  - (ii) An asset may be allocated over several groups of specified reserves.
  - (iii) Where a portion of a particular asset supports a group of specified reserves, that portion cannot support any other group of specified reserves.
  - (iv) The annual statement value of the assets held on support of the specified reserves shall not exceed the annual statement value of the specified reserves, except as provided in subdivision (c) of this section.
  - (v) If the method of assets allocation is not consistent from year to year, the extent of its inconsistency should be described in the supporting memorandum.

(c) Use of assets supporting the interest maintenance reserve and the asset valuation reserve.

1. An appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, must be used in any asset adequacy analysis.
2. Analysis of risks regarding asset default or write-down may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy.
3. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.
4. The amount of the assets used for the AVR and the IMR must be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum.
5. The method used for selecting particular assets or allocated portions of assets must be disclosed in the memorandum.

(d) Required interest scenarios.

1. For the purpose of performing the asset adequacy analysis required by this Part, the appointed actuary is expected to follow standards which are adopted by the Actuarial Standards Board and are not inconsistent with this Part; nevertheless, the appointed actuary must consider in the analysis the effect of at least the following interest rate scenarios:
  - (i) level with no deviation;
  - (ii) uniformly increasing over 10 years at a half percent (0.5%) per year and then level;
  - (iii) uniformly increasing at one percent per year over five years and then uniformly decreasing at one percent per year to the original level at the end of the 10 years and then level;

- (iv) an immediate increase of three percent and then level;
  - (v) uniformly decreasing over 10 years at a half percent (0.5%) per year and then level;
  - (vi) uniformly decreasing at one percent per year over five years and then uniformly increasing at one percent per year to the original level at the end of 10 years and then level; and
  - (vii) an immediate decrease of three percent and then level.
2. For these and other scenarios which may be used, projected interest rates for a five year treasury note need not be reduced beyond the point where such five year treasury note yield would be at 50 percent of its initial level.
  3. The beginning interest rates may be based on interest rates for new investments as of the valuation date similar to recent investments allocated to support the products being tested or be based on an outside index, such as treasury yields, of assets of the appropriate length on a date close to the valuation date. Whatever method is used to determine the beginning yield curve and associated interest rates should be specifically defined. The beginning yield curve and associated interest rates should be consistent for all interest rate scenarios.
  4. In the event of a projected negative surplus (based on a comparison of market values of assets and liabilities at the end of the projection) for a prescribed scenario for any line of business, the actuary shall modify that scenario by decreasing the total interest rate change in 100 bases point intervals until there is a projected positive surplus. The projected results at each interval tested should be provided. In addition, the actuary shall use additional assets to determine the approximate additional amount so that there is no longer any negative surplus under the prescribed scenario without modification under paragraph (1) of this subdivision.
  5. It is recognized that the adequacy of reserves and other actuarial items which are the subject of the opinion required by section 95.8 of this Part is a matter of judgment which the actuary rendering such opinion is to make in accordance with section 4217 of the Insurance Law and this Part. Consequently, failure under one or more of the scenarios prescribed by paragraph (1) of this subdivision would not necessarily prevent such actuary from expressing the opinion required by section 95.8 of this Part without qualification. However, the actuary shall furnish an analysis of the modified scenarios and of additional amounts under the prescribed scenarios without modification. If the actuary then opines that additional reserves are necessary, the actuary shall then explain and justify how the actuary determined the additional amount. The superintendent retains the right to request additional information with regard to these matters.

#### (e) Withdrawal or lapse rates.

For interest sensitive products, such as single premium cash value deferred annuities of universal life insurance, the withdrawal rates might be sensitive to changes in new money rates and to market rates of competitors. The description of the withdrawal rates should include the formula along with sample rates or the tables of rates along with appropriate descriptions as to their applicability.

#### (f) Calls.

1. In the absence of credible experience, the following are examples of acceptable procedures for coupon bonds without a call premium:
  - (i) assume no calls until the current interest rate is two percent less than the coupon rate, and then assume 100 percent call;
  - (ii) assume calls begin when the coupon rate exceeds the current interest rate and calls increase to 100 percent when the spread reaches three percent; and

- (iii) assume a 100 percent call when the present value of the remaining bond cash flows, when discounted at a level interest rate at the then rate for the appropriate scenario, exceeds the call price plus an expense margin plus one percent.
- 2. The following are examples of acceptable procedures for coupon bonds with a call premium of up to five percent:
  - (i) assume no calls until the current interest rate is three percent less than the coupon rate and then assume 100 percent call;
  - (ii) assume calls begin when the coupon rate exceeds the current interest rate by one percent and calls increase to 100 percent when the spread reaches four percent; and
  - (iii) assume a 100 percent call when the present value of the remaining bond cash flows, when discounted at a level interest rate at the then rate for the appropriate scenario, exceeds the call price plus an expense margin plus one percent.
- 3. In case of Government National Mortgage Association obligations, other mortgage backed securities and collateralized mortgage obligations, some prepayment should be assumed such as, for example, five percent when the current interest rate equals or exceeds the coupon rate, with prepayments increasing to 50 percent when the coupon rate exceeds the current interest rate by four percent, or by linking the ratio of the market value to the loan balance to multiples of the Public Securities Association standard prepayment model.
- 4. Other procedures may be used for other types of obligations and other call premiums.
- 5. Any comparison of coupon rate and current interest rates and any comparison of present values with amount payable on call should be for like type and quality of assets and remaining duration to maturity.

#### (g) Defaults.

In the absence of credible experience, it will be acceptable to make annual expense charges (or reductions in annual investment income) not less than 10 percent of the AVR maximum reserve for the bond, preferred stock, common stock or mortgage.

#### (h) Testing period.

In general, the testing period for asset adequacy analysis should extend far enough into the future to cover the major portion of the future run out of insurance cash flows. This period may vary by product. For example:

1. For group guaranteed interest contracts with a lump sum payout and a maturity date of 10 or less years to run, full surrender should be assumed on the maturity date and the testing period should extend to the last maturity date.
2. In case of individual single premium cash value deferred annuities, full surrender of any persisting annuities should be assumed at the end of a 10 year testing period, unless specific approval is obtained for a longer period.
3. For lifetime annuities a testing period of at least 20 years, and perhaps longer, would be appropriate.
4. For life insurance, a testing period of at least 20 years, and perhaps longer, would be appropriate.

#### (i) Market value of projected results.

The market value as of the end of the projection or testing period of any remaining assets and/or borrowed funds and of any remaining liabilities, and the net thereof, shall be provided based on assuming that the

interest rate after such date would be frozen at the prevailing rate as of that date for the appropriate interest rate scenario. In the case of liabilities with cash values, where the assumption of 100 percent lapse is used, the value of the remaining liabilities would be the cash value. In the case of noncash value liabilities, the present value of future liability payments and expenses shall be discounted at the prevailing scenario interest rate. Where such market values are discounted back to the valuation date, the procedure for discounting shall be explained and justified based on the scenario. The date as of which market values are taken shall be clearly labeled.

#### (j) Documentation.

The appointed actuary shall retain in file, for at least seven years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

11 CRR-NY 95.10 Current through June 30, 2021

### 95.11 Minimum reserve requirements with and without an acceptable actuarial opinion and memorandum.

- (a) Where there is an acceptable actuarial opinion and memorandum as to the sufficiency of assets supporting the liabilities of contracts or policies, then the reserve shall be the greater of:
  1. the statutory minimum reserve determined in accordance with the provisions of section 4217 of the Insurance Law; and
  2. the reserve determined by the appointed actuary to be required in order to support an unqualified actuarial opinion under section 95.7 or 95.8 of this Part, whichever is applicable.
- (b) A company that is required to prepare and submit a memorandum required by section 95.9 of this Part may elect not to do so, but only if the company maintains reserves which are not less than 115 percent nor more than 200 percent of the statutory minimum reserve determined in accordance with the provisions of section 4217 of the Insurance Law, as determined by the superintendent, to be appropriate to support the actuarial opinion submitted pursuant to section 95.8 of this Part.
- (c) A company that desires to hold additional reserves pursuant to this section in lieu of submitting the memorandum required by section 95.9 of this Part shall so notify the superintendent not later than December 1st of the year to which the actuarial opinion applies. The notice shall be accompanied by such information about the company's business, assets and liabilities as of such date and as projected to the end of such year as the superintendent deems sufficient to determine the amount by which the company must increase its reserve. The superintendent shall notify the company of the amount of the required reserve increase within 30 days after his receipt of such information.
- (d) Any company holding additional reserves on lieu of preparing the memorandum required by section 95.9 of this Part shall submit an actuarial opinion which shall conform to the format of section 95.7 of this Part, except section 95.7(b)(7), modified as necessary for this section. In lieu of section 95.7(b)(7), a paragraph shall document the eligibility for the company to provide an opinion as provided by section 95.11 of this Part. It shall include the following, if applicable:
  1. "This opinion is provided in accordance with section 95.11 of New York Insurance Regulation 126. As such it does not include an opinion regarding the adequacy of reserves and related actuarial items when considered in light of the assets that support them. The company is not eligible for exemption from submission of a statement of actuarial opinion in accordance with section 95.8 because the company is a category D company, for which no exemption is made.";

2. "The company is a category C company for which the company is not exempt every third year."; or
3. "The company is a category [A] [B] [C] company but is not eligible for exemption as noted by one or more of the following: "The company has requested permission from the superintendent under section 95.11 of Insurance Regulation No. 126 for exemption from an actuarial opinion required by section 95.8 and has received his approval on condition that the reserves maintained are not less than \_\_\_\_ percent of the statutory minimum reserves. The reserves held are approximately \_\_\_\_ percent of the statutory minimum reserves.
  - (i) The ratio of the sum of capital and surplus to the total admitted assets is [insert amount], which [does][does not] equal or exceed the applicable criterion based on the admitted assets of the company.
  - (ii) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is [insert amount], which [is] [is not] less than the applicable criteria based of the total admitted assets of the company.
  - (iii) The ratio of book value of the noninvestment grade bonds to the sum of capital and surplus is [insert amount], which [is] [is not] less than the applicable criteria of.50.
  - (iv) To my knowledge, based on such inquiry as I considered reasonable, the NAIC Examiner Team [has] [has not] designated the company as a first priority company in either 20\_\_ or 20\_\_ generally based of the annual statements for 20\_\_ and 20\_\_, or a second priority company in each of such years, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile."
- (e) When reserves for any contracts and policies are determined in accordance with this section where no actuarial opinion and memorandum acceptable to the superintendent has been filed, the calculations for the reserves, and an accompanying explanation of the basis of such calculations, shall be sent to the superintendent, attention of: Life Bureau, Actuarial Valuation Unit New York State Department of Financial Services One Commerce Plaza Albany, NY 12257 The explanation should include a demonstration of how the reserves comply with this section.

11 CRR-NY 95.11 Current through June 30, 2021

## 95.12 Severability.

If any provision of this Part or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons and circumstances.

11 CRR-NY 95.12 Current through June 30, 2021