

Dear Senators ANDREASON, Coiner & Malepeai, and  
Representatives BLACK, Henderson & Elaine Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Idaho Department of Insurance:

IDAPA 18.01.25 – Title Insurance and Title Insurance Agents and Escrow Officers

(Docket No. 18-0125-1001);

18.01.47 – Valuation of Life Insurance Policies Including the Introduction & Use of

New Select Mortality Factors (Docket No. 18-0147-1001);

18.01.53 – Continuing Education (Docket No. 18-0153-1001);

18.01.56 – Rebates and Illegal Inducement to Obtaining Title Insurance

Business Rules (Docket No. 18-0156-1001);

18.01.66 – Director’s Authority for Companies Deemed to be in Hazardous Financial

Condition (Docket No. 18-0166-1001);

18.01.77 – Actuarial Opinion and Memorandum Rule

(Docket No. 18-0177-1001);

18.01.79 – Recognition of Preferred Mortality

Tables for Use in Determining Minimum Reserve Liabilities

(Docket No. 18-0179-1001).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules’ analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 10-1-10. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules’ analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 11-1-10.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4845, or send a written request to the address or FAX number indicated on the memorandum attached.



# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

Jeff Youtz  
Director

### MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce and Human Resources Committee and the House Business Committee

FROM: Brooke Murdoch, Research Analyst *SBM*

DATE: September 14, 2010

SUBJECT: Idaho Department of Insurance

**IDAPA 18.01.25 – Title Insurance and Title Insurance Agents and Escrow Officers (Docket No. 18-0125-1001)**

**IDAPA 18.01.47 – Valuation of Life Insurance Policies Including the Introduction and Use of New Select Mortality Factors (Docket No. 18-0147-1001)**

**IDAPA 18.01.53 – Continuing Education (Docket No. 18-0153-1001)**

**IDAPA 18.01.56 – Rebates and Illegal Inducement to Obtaining Title Insurance Business Rules (Docket No. 18-0156-1001)**

**IDAPA 18.01.66 – Director's Authority for Companies Deemed to be in Hazardous Financial Condition (Docket No. 18-0166-1001)**

**IDAPA 18.01.77 – Actuarial Opinion and Memorandum Rule (Docket No. 18-0177-1001)**

**IDAPA 18.01.79 – Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities (Docket No. 18-0179-1001)**

**1. IDAPA 18.01.25 – Title Insurance and Title Insurance Agents and Escrow Officers (Docket No. 18-0125-1001)**

The Department of Insurance submits notice of proposed rulemaking at IDAPA 18.01.25. The proposed rule provides additional requirements relating to the rates charged by title entities, permits title entities to file escrow rates for up to two classifications which include a basic rate

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and a residential refinance rate, provides rate filing procedures and requires that escrow rates filed with the Department be accompanied by a written rate justification. The Department states that the purposes of the rule changes are to ensure that escrow pricing is not used as an illegal inducement to obtain title insurance business, to develop a verifiable system to determine the cost to deliver escrow services and to ensure that the consumers of title industry products and services have access to a viable and competitive marketplace.

Formal negotiated rulemaking was not conducted because the rule was drafted in consultation with title industry representatives. There is no negative fiscal impact resulting from this rulemaking.

We note only one error in new Section 002 on page 350. Citation to Section 67-5201(19)(b)(1)(v), Idaho Code, appears to be incorrect as such Section does not exist in Idaho Code.

The proposed rule is within the authority granted to the Department in Section 41-211, Idaho Code.

## **2. IDAPA 18.01.47 – Valuation of Life Insurance Policies Including the Introduction and Use of New Select Mortality Factors (Docket No. 18-0147-1001)**

The Department of Insurance submits notice of proposed rulemaking at IDAPA 18.01.47. The proposed rule modifies requirements relating to the calculation of deficiency reserves using mortality factors and requires that the appointed actuary disclose possible shortfalls in funding future required reserves. According to the Department, the proposed changes bring the rule in line with the National Association of Insurance Commissioners model regulation #830.

Negotiated rulemaking was not conducted because the proposed changes are consistent with a National Association of Insurance Commissioners model regulation and the Idaho domiciled life insurance company supports its adoption. There is no negative fiscal impact resulting from this rulemaking.

The proposed rule is within the authority granted to the Department in Section 41-211, Idaho Code.

## **3. IDAPA 18.01.53 – Continuing Education (Docket No. 18-0153-1001)**

The Department of Insurance submits notice of proposed rulemaking at IDAPA 18.01.53. The proposed rule makes changes to the continuing education requirements for licensed insurance producers. Specifically, the rule removes the requirement that ethics courses be stand alone courses and adds a requirement that persons utilizing independent study programs demonstrate their understanding of the materials by completing review questions at the end of each chapter with a score of 70% or better before proceeding to the next chapter.

Negotiated rulemaking was not conducted because the proposed changes were drafted in cooperation with members of the affected industry. There is no negative fiscal impact resulting from this rulemaking.

The proposed rule is within the authority granted to the Department in Sections 41-211, 41-1013 and 41-1025, Idaho Code.

**4. IDAPA 18.01.56 – Rebates and Illegal Inducement to Obtaining Title Insurance Business Rules (Docket No. 18-0156-1001)**

The Department of Insurance submits notice of proposed rulemaking at IDAPA 18.01.56. The proposed rulemaking deletes provisions relating to escrow closing charges and premium rates. According to the Department, the purpose of the proposed rule is to consolidate all rules relating to the filing of escrow charges and fees into one rule. To this end, the provisions removed from Rule 18.01.56 have been added to Rule 18.01.25, “Title Insurance and Title Insurance Agents and Escrow Officers.” The Department also states that the proposed rule is designed to ensure that the consumers of title industry products and services have access to a viable and competitive marketplace.

Formal negotiated rulemaking was not conducted because the rule was drafted in consultation with representatives of the affected industry. There is no negative fiscal impact resulting from this rulemaking.

The proposed rule is within the authority granted to the Department in Section 41-211, Idaho Code.

**5. IDAPA 18.01.66 – Director’s Authority for Companies Deemed to be in Hazardous Financial Condition (Docket No. 18-0166-1001)**

The Department of Insurance submits notice of proposed rulemaking at IDAPA 18.01.66. This rule sets forth the standards that the Director of the Department may consider in determining whether the continued operation of any insurer transacting insurance business in this state might be deemed to be hazardous to its policyholders, creditors or to the general public. The proposed rule modifies the existing standards and provides additional standards that the Director may consider. In addition, the proposed rule grants the Director the authority to issue an order to any insurer deemed to be in hazardous financial condition. The order may require that the insurer take corrective action or adjust rates for any non-life insurance product written by the insurer that the Director considers necessary to improve the financial condition of the insurer.

Negotiated rulemaking was not conducted because the proposed changes are consistent with a National Association of Insurance Commissioners model regulation and few companies are in hazardous financial condition. There is no negative fiscal impact resulting from this rulemaking.

We note one potential issue with this proposed rule. Section 012.02.l. on page 381, contains the following: “Notwithstanding any other provision of law limiting the frequency or

amount of premium rate adjustments.” This language seems to suggest that there is an existing Idaho Code provision that is not consistent with the provisions of new Section 012.02.1 of the proposed rule. Section 41-211, Idaho Code, authorizes the Director to promulgate rules, but provides that “[n]o such rule shall extend, modify, or conflict with any law of this state or the reasonable implications thereof.” Therefore, rules promulgated by the Department must be consistent with statutory provisions. Accordingly, we suggest that a statutory amendment would be more appropriate than the “notwithstanding” language in this proposed rule.

Aside from the foregoing comment, the proposed rule is within the authority granted to the Department in Section 41-211, Idaho Code.

**6. IDAPA 18.01.77 – Actuarial Opinion and Memorandum Rule (Docket No. 18-0177-1001)**

The Department of Insurance submits notice of proposed rulemaking at IDAPA 18.01.77. According to the Department, the proposed changes bring the rule in line with the National Association of Insurance Commissioners model regulation #822. The proposed rule removes outdated language from the statement of actuarial opinion, adds a date to the actuary signature line, provides directions on the rationale for degree of rigor in analyzing different blocks of business, provides directions for criteria for determining asset adequacy and provides instructions to comment on the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim period.

Negotiated rulemaking was not conducted because the proposed rule is consistent with a National Association of Insurance Commissioners model regulation and the Idaho domiciled life insurance company supports its adoption. There is no negative fiscal impact resulting from this rulemaking.

The proposed rule is within the authority granted to the Department in Section 41-211, Idaho Code.

**7. IDAPA 18.01.79 – Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities (Docket No. 18-0179-1001)**

The Department of Insurance submits notice of proposed rulemaking at IDAPA 18.01.79. According to the Department, the proposed changes bring the rule in line with the National Association of Insurance Commissioners model regulation #815. The proposed rule allows companies to use preferred mortality tables as the minimum valuation standard for policies issued on or after January 1, 2004 and before January 1, 2007, with the consent of the Director of the Department. The proposed rule also contains limitations on the use of the 2001 Commissioners Standard Ordinary Preferred Class Structure Table for the valuation of policies issued prior to January 1, 2007 and defines the reserve method.

Negotiated rulemaking was not conducted because the proposed changes are consistent with a National Association of Insurance Commissioners model regulation and the Idaho

domiciled life insurance company supports its adoption. There is no negative fiscal impact resulting from this rulemaking.

We note one minor typographical error in new Section 012.04.a. on page 394; (a) and (b) within the paragraph appear to be in reverse order.

The proposed rule is within the authority granted to the Department in Section 41-211, Idaho Code.

cc: Idaho Department of Insurance  
Shad Priest, Deputy Director

## IDAPA 18 - DEPARTMENT OF INSURANCE

### 18.01.25 - TITLE INSURANCE AND TITLE INSURANCE AGENTS AND ESCROW OFFICERS

DOCKET NO. 18-0125-1001

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Chapter 27, Title 41, Idaho Code, and Section 41-211, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of the changes to this rule are to ensure escrow pricing is not being used as an illegal inducement to obtain title insurance business, to develop a system to determine the cost to deliver escrow services that is verifiable, and to ensure that the consumers of title industry products and services have access to a viable and competitive marketplace.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, formal negotiated rulemaking was not conducted because the writing of this rule was accomplished in consultation with title industry representatives.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dale Freeman at (208) 334-4250.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 28th day of July, 2010.

Shad Priest  
Deputy Director  
Idaho Department of Insurance  
700 West State Street, 3rd Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 18-0125-1001**

**001. TITLE AND SCOPE.**

The purpose of these rules is to adopt with reference to title insurance and title insurance agents and escrow officers rules governing rates charged for various services and insurability on certain matters; rules governing procedural methods as to the way the title insurers, title insurance agents and their officers are to perform certain actions and rules governing actions of title insurance agents and employees acting as escrow agents. The purpose is to further protect consumers of title insurance industry products by ensuring that consumers are not injured by delivery of certain funds or documents (for recordation or otherwise) from an escrow without prior receipt of "collected funds" by the escrow agent and to preserve the financial stability of title insurers and title insurance agents. (7-1-93)

**01. Title.** The title of this chapter is IDAPA 18.01.25, "Title Insurance and Title Insurance Agents and Escrow Officers." ( )

**02. Application of Rule.** The provisions of this rule shall apply to all title insurers and title insurance agents. This rule does not limit the Director's authority to determine that other title insurance trade practices constitute violations of Section 41, Chapter 27, Idaho Code. ( )

~~002.—003. (RESERVED).~~

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(1)(v), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and each regional or district office of this agency. ( )

**003. ADMINISTRATIVE APPEALS.**

There is no appeal to the Attorney General from application of this rule. All such appeals must be instituted by written demand for a hearing before the Director of Insurance, Section 41-232, Idaho Code. Further appeal from the Director's decision can be taken to district court pursuant to Section 67-5270, Idaho Code. ( )

*[Codified Section 004 is being moved and renumbered to proposed Section 010]*

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into these rules. ( )

*[Codified Section 005 is being moved and renumbered to proposed Section 011]*

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB ADDRESS.**

**01. Office Hours.** The Idaho Department of Insurance is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. ( )

**02. Mailing Address.** The Department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ( )

**03. Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, ID 83720-0043. ( )

**04. Web Site Address.** The Department's web address is <http://www.doi.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**



Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

~~0067.~~ -- ~~0409.~~ (RESERVED).

**00410. PREMIUM RATES AND THEIR APPLICATION.**

**01. Schedule of Premium Rates.** Each title insurer shall file its schedule of premium rates (including both the taxable risk portion and the service portion) for title insurance charged the public for all policies, which premium rates shall commence with the lowest rate and shall advance by one thousand dollars (\$1,000) increments. The rate schedule shall include owner's, standard mortgagee and extended coverage mortgagee policies, and may include other rates. In addition, any charges made for special endorsements shall be listed and the type of policy to which applicable. Filed rates shall provide that where a preliminary report is issued, the order for the policy may be canceled prior to closing upon applicant being required to pay a cancellation charge of fifty percent (50%) of the premium with a minimum of fifty dollars (\$50) provided that any portion of the charge in excess of one hundred dollars (\$100) may be waived, and provided the entire charge may be canceled if it is apparent that by inadvertence or error the customer entered duplicate orders with the same or competing companies. The premium rates for policies shall only include title examination and issuance of title insurance which shall be deemed to include any preliminary report, commitment to insure, binder or similar report (herein collectively called preliminary report) and the policy subsequently issued thereon. If more than one (1) chain of title is involved, an additional charge shall be made for each additional chain. An additional chain is one involving property in a different block or section or under a different ownership within the last five (5) years. (7-1-93)

**02. Rebates, Discounts, Credits.** No title insurer or title insurance agent shall: (7-1-93)

**a.** Charge a premium for a policy in one transaction and withhold issuance of a policy thereon; (7-1-93)

**b.** Charge a premium for a policy in one transaction and apply the premium, or any part thereof, applicable to the first transaction to a premium charged in a subsequent transaction; provided that a title insurer may file a temporary or construction mortgagees policy rate allowing credit for such policy upon a permanent policy to the extent of the basic standard coverage charge only for the temporary policy provided that full applicable premium and fees have been charged and collected on the issuance of the first policy; and provided that a title insurer may file an owner's reissue rate under conditions prescribed by Subsection 010.06 infra; (7-1-93)

**c.** Provide or agree to provide closing or escrow services as a part of a title insurance premium charge for issuance of a policy; (7-1-93)

**d.** Issue a title insurance binder, commitment or preliminary report without an order and without making a charge therefor if a policy is not issued thereon, nor apply the charge or any part thereof toward the premium of a policy on any other tract of land; (7-1-93)

**e.** Issue a binder commitment or preliminary report, or title insurance policy for a charge which is less than that currently filed for such risk with the Department of Insurance; or (7-1-93)

**f.** In connection with transaction of any title insurance business received by or directed to such insurer or agent directly or indirectly, provide, or cause to be provided, to any person any payment, property or item of value, or division of a premium or fee; provided, contracts of reinsurance when no primary liability is assumed by the reinsurer are exempt here from. (7-1-93)

**03. Amount of Owner's Policy.** An owner's policy shall be issued for not less than (a) the amount of the current sales price of the land and any existing improvements appurtenant thereto, or (b) if no sale is being made, the amount equal to the value of the land and any existing improvements at the time of the issuance of the policy. If improvements are contemplated, the amount may include the cost of such improvements immediately contemplated to be erected thereon with a following pending improvement clause set forth in Schedule B of said policy and the full premium collected, which clause reduces the policy amount to the extent the improvements are not completed. The amount of policies covering leasehold estates for a term of fifty years or more shall be for the full value of the land

and existing improvements, and for less than fifty years shall be for an amount at the option of the insured based on (i) the total amount of the rentals payable for the primary term but not less than five (5) years, or (ii) the full value of the land and existing improvements together with any improvements immediately contemplated to be erected thereon. The amount of policies insuring contract purchasers shall be for the full value of the principal payments. Insurance of lesser estates shall be written for the amount of the value of the estate at the time the policy is issued.

(7-1-93)

**04. Amount of Mortgagee Policies.** A mortgagee's policy shall be for not less than the full principal debt of the loan insured and at insured's request may include up to twenty percent (20%) in excess of the principal debt to cover interest, foreclosure costs, etc. Where the land covered represents only part of the security for the loan, the policy shall be written for the amount of the unencumbered value of the land or the amount of the loan, whichever is the lesser.

(7-1-93)

**05. Simultaneous Issuance of Owner's and Mortgagee's Policy.** When an owner's policy and a mortgage policy covering identical land are simultaneously issued, the owner's policy shall bear the regular owner's rate. Premium for the mortgagee policy simultaneously issued may be for an amount less than the full mortgagee rate for the amount of insurance not in excess of the owner's policy.

(7-1-93)

**06. Double Sale and Reissue.** No order will be held open to cover a double sale and the premium will be charged and the policy issued on each sale, unless the conveyance on resale is recorded at the same time as the original transaction. A title insurer may file an owner's reissue rate of not less than fifty percent (50%) of the basic rate which shall be applicable to any policy ordered within two (2) years of the effective date of a prior owner's or purchaser's policy naming applicant as the insured provided that the following conditions are met:

(7-1-93)

**a.** The prior policy or a copy thereof is presented to the issuing company and shall be retained in the issuing company's file, or in the absence thereof, reasonable proof of issuance is provided the issuing company.

(7-1-93)

**b.** The reissue premium shall be based on the schedule of fees in effect at the time of reissue.

(7-1-93)

**c.** Increased liability is to be computed in accordance with the basic schedule of fees in the applicable brackets.

(7-1-93)

**07. Amount on Litigation and Foreclosure Reports.** Where a preliminary report is made for an owner's policy to be issued after a quiet title action or after a foreclosure of contracts of sale, deeds of trust or mortgages, the premium charge shall be that on an owner's policy and the policy will be issued following the successful completion of the litigation or the foreclosure, and cancellation fee charged if the action is unsuccessful. Such fee shall include the examination of title as well as a check immediately prior to judgment or sale on foreclosure. Each such preliminary report shall bear on its face as the limit of liability of the insurer, the value upon which the premium charge is based.

(7-1-93)

#### **00511. PROCEDURAL RULES AND DEFINITIONS.**

**01. Definitions.** (7-1-93)

**a.** Policy. Any contract or form of title insurance which prior to its issuance has been filed with the Director of Insurance. (7-1-93)

**b.** Preliminary Report. A binder of insurance, a commitment to insure, a preliminary report of title, and litigation reports including quiet title action, foreclosure actions of contracts of sale, deeds of trust or mortgages where a policy of title insurance will be issued on the successful completion thereof. There is excluded herefrom miscellaneous reports which do not insure title, such as judgment reports, lot book reports or property search reports which are governed by Subsection 011.02. (7-1-93)

**c.** Title Examination. A search and examination of the title and a determination of insurability of the title in accordance with sound title underwriting practices. Such examination of the public records shall be made only for the purpose of determining insurability of the described property and shall not be a report on the condition of the

record.

(7-1-93)

**d.** Issuance of a Policy. The preparation, execution and delivery of a title insurance policy which is hereby deemed to be only a contract of insurance up to the face amount of such policy and in no way shall create a tort liability as to the condition of the record insured from. The same shall include any necessary investigation just prior to actual issuance of a policy to determine if there has been proper execution, acknowledgement and delivery of any conveyances, mortgage papers, and other title instruments which may be necessary for the issuance of a policy. It shall also include determination of the status of taxes based on the latest available information and a final search of the title and that all necessary papers have been filed for record. Issuance of the policy shall not include services which are essentially escrow or closing services, such as receiving and disbursing money, prorating insurance and taxes, etc., for which an escrow fee shall be charged. The issuer of the policy may specify requirements necessary for the issuance of the title insurance, but it is the responsibility of the applicant for the insurance to meet such requirements and the title insurance agent shall not act for the applicant to satisfy the same. It is not the responsibility of the policy issuer to cure defects of title or remove liens or encumbrances, nor to perform services extraneous to the issuance of the policy. Title insurers and title insurance agents in the issuance of title insurance policies shall not do any acts which constitute the practice of law and the premium shall not include the cost of legal services to be performed for the benefit of anyone other than the company. A title insurance agent who is also a licensed lawyer rendering any legal services in the transaction insured must render a separate legal billing therefor and the escrow fees shall not include such legal services.

(7-1-93)

**e.** Tract Indexes and Abstract Records. See IDAPA 18.01.01, Rules of the Department of Insurance. The tract indexes and abstract records shall be maintained and posted to current date and shall include adequate maps that will enable a person working the title plant to locate a tract of land which is the subject of the title examination.

(7-1-93)

**02. Miscellaneous Reports.** Where an insurer or its agent issues judgment reports, lot book reports or property search reports, each such report shall specifically contain the following statement: "This report is based on a search of our tract indexes of the county records. This is not a title or ownership report and no examination of the title to the property described has been made. For this reason, no liability beyond the amount paid for this report is assumed hereunder, and the company is not responsible beyond the amount paid for any errors and omissions contained herein."

(7-1-93)

**03. Special Exceptions.** An insurer may insert such special exception(s) as shall develop from an examination of the title. A special exception shall in all cases specifically describe the item excepted to and shall not be general in terms. The printed provisions of a filed policy form, including exclusions from coverage, exceptions not insured against and stipulations and conditions shall not be deemed special exceptions.

(7-1-93)

**04. Liens and Encumbrances, Standards of Insurability and Insuring Around.** The determination of insurability as to liens and encumbrances under Section 41-2708(1) and the risk prohibited under Section 41-2708(2), Idaho Code, intentionally omitting an outstanding enforceable recorded lien or encumbrance, are interpreted by the Insurance Director to mean:

(7-1-93)

**a.** "Intentionally" omitting an outstanding enforceable recorded lien or encumbrance is the issuance of the policy with the intent to conceal information from any person by suppressing or withholding title information, the consequence of which could result in a monetary loss either to the title insurance company or to the insured under the policy or binder.

(7-1-93)

**b.** "Outstanding enforceable recorded lien or encumbrance" and/or "determination of insurability" as to possible liens and encumbrances shall not be construed as prohibiting an insurer from issuing a policy without taking exception to a specific recorded, inchoate, or death tax item when sound underwriting standards and practices allow insurance against the item. Defects of title are not regulated by this provision. Specifically, a policy may be issued without taking exception to the following items on the conditions set out:

(7-1-93)

**i.** Where a lien securing an obligation, though not released of record, to the satisfaction of the insurer has been discharged and the insurer or its agent has documentary evidence in its file that the obligation has been paid in full.

(7-1-93)

ii. Where funds are in escrow to pay said item and a recordable release in form for filing is available for recording in the ordinary course of business. (7-1-93)

iii. Where liens, in the opinion of counsel, are barred by the statute of limitations. (7-1-93)

iv. Where inchoate liens may arise from improvements to the described property and may have priority over a mortgage being insured and a sufficient indemnity as herein defined made by a person or persons who are not the makers of the obligation secured by the insured mortgage or a guarantor thereof, has been delivered to and accepted by the insurer, or sufficient funds, including short term treasury bills and notes, have been deposited with the insurer or its agent to assure ultimate payment and release of such liens; provided, an exception as to such inchoate liens shall be shown on the policy with a provision insuring against the enforcement thereof. Sufficient indemnity as used herein shall mean a direct obligation to pay such liens in an amount judged adequate by the insurer executed by a financial institution regulated by the state or federal government or executed by a responsible person as hereinafter defined. This subsection shall also apply to recorded liens being contested if the indemnity is one hundred and fifty percent (150%) of the claim and is by such financial institution or in said funds. (7-1-93)

v. Where the insurer has previously issued a policy without taking exception to the specific item and is called upon to issue an additional policy where it is already obligated under such prior policy and where the new policy will not increase its liability or exposure; provided, an exception as to such item shall be shown on the policy with a provision insuring against the enforcement thereof. (7-1-93)

vi. When the mortgage policy issued insures validity and priority of a lien, the insurer shall not be required to itemize liens which are subordinate to the lien insured, whether by express subordination or operation of law, unless such subordinated matters must be shown to comply with a policy provision, or unless requested by the insured to do so; provided, when issuing a preliminary report, commitment or a binder for a mortgagee's policy all subordinate liens shall be shown but a statement may be made that they are subordinate. (7-1-93)

vii. With reference to federal estate taxes and state inheritance taxes which have not been paid, where the insurer has examined a balance sheet of the estate and determined more than adequate funds are on hand to pay such taxes, and the insurer has taken an indemnity from a responsible person protecting itself against such unpaid taxes, or where sufficient moneys or other securities to pay such taxes have been placed in escrow pending the payment thereof or pending receipt of waiver of lien from the taxing authority. (7-1-93)

viii. "Responsible person" is one (1), or more than one (1) if they are jointly and severally liable, each of whose current verified balance sheet upon examination is determined by the insurer to be sufficient for the purpose of the indemnity given. Verified copies of all statements shall be retained by the insurer or its agent. (7-1-93)

**05. Mechanics' Liens, Prohibited Risk.** Under the provisions of Section 41-2708, Idaho Code, the Insurance Director has determined under standards of insurability, prohibited risks and rebates, that under all forms of mortgage policies the risk insured shall not include unrecorded liens and encumbrances, including contractors', subcontractors' professional services, materialmen's and mechanics' liens, unless: (7-1-93)

**a.** The mortgage shall have been placed of record prior to commencement of any improvement on the premises and the insurer is satisfied that the mortgage and related documents with reference to such priority; or (7-1-93)

**b.** Unless the provisions of Subsections 011.04.b.ii., 011.04.b.iii. or 011.04.b.iv., and 011.04.b.viii. as applicable have been complied with; or (7-1-93)

**c.** Unless the insurer has satisfied itself and documented its file that construction has been completed and the time for filing liens has expired. (7-1-93)

**06. Usury, Truth in Lending Disclosures.** Protection against usury, or disclosures required in consumer credit protection acts, truth in lending acts, or similar acts imposing duties on lenders, do not constitute a part of the issuance of title insurance policies. Title insurers and their agents shall not prepare or pass judgment on documents as to usury nor on disclosure documents and notice of right of rescission documents required by any such acts or make any computations as required therein, in the issuance of title insurance policies; provided, an

endorsement to a mortgage policy insuring that the loan is one by definition of the Truth in Lending Act exempt from rescission is permissible. Nothing herein shall prohibit such title insurers or their agents from performing closing or escrow services involving such matters when a proper fee is obtained therefor. (7-1-93)

**07. Abstract Plant Information.** Each title insurance agent in making application for a license as such agent, or when paying his fee for renewal of such yearly license, shall submit on the original application and annually thereafter the attached form, marked Exhibit A, attached hereto, "Information re Abstract Plant" completed as to each question set forth herein. (7-1-93)

**08. Filing, Approval, Unique Contract or Rate.** Whenever a title insurer is requested to insure a unique kind or class of risk for which a premium rate or form of policy or endorsement has not been filed, neither of which lends itself to an advance filing and determination of said rate or form, pursuant to Section 41-2706(4) such title insurer may make a written application to the Director of Insurance for approval of said special rate or form without complying with the filing notice and thirty (30) day waiting provisions of Section 41-2707 upon complying with the following requirements: (7-1-93)

**a.** The insurer shall not have agreed to the special rates nor agreed to issue the special policy or endorsement, prior to making an application to the Director of Insurance as herein set out. (7-1-93)

**b.** The insurer shall make a written application to the Director of Insurance, requesting approval of the applicable special rate or special insurance policy or endorsement, wherein the insurer shall set forth why the particular rate or policy or endorsement is unique as to the risk or form, that such item has or has not ever arisen in the past five (5) years to the knowledge of said insurer, and the circumstances if it has previously arisen in said period, and the circumstances which now arise which necessitate said rate, policy or endorsement and an analysis comparing said unique rate, policy or endorsement to the nearest comparable filed rate, policy or endorsement and justifying the difference on the basis of Section 41-2706(1) and (2). Such application shall have attached to it the proposed policy or endorsement form. The Director of Insurance shall have ten (10) working days after the date of receipt of such application to disapprove the same, and the filing shall be deemed effective if the same is not disapproved within such time. The burden is upon the insurer to make inquiry after the expiration after said ten (10) days to determine whether a disapproval has been made, whether or not mailed notice of such disapproval has not yet been received by said insurer. (7-1-93)

**c.** The provisions hereof are only applicable to rates, policies and endorsements, which by reason of the rarity of the event, or the peculiarity of the circumstances, do not lend themselves to a general advance determination and filing of said item. Applications under this rule and the applicable statute shall not be approved if it appears either that said application does not meet the standards of the statute or is such a deviation from the usual policy form or rate most nearly applicable thereto as to be an unsound underwriting practice or an inadequate premium. (7-1-93)

**0142. TITLE INSURANCE AGENTS AND EMPLOYEES ACTING AS ESCROW AGENTS.**

**01. Written Instructions.** An escrow agent shall not accept funds or papers in escrow without a dated, written instruction signed by the parties or their authorized representatives adequate to administer the escrow account and without receiving at the time provided in the escrow instructions sufficient funds and documents to carry out terms of the escrow instructions. Funds and documents deposited shall be used only in accordance with such written instruction; and if additional specific instructions are needed, the agent shall obtain the consent of both parties or such representatives to the escrow or an order of a court of competent jurisdiction at the expense of the escrow parties. (7-1-93)

**02. Notice of Conflict of Interest.** An escrow agent shall act without partiality to any of the parties to the escrow. An escrow agent may not close a transaction where he has, directly or indirectly, a monetary interest in the subject property either as buyer or seller. If an escrow agent has a business interest in the escrow transaction other than as escrow agent, the relationship or interest must be disclosed in the written escrow instructions. After noting such interest, an additional statement shall appear as follows: "We call this interest to your attention for disclosure purposes. This interest will not, in our opinion, prevent us from being a fair and impartial escrow agent in this transaction, but you are, nevertheless, free to request the transaction be closed by some other escrow agent." (7-1-93)

**03. Closing Statement.** On completion of an escrow transaction the agent shall deliver to each principal a written closing statement signed by the agent of each principal's account. The same shall show all receipts and disbursements and any charge made by and disbursements to the escrow agent shall be clearly noted. A copy shall be retained. (7-1-93)

**04. Control of Funds.** An escrow agent shall maintain one or more "trust accounts" in a federally insured financial institution into which all escrow funds received shall be deposited and from which there shall be drawn escrow payments. No other funds shall be commingled with such trust account. Escrow fees shall not be drawn until the escrow is completely ready to close in accordance with the escrow instructions and must be withdrawn not later than the day on which the final disbursements are made for the escrow closing. (7-1-93)

**05. Escrow Accounting Procedures.** An escrow agent shall maintain on a current basis (a) an escrow ledger with a separate numbered sheet for each escrow agreement and (b) an escrow liability control account. Disbursements shall be posted from checks or other vouchers and each item, not the total of items, must be entered. Escrow liability control account shall balance with the escrow ledger at all times and shall equal the balance of funds in the "trust accounts" for escrows at the bank. Checks may not be drawn against an escrow account without sufficient credit balance for the particular escrow existing at the time. Funds shall not be transferred between escrow agents except by writing checks and receipts which are charged and credited respectively to accounts with the reason noted and the authority therefor. All services must be performed and the escrow account ready to close before any service or escrow fees may be charged and drawn from an escrow account (unless an escrow is a long term collection, and fees are payable monthly or annually). The escrow funds will be placed in the "trust accounts" for escrows and no other funds commingled therewith. All entries in any escrow account shall be posted the date of the entry without regard of the date of posting, but all entries should be posted daily. (7-1-93)

**06. Escrow Records.** Each escrow agent shall maintain in each escrow transaction: (3-15-02)

**a.** Evidence of all funds received including copies of all instruments, which shall include prenumbered cash receipts, copies of cashier's checks, wire transfer confirmations or evidence of unconditional payment of checks, as applicable; (3-15-02)

**b.** Complete evidence of all funds disbursed which shall include check stubs or check copies, and wire instructions for all disbursements as applicable; and (3-15-02)

**c.** A final ledger sheet for each escrow transaction listing all items received and disbursed. All records shall be made available for audit, inspection and examination by the Director upon demand, and all records shall be preserved for not less than six (6) years from the closing date of the escrow. (3-15-02)

**07. Escrow Audit.** Each escrow agent shall submit to the Director not less often than the end of every third year an audit by an independent public accountant of its escrow transactions, a verification of open escrows and whether the escrow agent's records are maintained in a manner to permit such audit. The audit report shall include a balance sheet as of the close of the audit period, which will be June 30th of the particular year, a list of all bank accounts of the escrow agent containing escrow funds showing the name, address and account number, a list of any closing escrows which have been open for more than one (1) year at the end of the audit period, showing the number of confirmations requested, number of discrepancies and approximate percentage of escrow accounts verified, and a statement that the escrow agent has complied with the rules of the Director as to escrow accounts listing any exceptions. As an alternative, the escrow agent may submit with the prior approval of the Department, a signed certification of review, in a standard format as approved by the Director, by its underwriter that it has been subjected to an escrow review performed by the title insurer. The scope of the escrow review shall include a limited review of escrow transactions and files. This signed certification must be received no later than December 31 of every third year. If the certification is not deemed adequate by the Director, he may require an escrow audit by an independent public accountant. (3-15-02)

**08. Bond.** Before a license shall be issued to a title insurance agent pursuant to Section 41-2710, Idaho Code, such agent must comply with the requirements for a bond for the title insurance agent, escrow officer and any of the employees of said agent thereof engaged in handling escrow accounts and funds or countersigning and issuing title insurance policies, except such employees whose duties are wholly clerical in relation thereto. Such bond need not be renewed each year, but may be in the form that continues from year to year until canceled. Such bond may be

for more than one county if the title insurance agent is licensed to do business in more than one county, but the liability under such bond shall be limited to the amount per county as required by Section 41-2711, Idaho Code. Such bond shall be for the benefit of all persons who have suffered any loss because of the breach of the terms of said bond and shall be enforceable on finding of the Director of Insurance upon hearing that the terms of the bond have been violated. Deposits in Lieu of Bonds: In lieu of such bond, cash or securities as herein defined may be deposited with the Director of Insurance. The Director of Insurance does hereby approve the following securities which are eligible for deposit in place of the bond required: Cash in the form of a cashier's check, any public obligation as defined in Section 41-707 and Section 41-708, Idaho Code, and the assignment of any savings deposits or certificates of deposit as defined in Section 41-720, Idaho Code. In each case, such deposit shall be accompanied by a statement that such deposit is made to meet the compliance of Section 41-2710, Idaho Code, and may be liquidated to meet the obligations of said section. Said cash or security in lieu of the bond shall be deposited with the director pursuant to Section 41-804, Idaho Code, except that the cash shall be deposited with the state treasurer for the account of the bond of said depositing agent. (7-1-93)

**09. Cancellation of Bond -- Cancellation of License.** A title insurance agent's bond may provide for cancellation thereof upon notice of not less than thirty days to the Insurance Director and to the licensed agent. Upon such notice being received, the licensed title insurance agent must provide a new bond in place thereof before the cancellation of the current bond, and in the event of failure to do so, the license of the title insurance agent shall be deemed suspended on the date of the expiration of such bond, and until a replacement bond has been issued and delivered to the Director of Insurance. (7-1-93)

**10. Disbursement of Funds or Documents From Escrow -- Requirement for Collected Funds.** (7-1-93)

**a. Definitions.** (7-1-93)

i. "Business Day" means a calendar day other than Saturday or Sunday, and also excluding most major holidays. If January 1, July 4, November 11, or December 25 fall on a Sunday, the next Monday is also excluded from the definition of a business day. (7-1-93)

ii. "Collected Funds" means (a) cash (currency); (b) wired funds when unconditionally received by the escrow agent; (c) when identified as such, (1) cashier's check; (2) certified check; or (3) teller's check (official check) when any of the above are unconditionally received by the escrow agent; (d) U.S. Treasury checks, postal money orders, federal reserve bank checks, federal home loan bank checks, State of Idaho and local government checks, local or Idaho on-us checks, or local third party checks on the next business day after deposit; (e) local personal or corporate checks on the second business day after deposit; and (f) non-local State and government checks, non-local on-us checks, non-local personal or corporate checks or non-local third party checks on the fifth business day after deposit. For purposes of this section a deposit is considered made on (1) the same day the item is delivered in person to an employee of a federally insured financial institution, or (2) the first business day following an after business hours deposit of an item to a federally insured financial institution. (7-1-93)

iii. "Cashier's Check, Certified Check and Teller's Check (Official Check)" as identified above in Subsection 012.10.a.ii. means "checks" issued by a federally insured financial institution. (7-1-93)

iv. "Collection or Long-Term Escrow" means an escrow established for the purpose of receiving two (2) or more periodic payments over a total period of time after establishment in excess of thirty (30) days. (7-1-93)

v. "Escrow" includes any agreement (express, implied in fact or implied at law) pursuant to which funds or documents are delivered to an escrow agent to be held by the escrow agent until the happening of a contingency or until the performance of a condition, and then delivered by the escrow agent to another or recorded by the escrow agent. (7-1-93)

vi. "Escrow Agent" includes any person or entity described in Section 41-2704, Idaho Code, (and the rules promulgated thereunder), which accepts funds or documents for the purpose described in Subsection 012.10.a.v. (7-1-93)

vii. "Incidental Expenses" means direct expenses that are the obligation of one or more of the parties to

an escrow transaction but are not the purchaser's principal obligation. Incidental expenses would include, but not be limited to, advances to cover unexpected recording fees and additional interest occasioned by delays in closings or miscalculations. (7-1-93)

viii. "Local Checks" as identified above in Subsection 012.10.a.ii. means checks drawn against a federally insured financial institution located in the same check processing region as the title agent's depository federally insured financial institution. (7-1-93)

ix. "On-U's Checks" as identified above in Subsection 012.10.a.ii. means checks drawn against the same federally insured financial institution or branch as the title agent's own depository federally insured financial institution. (7-1-93)

**b. Requirement of Collected Funds.** (7-1-93)

i. Notwithstanding any agreement to the contrary, no disbursement of funds or delivery of documents from an escrow for recording or otherwise may be made unless the escrow contains a credit balance consisting of collected funds, other than funds of the escrow agent or its affiliates, sufficient to discharge all monetary conditions of the escrow. The requirement of collected funds does not apply to collection or long term escrows. (7-1-93)

ii. Notwithstanding any other provision of Section 012, an escrow agent may advance its own funds in an aggregate amount not to exceed one thousand dollars (\$1000) to pay incidental expenses incurred with respect to the escrow. (7-1-93)

**0123. ESCROW ~~FEES~~ CHARGES.**

**01. Fees.** A title entity shall not charge less than the rate filed with the Department of Insurance for a specified escrow service. Each title insurer and title insurance agent shall file its schedule of escrow rates charged for all escrow services and closing services rendered. Such services shall not include preparation of instruments. The fee shall be based upon the full sales price in the event of a sale, or the amount of the loan in the event of a mortgage. Property in different ownerships always, and noncontiguous properties generally, are rated separately. Additional fees will be charged where the minimum fee is inadequate because of the unusual complications of the transactions. It is the intent of the Department of Insurance that fees collected shall not be less than the title entities cost to produce escrow services. (7-1-93)( )

**02. Rate Classifications.** A title entity may file escrow rates for up to two (2) classifications which include a basic rate and a residential refinance rate. ( )

**a.** Basic Escrow Rate shall mean the rate charged on all escrow classifications regardless of customer or transaction classification unless a separate filing is made for the residential rate as defined below. ( )

**b.** Residential Refinance Rate shall mean the rate charged for an escrow closing involving improved real property with an existing single-family residential unit or multi-family structure with four (4) or less residential units, wherein an existing Deed of Trust/Mortgage of record is paid off with the proceeds from a new Deed of Trust/Mortgage on the same property, provided there is at least one (1) common Grantor on both the existing and the new Deed of Trust/Mortgage. ( )

**03. Rate Filing Procedure.** Escrow rates shall be filed on a yearly basis including written justification no later than May 1. The yearly escrow rate filings shall be effective June 1 each year unless otherwise notified by the Department of Insurance. Additionally, rate filings shall be filed as often as necessary if escrow costs exceed escrow revenues. Implementation of rates other than the yearly filings will occur thirty (30) days from the date filed unless otherwise notified by the Department of Insurance. An escrow rate filing, regardless of classification, shall include three (3) components: ( )

**a.** A Minimum Rate, which shall be a rate component and considered justified, as established in Subsection 013.04 below regarding rate justification, in an amount no less than seventy-five percent (75%) of the cost of closing, except that for a residential refinance rate where the minimum rate may be an amount no less than fifty percent (50%) of the cost of closing. ( )



**b.** A Basic Rate, which shall be a rate component and considered justified if it reflects the full sales price in the event of a sale or the amount of the loan in the event of a Deed of Trust/Mortgage. The basic rate shall be in addition to the minimum rate and be stated in increments per one thousand (1,000) of the transaction amount. ( )

**c.** A Minimum Negotiable Rate, which shall be a rate component and considered justified in an amount no less than five (5) times the Minimum Rate. ( )

**04. Rate Justification.** Escrow rates filed with the Department of Insurance must be accompanied by written justification which includes the cost of closing an escrow transaction. Written justification can be accomplished in either of the following: ( )

**a.** Actual Cost. Rates shall be based on the actual cost of the title entities' escrow operations using the last three (3) years as the source of the cost data. The cost analysis must be completed using activity-based cost accounting principles, and be certified by an independent Certified Public Accountant (CPA). ( )

**b.** The Department of Insurance will accept as actual costs an industry standard formula established each year by the Idaho Land Title Association (ILTA) that uses the title entities' direct compensation costs and industry standards for productivity and overhead costs to calculate the cost of an escrow closing. Each year the ILTA shall submit the industry standard formula to the Department of Insurance for review by April 1. ( )

**025. Rebates, Discounts, Credits.** Escrow fees charged by title insurers and title insurance agents for escrow work and for closings incident to any commitment, binder, preliminary report or the issuance of any contract or policy of title insurance pursuant to Section 41-2704, Idaho Code, are the business of title insurance regulated by Chapter 27 of Title 41 and are subject to the same prohibitions against rebates and illegal inducements as are applicable to the issuance of title insurance policies. Charging other than the full filed escrow fee for an escrow or closing is deemed to be a rebate and illegal inducement to the business of title insurance, the issuance of any title insurance policy or the performance of any escrow or closing work, or a combination of any of the same. No title insurer or title insurance agent shall: (7-1-93)

**a.** Perform escrow or closing services without charging the fee therefor as filed with the Insurance Director; (7-1-93)

**b.** Charge an escrow or closing fee for a transaction and perform the services, or any part thereof, for another closing or escrow transaction; (7-1-93)

**c.** Provide or agree to provide closing or escrow services as a part of a title insurance premium charge or as a part of any other service rendered by said party; (7-1-93)

**d.** Provide or agree to provide closing or escrow services without a signed escrow instruction and a proper accounting record established therefor and showing on such record the collection of the proper escrow fee therefor; or (7-1-93)

**e.** In connection with obtaining escrow business or the providing or agreeing to provide closing or escrow services, directly or indirectly, to provide or cause to be provided to any other person any payment, property or item of value, or any division of an escrow or closing fee. (7-1-93)

**0134. SEVERABILITY.**

If any provision of these rules, or the application thereof to any person or circumstance, is held invalid, such validity shall not affect other provisions of applications of these rules which can be given effect without the invalid provision or application, and to that end the provisions in these rules are severable. (7-1-93)

**0145. -- 999. (RESERVED).**

## IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

### 18.01.47 - VALUATION OF LIFE INSURANCE POLICIES INCLUDING THE INTRODUCTION AND USE OF NEW SELECT MORTALITY FACTORS

DOCKET NO. 18-0147-1001

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 41-211, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, no later than September 15, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This updates the rule to agree with the National Association of Insurance Commissioners model regulation #830 to apply the same standards to Idaho insurers offering life insurance products as are imposed by other states that have adopted the model. This rule permits the recognition of company mortality experience in the development of deficiency reserves and removes some arbitrary limits that had been imposed on the recognition of company experience. It includes a requirement for disclosure by the appointed actuary of possible shortfalls in funding future required reserves.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

This rulemaking does not impose any fees.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed changes are from a National Association of Insurance Commissioners model regulation and the Idaho domiciled life insurance company supports adoption of it.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Georgia Siehl at (208) 334-4314.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 10th day of August, 2010.

Shad Priest, Deputy Director  
Idaho Department of Insurance  
700 West State St., 3rd Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 18-0147-1001**

**001. TITLE AND SCOPE.**

**01. Title.** This chapter shall be cited in full as IDAPA 18.01.47, "Valuation of Life Insurance Policies Including the Introduction and Use of New Select Mortality Factors." (3-30-01)

**02. Scope.** The purpose of this chapter is to provide: (3-30-01)

- a.** Tables of select mortality factors and rules for their use; (3-30-01)
- b.** Rules concerning a minimum standard for the valuation of plans with nonlevel premiums or benefits; and (3-30-01)
- c.** Rules concerning a minimum standard for the valuation of plans with secondary guarantees. (3-30-01)

**03. Method.** The method for calculating basic reserves defined in this chapter will constitute the commissioners' reserve valuation method for policies to which this chapter is applicable. (3-30-01)

**04. Applicability.** This chapter shall apply to all life insurance policies, with or without nonforfeiture values, issued on or after the effective date of this chapter, subject to the following exceptions and conditions. (3-30-01)

**a. Exceptions:** (3-30-01)

i. This chapter shall not apply to any individual life insurance policy issued on or after the effective date of this chapter if the policy is issued in accordance with and as a result of the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before the effective date of this chapter, that guarantees the premium rates of the new policy. This chapter also shall not apply to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy. (3-30-01)

ii. This chapter shall not apply to any universal life policy that meets all the following requirements: (3-30-01)

- (1) Secondary guarantee period, if any, is five (5) years or less; (3-30-01)
- (2) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the CSO valuation tables as defined in Subsection 00410.06 and the applicable valuation interest rate; and ~~(3-30-01)~~( )

(3) The initial surrender charge is not less than one hundred percent (100%) of the first year annualized specified premium for the secondary guarantee period. (3-30-01)

iii. This chapter shall not apply to any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts. (3-30-01)

iv. This chapter shall not apply to any variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts. (3-30-01)

v. This chapter shall not apply to a group life insurance certificate unless the certificate provides for a

stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one (1) year. (3-30-01)

**b.** Conditions: (3-30-01)

i. Calculation of the minimum valuation standard for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits (other than universal life policies), or both, shall be in accordance with the provisions of Section ~~006~~12. (~~3-30-01~~)(\_\_\_\_)

ii. Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies, that contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period shall be in accordance with the provisions of Section ~~007~~13. (~~3-30-01~~)(\_\_\_\_)

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying *at cost in the main office and each regional or district office of this agency* in accordance with the public records act. (~~3-30-01~~)(\_\_\_\_)

**003. ADMINISTRATIVE APPEALS.**

*There is no appeal to the Attorney General from application of this chapter. All such appeals must be instituted by written demand for a hearing before the Director of the Department of Insurance, pursuant to Chapter 2, Title 41 and Chapter 52, Title 67, Idaho Code. Further appeal from the Director's decision can be taken to district court, pursuant to Chapter 52, Title 67, Idaho Code. All administrative appeals shall be governed by Title 41, Chapter 2, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General -- General Provisions."* (~~3-30-01~~)(\_\_\_\_)

**[Codified Section 009 is being moved and renumbered to proposed Section 004]**

**0094. INCORPORATION BY REFERENCE.**

The tables of select mortality factors are hereby incorporated by reference into IDAPA 18.01.47, "Valuation of Life Insurance Policies Including the Introduction and Use of the New Select Mortality Factors" that are the bases to which the respective percentage of Subsections ~~005~~11.01.b., ~~005~~11.02.b., and ~~005~~11.02.c. are applied. The tables referenced are located on the Internet (~~www.doi.state.id.us~~ - *select Miscellaneous under the Company Assistance link, <http://www.doi.idaho.gov> - select Rates and Policy Forms under the Companies link, see Related Rules and Bulletins* - see Attachments to IDAPA 18.01.47). (~~3-30-01~~)(\_\_\_\_)

**01. Types of Tables.** The six (6) tables of select mortality factors incorporated herein by reference include: (3-30-01)

**a.** Male aggregate; (3-30-01)

**b.** Male nonsmoker; (3-30-01)

**c.** Male smoker; (3-30-01)

**d.** Female aggregate; (3-30-01)

**e.** Female nonsmoker; and (3-30-01)

**f.** Female smoker. (3-30-01)

**02. Age Basis.** These tables apply to both age last birthday and age nearest birthday mortality tables. (3-30-01)

**03. Computation for Sex-Blended Mortality Tables.** For sex-blended mortality tables, compute

select mortality factors in the same proportion as the underlying mortality. For example, for the 1980 CSO-B Table, the calculated select mortality factors are eighty percent (80%) of the appropriate male table as referenced in Section 0094, plus twenty percent (20%) of the appropriate female table, as referenced in Section 0094. (3-30-01)( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

**01. Office Hours.** The Department of Insurance is open from 8 a.m. to 5 p.m. except weekends and legal holidays. ( )

**02. Mailing Address.** The Department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ( )

**03. Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83720. ( )

**04. Web Site Address.** The Department's web address is <http://www.doi.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with these rules are subject to the provisions of the Idaho Public Records, Act, Title 9, Chapter 3, Idaho Code. ( )

**007. -- 009. (RESERVED).**

*[Codified Sections 004 through 008 are being moved and renumbered to proposed Sections 010 through 014, respectively.]*

**00410. DEFINITIONS.**

**01. Basic Reserves.** Reserves calculated in accordance with Section 41-612(5), Idaho Code. (3-30-01)

**02. Contract Segmentation Method.** Method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception, for the first segment) to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO valuation tables, as defined in this chapter, (or any other valuation mortality table adopted by the National Association of Insurance Commissioners (NAIC) after the effective date of this chapter and promulgated by rule by the Director for this purpose), and, if elected, the optional minimum mortality standard for deficiency reserves set forth in Subsection 011.02. The length of a particular contract segment shall be set equal to the minimum of the value  $t$  for which  $G_t$  is greater than  $R_t$  (if  $G_t$  never exceeds  $R_t$  the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy), where  $G_t$  and  $R_t$  are defined as follows:

- Formulas -

$$G_t = \frac{GP_{x+k+t}}{GP_{x+k+t-1}}$$

where:

$x$  = original issue age;

$k$  = the number of years from the date of issue to the beginning of the segment;

$t = 1, 2, \dots$ ;  $t$  is reset to 1 at the beginning of each segment;

$GP_{x+k+t-1} =$  Guaranteed gross premium per thousand of face amount for year  $t$  of the segment, ignoring policy fees only if level for the premium paying period of the policy.

$R_t = \frac{q_{x+k+t}}{q_{x+k+t-1}}$ , However,  $R_t$  may be increased or decreased by one percent (1%) in any policy year, at the company's option, but  $R_t$  shall not be less than one (1);

where:

$x, k$  and  $t$  are as defined above, and

$q_{x+k+t-1} =$  valuation mortality rate for deficiency reserves in policy year  $k+t$  but using the mortality of Paragraph 011.02.b. if Paragraph 011.02.c. is elected for deficiency reserves.

However, if  $GP_{x+k+t}$  is greater than 0 and  $GP_{x+k+t-1}$  is equal to 0,  $G_t$  shall be deemed to be 1000. If  $GP_{x+k+t}$  and  $GP_{x+k+t-1}$  are both equal to 0,  $G_t$  shall be deemed to be 0.

~~(3-30-01)~~( )

- 03. Deficiency Reserves.** Excess, if greater than zero (0), of (3-30-01)
- a.** Minimum reserves calculated in accordance with Section 41-612(10), Idaho Code, over (3-30-01)
- b.** Basic reserves. (3-30-01)
- 04. Guaranteed Gross Premiums.** Premiums under a policy of life insurance that are guaranteed and determined at issue. (3-30-01)
- 05. Maximum Valuation Interest Rates.** Interest rates defined in Section 41-612(4b), Idaho Code (Computation of Minimum Standard by Calendar Year of Issue) that are to be used in determining the minimum standard for the valuation of life insurance policies. (3-30-01)
- 06. 1980 CSO Valuation Tables.** Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without ten (10) year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983. (3-30-01)
- 07. Scheduled Gross Premium.** Smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in ~~Subsection Paragraph 00713.01.c.~~, if any, or else the minimum premium described in ~~Subsection Paragraph 00713.01.d.~~ ~~(3-30-01)~~( )
- 08. Segmented Reserves.** (3-30-01)
- a.** Reserves calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the respective guaranteed gross premiums within the segment. The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals: (3-30-01)
- i.** The present value of the death benefits within the segment, plus (3-30-01)

ii. The present value of any unusual guaranteed cash value (see Subsection ~~00612.04~~ occurring at the end of the segment, less ~~(3-30-01)~~(\_\_\_\_)

iii. Any unusual guaranteed cash value occurring at the start of the segment, plus (3-30-01)

iv. For the first segment only, the excess of the Item one (1) over Item two (2), as follows: (3-30-01)

(1) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen (19) year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one (1) year higher than the age at issue of the policy. (3-30-01)

(2) A net one (1) year term premium for the benefits provided for in the first policy year. (3-30-01)

b. The length of each segment is determined by the “contract segmentation method,” as defined in this chapter. (3-30-01)

c. The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy. (3-30-01)

d. For both basic reserves and deficiency reserves computed by the segmented method, present values shall include future benefits and net premiums in the current segment and in all subsequent segments. (3-30-01)

**09. Tabular Cost of Insurance.** The net single premium at the beginning of a policy year for one (1) year term insurance in the amount of the guaranteed death benefit in that policy year. (3-30-01)

**10. Ten Year Select Factors.** The select factors adopted with the 1980 amendments to the NAIC Standard Valuation Law. (3-30-01)

**11. Unitary Reserves.** (3-30-01)

a. The present value of all future guaranteed benefits less the present value of all future modified net premiums, where: (3-30-01)

i. Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and (3-30-01)

ii. Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of Item one (1) over Item two (2), as follows: (3-30-01)

(1) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen (19) year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one (1) year higher than the age at issue of the policy. (3-30-01)

(2) A net one (1) year term premium for the benefits provided for in the first policy year. (3-30-01)

b. The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy. (3-30-01)

**12. Universal Life Insurance Policy.** Any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy. (3-30-01)

**00511. GENERAL CALCULATION REQUIREMENTS FOR BASIC RESERVES AND PREMIUM DEFICIENCY RESERVES.**

**01. Basic Reserves.** At the election of the company for any one (1) or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after the effective date of this chapter and promulgated by rule by the Director for this purpose). If select mortality factors are elected, they may be: (3-30-01)

**a.** The ten (10) year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law; (3-30-01)

**b.** The select mortality factors in the tables as referenced in Section 0094; or ~~(3-30-01)~~(\_\_\_\_)

**c.** Any other table of select mortality factors adopted by the NAIC after the effective date of this chapter and promulgated by rule by the Director for the purpose of calculating basic reserves. (3-30-01)

**02. Deficiency Reserves.** Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero (0), of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after the effective date of this chapter and promulgated by rule by the Director). If select mortality factors are elected, they may be one of the following: (3-30-01)

**a.** The ten (10) year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law; (3-30-01)

**b.** The select mortality factors in the tables as referenced in Section 0094; ~~(3-30-01)~~(\_\_\_\_)

**c.** For durations in the first segment, X percent of the select mortality factors in the tables as referenced in Section 0094, subject to the following: ~~(3-30-01)~~(\_\_\_\_)

**i.** X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience; (3-30-01)

**ii.** ~~X shall not be less than twenty percent (20%);~~ ~~(3-30-01)~~

**iii.** ~~X shall not decrease in any successive policy years;~~ ~~(3-30-01)~~

~~iv.~~**i.** X is such that, when using the valuation interest rate used for basic reserves, Item one (1) is greater than or equal to Item two (2); (3-30-01)

(1) The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X; (3-30-01)

(2) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date; (3-30-01)

~~iii.~~**iii.** X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of



the first five (5) years after the valuation date; (3-30-01)

~~iv.~~ The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all the requirements of ~~Subsection Paragraph 00511.02.c.~~; ~~(3-30-01)(\_\_\_\_\_)~~

~~vii.~~ The appointed actuary may decrease X at any valuation date as long as X ~~does not decrease in any successive policy years and as long as it~~ continues to meet all the requirements of ~~Subsection Paragraph 00511.02.c.~~; and ~~(3-30-01)(\_\_\_\_\_)~~

~~viii.~~ The appointed actuary shall specifically take into account the adverse effect on expected mortality and lapsation of any anticipated or actual increase in gross premiums. (3-30-01)

~~viii.~~ If X is less than one hundred percent (100%) at any duration for any policy, the following requirements shall be met: (3-30-01)

(1) The appointed actuary shall annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of the Actuarial and Memorandum Rule, IDAPA 18.01.77, Section 00822, "Statement of Actuarial Opinion Based on an Asset Adequacy Analysis"; ~~and~~ ~~(3-30-01)(\_\_\_\_\_)~~

(2) The appointed actuary shall disclose, in the Regulatory Asset Adequacy Issues Summary, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one (1) or more interim periods; and (\_\_\_\_\_)

(3) The appointed actuary shall annually opine for all policies subject to this chapter as to whether the mortality rates resulting from the application of X meet the requirements of ~~Subsection Paragraph 00511.02.c.~~ This opinion shall be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience; ~~or~~. ~~(3-30-01)(\_\_\_\_\_)~~

**d.** Any other table of select mortality factors adopted by the NAIC after the effective date of this chapter and promulgated by rule by the Director for the purpose of calculating deficiency reserves. (3-30-01)

**03. Applicability.** Subsection 00511.03 applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. However, if the first segment is less than ten (10) years, the appropriate ten (10) year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law may be used thereafter through the tenth policy year from the date of issue. ~~(3-30-01)(\_\_\_\_\_)~~

**04. Gross Premiums.** In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if not included in the actual calculation of basic reserves. (3-30-01)

**05. Changes in Guarantees.** Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one (1) year after the date of the change shall be the greatest of the following: (3-30-01)

**a.** Reserves calculated ignoring the guarantee; (3-30-01)

**b.** Reserves assuming the guarantee was made at issue; and (3-30-01)

**c.** Reserves assuming that the policy was issued on the date of the guarantee. (3-30-01)

**06. Reserve Adequacy.** The Director may require that the company document the extent of the adequacy of reserves for specified blocks, including but not limited to policies issued prior to the effective date of this chapter. This documentation may include a demonstration of the extent to which aggregation with other non-specified

blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of the Actuarial and Memorandum Rule, IDAPA 18.01.77, Section ~~00822~~, "Statement of Actuarial Opinion Based on an Asset Adequacy Analysis." ~~(3-30-01)(\_\_\_\_\_)~~

**00612. CALCULATION OF MINIMUM VALUATION STANDARD FOR POLICIES WITH GUARANTEED NONLEVEL GROSS PREMIUMS OR GUARANTEED NONLEVEL BENEFITS (OTHER THAN UNIVERSAL LIFE POLICIES).**

**01. Basic Reserves.** Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy shall use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, either of the adjustments described below may be made: (3-30-01)

**a.** Treat the unitary reserve, if greater than zero (0), applicable at the end of each segment as a pure endowment and subtract the unitary reserve, if greater than zero (0), applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment; or (3-30-01)

**b.** Treat the guaranteed cash surrender value, if greater than zero (0), applicable at the end of each segment as a pure endowment; and subtract the guaranteed cash surrender value, if greater than zero (0), applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment. (3-30-01)

**02. Deficiency Reserves.** (3-30-01)

**a.** The deficiency reserve at any duration shall be calculated: (3-30-01)

**i.** On a unitary basis if the corresponding basic reserve determined by Subsection ~~00612.01~~ is unitary; ~~(3-30-01)(\_\_\_\_\_)~~

**ii.** On a segmented basis if the corresponding basic reserve determined by Subsection ~~00612.01~~ is segmented; or ~~(3-30-01)(\_\_\_\_\_)~~

**iii.** On the segmented basis if the corresponding basic reserve determined by Subsection ~~00612.01~~ is equal to both the segmented reserve and the unitary reserve. ~~(3-30-01)(\_\_\_\_\_)~~

**b.** Subsection ~~00612.02~~ shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality (specified in Subsection ~~00511.02~~ and rate of interest). ~~(3-30-01)(\_\_\_\_\_)~~

**c.** Deficiency reserves, if any, shall be calculated for each policy as the excess if greater than zero (0), for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in Subsection ~~00511.02~~. ~~(3-30-01)(\_\_\_\_\_)~~

**d.** For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves. (3-30-01)

**03. Minimum Value.** Basic reserves may not be less than the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used. The tabular cost of insurance shall use the same valuation mortality table and interest rates as that used for the calculation of the segmented reserves. However, if select mortality factors are used, they shall be the ten (10) year select factors incorporated into the 1980 amendments of the NAIC Standard Valuation Law. In no case may total reserves (including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire upon contract termination) be less than the amount that the policyowner would receive (including the cash surrender value of the supplemental benefits, if any, referred to above), exclusive of any deduction for policy loans, upon termination of the policy. (3-30-01)

**04. Unusual Pattern of Guaranteed Cash Surrender Values. (3-30-01)**

**a.** For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an  $n$  year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where  $n$  is the number of years from the date of issue to the date the unusual cash surrender value is scheduled. (3-30-01)

**b.** The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an  $n$  year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where: (3-30-01)

**i.**  $n$  is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of: (3-30-01)

(1) The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or (3-30-01)

(2) The mandatory expiration date of the policy; and (3-30-01)

**ii.** The net premium for a given year during the  $n$  year period is equal to the product of the net to gross ratio and the respective gross premium; and (3-30-01)

**iii.** The net to gross ratio is equal to Item One (1) divided by Item Two (2) as follows: (3-30-01)

(1) The present value, at the beginning of the  $n$  year period, of death benefits payable during the  $n$  year period plus the present value, at the beginning of the  $n$  year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the  $n$  year period. (3-30-01)

(2) The present value, at the beginning of the  $n$  year period, of the scheduled gross premiums payable during the  $n$  year period. (3-30-01)

**c.** For purposes of Subsection ~~00612.04~~, a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of: ~~(3-30-01)~~(\_\_\_\_)

**i.** One hundred ten percent (110%) of the scheduled gross premium for that year; (3-30-01)

**ii.** One hundred ten percent (110%) of one (1) year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and (3-30-01)

**iii.** Five percent (5%) of the first policy year surrender charge, if any. (3-30-01)

**05. Optional Exemption for Yearly Renewable Term (YRT) Reinsurance.** At the option of the company, the following approach for reserves on YRT reinsurance may be used: (3-30-01)

**a.** Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year; (3-30-01)

**b.** Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in Subsection ~~00612.03~~; ~~(3-30-01)~~(\_\_\_\_)

**c.** Deficiency reserves. (3-30-01)

i. For each policy year, calculate the excess, if greater than zero (0), of the valuation net premium over the respective maximum guaranteed gross premium. (3-30-01)

ii. Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with ~~Subsection~~ paragraph 00612.05.c.i.; (~~3-30-01~~)(    )

d. For purposes of Subsection ~~00612.05~~, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without ten (10) year select mortality factors, or any other table adopted after the effective date of this chapter by the NAIC and promulgated by rule by the Director for this purpose; (~~3-30-01~~)(    )

e. A reinsurance agreement shall be considered YRT reinsurance for purposes of Subsection ~~00612.05~~ if only the mortality risk is reinsured; and (~~3-30-01~~)(    )

f. If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit shall be limited to the amount of reserve held by the assuming company for the affected policies. (3-30-01)

**06. Optional Exemption for Attained-Age-Based Yearly Renewable Term Life Insurance Policies.**  
At the option of the company, the following approach for reserves for attained-age-based YRT life insurance policies may be used: (3-30-01)

a. Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year. (3-30-01)

b. Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in Subsection ~~00612.03~~. (~~3-30-01~~)(    )

c. Deficiency reserves: (3-30-01)

i. For each policy year, calculate the excess, if greater than zero (0), of the valuation net premium over the respective maximum guaranteed gross premium. (3-30-01)

ii. Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with ~~Subsection~~ paragraph 00612.06.c.i. (~~3-30-01~~)(    )

d. For purposes of Subsection ~~00612.06~~, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten (10) year select mortality factors, or any other table adopted after the effective date of this chapter by the NAIC and promulgated by rule by the Director for this purpose. (~~3-30-01~~)(    )

e. A policy shall be considered an attained-age-based YRT life insurance policy for purposes of Subsection ~~00612.06~~ if: (~~3-30-01~~)(    )

i. The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are based upon the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the policy was issued; and (3-30-01)

ii. The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance and attained age. (3-30-01)

f. For policies that become attained-age-based YRT policies after an initial period of coverage, the approach of Subsection ~~00612.06~~ may be used after the initial period if: (~~3-30-01~~)(    )

i. The initial period is constant for all insureds of the same sex, risk class and plan of insurance; or

(3-30-01)

ii. The initial period runs to a common attained age for all insureds of the same sex, risk class, and plan of insurance; and (3-30-01)

iii. After the initial period of coverage, the policy meets the conditions of ~~Subsection~~ Paragraph 00612.06.e.; and ~~(3-30-01)~~( )

g. If this election is made, this approach shall be applied in determining reserves for all attained-age-based YRT life insurance policies issued on or after the effective date of this chapter. (3-30-01)

**07. Exemption from Unitary Reserves for Certain n-Year Renewable Term Life Insurance Policies.** Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met: (3-30-01)

a. The policy consists of a series of  $n$ -year periods, including the first period and all renewal periods, where  $n$  is the same for each period, except that for the final renewal period,  $n$  may be truncated or extended to reach the expiry age, provided that this final renewal period is less than ten (10) years and less than twice the size of the earlier  $n$ -year periods, and for each period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level; (3-30-01)

b. The guaranteed gross premiums in all  $n$ -year periods are not less than the corresponding net premiums based upon the 1980 CSO Table with or without the ten (10) year select mortality factors; and (3-30-01)

c. There are no cash surrender values in any policy year. (3-30-01)

**08. Exemption From Unitary Reserves for Certain Juvenile Policies.** Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met, based upon the initial current premium scale at issue: (3-30-01)

a. At issue, the insured is age twenty-four (24) or younger; (3-30-01)

b. Until the insured reaches the end of the juvenile period, which shall occur at or before age twenty-five (25), the gross premiums and death benefits are level, and there are no cash surrender values; and (3-30-01)

c. After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy. (3-30-01)

**00713. CALCULATION OF MINIMUM VALUATION STANDARD FOR FLEXIBLE PREMIUM AND FIXED PREMIUM UNIVERSAL LIFE INSURANCE POLICIES THAT CONTAIN PROVISIONS RESULTING IN THE ABILITY OF A POLICY OWNER TO KEEP A POLICY IN FORCE OVER A SECONDARY GUARANTEE PERIOD.**

**01. General.** The following general provisions apply. (3-30-01)

a. Policies with a secondary guarantee include: (3-30-01)

i. A policy with a guarantee that the policy will remain in force at the original schedule of benefits, subject only to the payment of specified premiums; (3-30-01)

ii. A policy in which the minimum premium at any duration is less than the corresponding one (1) year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten (10) year select mortality factors, or any other table adopted after the effective date of this chapter by the NAIC and promulgated by rule by the Director for this purpose; or (3-30-01)

iii. A policy with any combination of ~~Subsections~~ paragraphs 00713.01.a.i. and 00713.01.a.ii. ~~(3-30-01)~~( )

**b.** A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. When a policy contains more than one secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Secondary guarantees that are unilaterally changed by the insurer after issue shall be considered to have been made at issue. Reserves described in Subsections ~~00713.02~~ and ~~00713.03~~ below shall be recalculated from issue to reflect these changes. (3-30-01)(\_\_\_\_)

**c.** Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed. (3-30-01)

**d.** For purposes of Section ~~00713~~, the minimum premium for any policy year is the premium that, when paid into a policy with a zero (0) account value at the beginning of the policy year, produces a zero (0) account value at the end of the policy year. The minimum premium calculation shall use the policy cost factors (including mortality charges, loads and expense charges) and the interest crediting rate, which are all guaranteed at issue. (3-30-01)(\_\_\_\_)

**e.** The one (1) year valuation premium means the net one (1) year premium based upon the original schedule of benefits for a given policy year. The one (1) year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in ~~Subsections Paragraphs~~ ~~00511.02.b.~~, ~~00511.02.c.~~, and ~~00511.02.d.~~ may not be used to calculate the one (1) year valuation premiums. (3-30-01)(\_\_\_\_)

**f.** The one (1) year valuation premium should reflect the frequency of fund processing, as well as the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund. (3-30-01)

**02. Basic Reserves for the Secondary Guarantees.** Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force and the segments will be determined according to the contract segmentation method as defined in Subsection ~~00410.02~~. (3-30-01)(\_\_\_\_)

**03. Deficiency Reserves for the Secondary Guarantees.** Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in Subsection ~~00612.02~~ with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force. (3-30-01)(\_\_\_\_)

**04. Minimum Reserves.** The minimum reserves during the secondary guarantee period are the greater of: (3-30-01)

**a.** The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or (3-30-01)

**b.** The minimum reserves required by other rules or rules governing universal life plans. (3-30-01)

**~~00814~~. EFFECTIVE DATE.**

This chapter shall become effective January 1, 2000. (3-30-01)

***[Codified Section 009 has been moved and renumbered to proposed Section 004]***

**0105. -- 999. (RESERVED).**

## **IDAPA 18 - DEPARTMENT OF INSURANCE**

### **18.01.53 - CONTINUING EDUCATION**

**DOCKET NO. 18-0153-1001**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 41, Chapter 2, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, no later than September 15, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule sets forth continuing education requirements for insurance producers. The proposed changes remove the requirement that ethics courses be stand alone courses, and add a requirement that persons using self-study materials demonstrate their understanding of the materials by completing questions at the end of each chapter with a score of at least 70% before proceeding to the next chapter.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

This rulemaking does not impose any fees.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed changes were developed in cooperation with members of the affected industry.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Gina McBride at (208-334-4340).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 23rd day of July, 2010.

Shad Priest  
Deputy Director  
Idaho Department of Insurance  
700 West State St., 3rd Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 18-0153-1001

**012. BASIC REQUIREMENTS.**

**01. Proof of Completion.** As a condition for the continuation of a license, a licensee must furnish the Director of the Department of Insurance ("Director"), on or before the licensing renewal date, proof of satisfactory completion of approved subjects or courses meeting the following requirements: (4-5-00)

**a.** Twenty-four (24) hours of continuing education credit during each licensing period, which licensing period is for two (2) years. (3-20-04)

**b.** At least three (3) hours of continuing education credit in ethics must be earned each licensing period. ~~The ethics courses must be stand-alone courses and not part of other courses.~~ (3-19-10)( )

**c.** No more than four (4) hours of continuing education credit from courses approved for public adjusters shall apply toward the continuation of a producer license. (3-19-10)

**02. Relicensing Procedures After Voluntary Termination of License.** An insurance agent who voluntarily terminates his/her license can apply to be relicensed without testing if the application is received by the Department within twelve (12) months after the termination and if the continuing education requirements were completed during the licensing period prior to voluntary termination. Non-resident insurance agents who were former resident agents and who wish to obtain a resident license once again will be subject to the continuing education requirements on a pro-rata basis. (4-5-00)

**03. Completion Within Two Years.** Each course to be applied toward satisfaction of the continuing education requirement must have been completed within the two (2) year period immediately preceding renewal of the license. Courses may not have been duplicated in the same renewal period. The date of completion for a self-study course is the date of successful completion of exam. (3-20-04)

**(BREAK IN CONTINUITY OF SECTIONS)**

**024. CREDIT FOR INDIVIDUAL STUDY PROGRAMS.**

**01. Requirements for Credit of Independent Study Programs.** All approved correspondence courses or independent study programs must include an examination which requires a score of seventy percent (70%) or better to earn a certificate of completion. For each approved course, the sponsoring organization shall maintain multiple tests (two (2) or more) sufficient to maintain the integrity of the testing process. A written explanation of test security and administration methods shall accompany the course examination materials. Each unit and/or chapter of a course must contain review questions that must be answered with a score of 70% or better before access to the following unit/chapter is allowed. ( )

**02. Completed Tests.** The examinations shall be administered, graded, and the results recorded by the organization to which approval was originally granted. Completed tests shall be retained by the sponsoring organization and shall not be returned to any licensee. (7-1-93)( )

**023. Prior Approval Required for Independent Study Programs.** All correspondence courses or individual study programs must be submitted for approval and must be approved prior to being offered to licensees for continuing education credit. (7-1-93)



## IDAPA 18 - DEPARTMENT OF INSURANCE

### 18.01.56 - REBATES AND ILLEGAL INDUCEMENTS TO OBTAINING TITLE INSURANCE BUSINESS RULES

DOCKET NO. 18-0156-1001

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 41-211, 41-1314, and 41-2708, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of the changes to this rule are to have rules relating to filing of escrow charges and fees all contained in one rule, rule 18.01.25, "Title Insurance and Title Insurance Agents and Escrow Officers," and to ensure that the consumers of title industry products and services have access to a viable and competitive marketplace. This rulemaking deletes language from rule 18.01.56 that will be added to rule 18.01.25.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, formal negotiated rulemaking was not conducted because the writing of this rule was accomplished in consultation with representatives of the affected industry.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dale Freeman at (208) 334-4250.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 23rd day of July, 2010.

Shad Priest  
Deputy Director  
Idaho Department of Insurance  
700 West State Street, 3rd Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 18-0156-1001

**017. ~~ESCROW CLOSING CHARGES AND PREMIUM RATES.~~**

~~A title entity shall not charge less than the rate as filed with the Department of Insurance for a specified title or escrow service or for a policy of title insurance. A specified title service is any service defined in the title entity's filed schedule of rates and charges or the schedule in use by the title entity. A title entity shall also not waive or offer to waive all or any part of the title entity's established fee or charge for services which are not the subject of rates filed with the Department of Insurance. A filed charge or rate shall not be less than the title entity's cost for providing that service. Rates shall not reflect credits of any kind applicable with regard to different classifications of customers or to types of closings. Rates shall be filed with justification in accordance with Idaho Code, Section 41-2706. Justification shall clearly demonstrate that the title entity's filed rates for escrow services are not less than the title entity's cost to provide the escrow services. Escrow rates shall be refiled on or before December 15, 1988 establishing a title entity's basic rate including a minimum and negotiable rate. However, a title entity shall utilize its basic rate, minimum rate, and negotiable rate with respect to different classifications of customers or to types of closings effective December 1, 1988. Escrow rates shall be filed thereafter on a yearly basis due March 15 reflecting experience based on the calendar year. The first yearly filing will be due March 15, 1990 reflecting experience from January 1, 1989 to December 31, 1989. In addition, rates shall be filed as often as necessary if escrow costs exceed escrow revenues. Rates may also be filed in addition to the yearly filing for filings to increase revenues. Rate filings in these instances shall be filed at least thirty (30) days prior to implementation. All rate filings shall be based on twelve months experience.~~ (7-1-93)(\_\_\_\_)

**018. PENALTY.**

This Section shall emphasize and restate the general penalties authorized pursuant to Title 41, Idaho Code, (the Idaho Insurance Code) for violations of the anti-rebate and anti-illegal inducement laws. (7-1-93)

**01. Section 41-2708(3), Idaho Code.** ~~Section 41-2708(3) provides that each person and entity giving or receiving a rebate, illegal inducement, or a reduction in rate shall be liable for three (3) times the amount of such rebate, illegal inducement, or reduced rate.~~ In addition to this penalty penalties imposed by statute, a title entity may also be subject to an administrative penalty as outlined below. (7-1-93)(\_\_\_\_)

**02. Section 41-327, Idaho Code.** Section 41-327 provides that the Director may impose an administrative penalty not to exceed five thousand dollars (\$5,000) and/or suspend or revoke an insurer's certificate of authority if the Director finds, after a hearing thereon, that the insurer has either violated or failed to comply with the Insurance Code. (7-1-93)

**03. Section 41-1016, Idaho Code.** Section 41-1016 provides that the Director may impose an administrative penalty not to exceed one thousand dollars (\$1,000) and/or suspend or revoke an agent's license if the Director finds, after a hearing thereon, that the agent has either violated or failed to comply with the Insurance Code. (3-30-07)

## IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

### 18.01.66 - DIRECTOR'S AUTHORITY FOR COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

DOCKET NO. 18-0166-1001

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 41, Chapter 2, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, no later than September 15, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule sets forth the standards which the director may use for identifying insurers found to be in such financial condition as to render the continuance of their business hazardous to the public or to holders of their policies or certificates of insurance. The proposed changes provide additional standards for consideration by the director to determine whether the continued operations of an insurer might be deemed hazardous to the policyholders, creditors or the general public. It also gives the director the authority to issue an order to companies deemed to be in hazardous financial condition to take corrective action.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes are from a National Association of Insurance Commissioners model regulation and few companies fall into the category of hazardous financial condition.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: This rule incorporates by reference the full text of the National Association of Insurance Commissioners Financial Condition Examiners Handbook and the National Association of Insurance Commissioners Annual Statement Instructions and Accounting Practices and Procedures Manual, pursuant to Sections 41-223 and 41-335, Idaho Code. The referenced text provides standards the Director may use to identify insurers whose financial condition may be hazardous to the public or to holders of their policies or certificates of insurance.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Georgia Siehl at (208-334-4314).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before

DATED this 28th day of July, 2010.

Shad Priest, Deputy Director  
Idaho Department of Insurance  
700 West State St., 3rd Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 18-0166-1001

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited as IDAPA 18.01.66, "Director's Authority for Companies Deemed to be in Hazardous Financial Condition." ( )

**02. Scope.** The purpose of this rule is to set forth the standards which the Director may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to the public or to holders of their policies or certificates of insurance. This rule shall not be interpreted to limit the powers granted the Director by any laws or parts of laws of this state, nor shall this rule be interpreted to supersede any laws or parts of laws of this state. (+10-1-93)( )

**002. (RESERVED) WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of this rule, or to the documentation of compliance with this rule. These documents will be available for public inspection and copying in accordance with the Idaho Public Records Law, Title 9, Chapter 3, Idaho Code. ( )

**003. ADMINISTRATIVE APPEALS.**

Any order or decision of the Director shall be subject to appeal in accordance with Chapter 52, Title 67, Idaho Code, at the instance of any party to the proceedings whose interests are substantially affected. All administrative appeals shall be governed by Title 41, Chapter 2, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General -- General Provisions." (+10-1-93)( )

**004. INCORPORATION BY REFERENCE.**

This rule incorporates by reference the full text of the National Association of Insurance Commissioners Financial Condition Examiners Handbook and the National Association of Insurance Commissioners Annual Statement Instructions and Accounting Practices and Procedures Manual, pursuant to Sections 41-223 and 41-335, Idaho Code. Copies may be viewed at: ( )

**01. Department.** Idaho Department of Insurance, 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. ( )

**02. Industry Documents.** NAIC Executive Headquarters, 2301 McGee Street, Suite 800, Kansas City, MO 64108-2662. <http://www.naic.org>. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS, AND WEB SITE.**

**01. Office Hours.** The Department of Insurance is open from 8 a.m. to 5 p.m. except weekends and legal holidays. ( )

**02. Mailing Address.** The Department's mailing address is Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ( )

**03. Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. ( )

**04. Web Site Address.** The department's web address is <http://www.doi.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with this rule are subject to the provisions of the Idaho Public Records Law, Title 9, Chapter 3, Idaho Code. ( )

0047. -- 010. (RESERVED).

**011. STANDARDS.**

The following standards, either singly or ~~a~~ in combination of two (2) or more, may be considered by the Director to determine whether the continued operation of any insurer transacting ~~an~~ insurance business in this state might be deemed to be hazardous to ~~the~~ its policyholders; or creditors or to the general public. The Director may consider:

(10-1-93)(\_\_\_\_)

**01. Examination Reports.** Adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports or summaries.

(10-1-93)(\_\_\_\_)

**02. NAIC Insurance Regulatory Information System.** The National Association of Insurance Commissioners Insurance Regulatory Information System and its ~~related reports~~ other financial analysis solvency tools and reports.

(10-1-93)(\_\_\_\_)

**03. Expense Ratios.** ~~The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus.~~ **Adequate Cash Provision.** Whether the insurer has made 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 insurer, when considered in light of the assets held by the insurer 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.

(10-1-93)(\_\_\_\_)

**04. Asset Portfolio.** ~~The insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature.~~

(10-1-93)

**054. Reinsurance Program.** The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer.

(10-1-93)

**065. Operating Loss (50% of Surplus).** ~~Whether~~ the insurer's operating loss in the last twelve (12) month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than fifty percent (50%) of ~~such~~ the insurer's remaining surplus as regards policyholders in excess of the minimum required.

(10-1-93)(\_\_\_\_)

**06. Operating Loss (20% of Surplus).** Whether the insurer's operating loss in the last twelve (12) month period or any shorter period of time, excluding net capital gains, is greater than twenty percent (20%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required.

(\_\_\_\_)

**07. Insolvency of Affiliate, Subsidiary or Reinsurer.** ~~Whether any affiliate, subsidiary or a reinsurer, obligor, or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations, and which in the opinion of the Director may affect the solvency of the insurer.~~

(10-1-93)(\_\_\_\_)

**08. Contingent Liabilities.** Contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the Director may affect the solvency of the insurer.

(10-1-93)

**09. Controlling Person.** Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer.

(10-1-93)

**10. Receivables.** The age and collectibility of receivables.

(10-1-93)

**11. Competence of Management.** Whether the management of an insurer, including officers,

directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position. (10-1-93)

**12. Failure to Respond to Inquiries.** Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry. (10-1-93)

**13. Failure to Meet Filing Requirements.** Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the Director. ( )

**134. False or Misleading Financial Statements.** Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer. (10-1-93)

**145. Extensive Growth.** Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner. (10-1-93)

**156. Cash Flow.** Whether the company has experienced or will experience in the foreseeable future cash flow and/or liquidity problems. (10-1-93)

**17. Reserves Compliance with Minimum Standards.** Whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice. ( )

**18. Material Under-Reserving.** Whether management persistently engages in material under-reserving that results in adverse development. ( )

**19. Transactions Among Affiliates.** Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets, capital gains or both do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature. ( )

**20. Any Other Finding.** Any other finding determined by the Director to be hazardous to the insurer's policyholders or creditors or to the general public. ( )

**012. DIRECTOR'S AUTHORITY.**

**01. Determination of Financial Condition.** For the purposes of making a determination of an insurer's financial condition under this rule, the Director may: (10-1-93)

**a.** Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding; (10-1-93)

**b.** Make appropriate adjustments, including disallowance, to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates, consistent with the NAIC Accounting Policies and Procedures Manual, state laws, and regulations; ~~(10-1-93)~~( )

**c.** Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; (10-1-93)

**d.** Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve (12) month period. (10-1-93)

**02. Issuance of Order.** If the Director determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders or creditors or to the general public, then the Director may, upon ~~his~~ a determination, issue an order requiring the insurer to: ~~(10-1-93)~~( )

- a. Reduce the total amount of present and potential liability for policy benefits by reinsurance; (10-1-93)
- b. Reduce, suspend or limit the volume of business being accepted or renewed; (10-1-93)
- c. Reduce general insurance and commission expenses by specified methods; (10-1-93)
- d. Increase the insurer's capital and surplus; (10-1-93)
- e. Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders; (10-1-93)
- f. File reports in a form acceptable to the Director concerning the market value of an insurer's assets; (10-1-93)
- g. Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Director deems necessary; (10-1-93)
- h. Document the adequacy of premium rates in relation to the risks insured; (10-1-93)
- i. File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in such format as promulgated by the Director; (10-1-93)
- j. Correct corporate governance practice deficiencies and adopt and utilize governance practices acceptable to the Director; ( )
- k. Provide a business plan to the Director in order to continue to transact business in the state; or ( )
- l. Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the Director considers necessary to improve the financial condition of the insurer. ( )

**03. Hearing.** Any insurer subject to an order under Subsection 012.02 may request a hearing to review that order pursuant to Title 41, Chapter 2, Idaho Code. ~~The notice of hearing shall be served upon the insurer pursuant to Section 550 to the extent not inconsistent with this subsection. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the Director based the order. Unless mutually agreed between the Director and the insurer, the hearing shall occur not less than ten (10) days nor more than thirty (30) days after notice is served and shall be either in Ada County or in some other place convenient to the parties designated by the Director. He shall hold all hearings under this subsection privately, unless the insurer requests a public hearing, in which case the hearing shall be public.~~ (10-1-93)( )

**013. SEVERABILITY.**  
If any provisions of this rule ~~be~~ are held to be invalid, the remainder shall not be affected. (10-1-93)( )

# IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

## 18.01.77 - ACTUARIAL OPINION AND MEMORANDUM RULE

DOCKET NO. 18-0177-1001

### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section, 41-211, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, no later than September 15, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This updates the rule to agree with the National Association of Insurance Commissioners model Regulation #822 to apply the same standards to Idaho insurers offering life insurance products as are imposed by other states that have adopted the model. The rule removes outdated language in actuarial opinions, adds a date to the signature of actuary, provides directions on the rationale for degree of rigor in analyzing different blocks of business, provides directions for criteria for determining asset adequacy, and provides instructions to comment on the impact of the insufficiency of assets to support the payment of benefits.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

This rulemaking does not impose any fees.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed changes are from a National Association of Insurance Commissioners model regulation and the Idaho domiciled life insurance company supports adoption of it.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Georgia Siehl at (208) 334-4314.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before

DATED this 10th day of August, 2010.

Shad Priest  
Deputy Director  
Idaho Department of Insurance  
700 West State St., 3rd Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398



**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 18-0177-1001**

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.**

**01. Office Hours.** The Department of Insurance is open from 8 a.m. to 5 p.m. except ~~Saturday, Sunday~~  
~~weekends~~ and legal holidays. (3-30-07)(\_\_\_\_)

**02. Mailing Address.** The department's mailing address is: Idaho Department of Insurance, P.O. Box  
83720, Boise, ID 83720-0043. (3-30-07)

**03. Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho  
~~83702-0043.~~ (3-30-07)(\_\_\_\_)

**04. Web Site Address.** The department's web address is <http://www.doi.idaho.gov>. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**022. STATEMENT OF ACTUARIAL OPINION BASED ON AN ASSET ADEQUACY ANALYSIS.**

**01. General Description.** The statement of actuarial opinion submitted in accordance with this section  
shall consist of; (3-30-07)

**a.** A paragraph identifying the appointed actuary and his qualifications (see Subsection 022.02.a. of  
this chapter); (3-30-07)

**b.** A scope paragraph identifying the subjects on which an opinion is to be 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, (see Subsection 022.02.b. of this chapter)  
and identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed;  
(3-30-07)

**c.** 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 (see Subsection 022.02.c. of this chapter),  
supported by a statement of each such expert in the form prescribed by Subsection 022.05 of this chapter; and  
(3-30-07)

**d.** An opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of  
the supporting assets to mature the liabilities (see Subsection 022.02.f. of this chapter). (3-30-07)

**e.** One (1) or more additional paragraphs will be needed in individual company cases as follows;  
(3-30-07)

**i.** If the appointed actuary considers it necessary to state a qualification of his opinion; (7-1-97)

**ii.** 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; (3-30-07)

**iii.** If the appointed actuary must disclose whether additional reserves of the prior opinion date are  
released as of this opinion date, and the extent of the release; or (3-30-07)

iv. If the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion. (7-1-97)

**02. Recommended Language.** The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. 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 professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section. (7-1-97)

a. The opening paragraph should generally indicate the appointed actuary’s relationship to the company and his qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

“I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the Director dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies.”

For a consulting actuary, the opening paragraph should contain a sentence such as:

“I, [name], a member of the American Academy of Actuaries, am associated with the firm of [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 Director dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies.” (7-1-97)

b. The scope paragraph should 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, ~~1920~~[ ]. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis.

**TABLE 022.02.b.**

Asset Adequacy Tested Amounts			Reserves and Liabilities		
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
Exhibit 5					
Life Insurance					
Annuities					
Supplementary Contracts Involving Life Contingencies					
Accidental Death Benefit					
Disability - Active					
Disability - Disabled					
Miscellaneous					
Total (Exhibit 5 Item 1, Page 3)					

Asset Adequacy Tested Amounts			Reserves and Liabilities		
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
Exhibit 6 Active Life Reserve					
Claim Reserve					
Total (Exhibit 6 Item 2, Page 3)					
Exhibit 7 Premium and Other Deposit Funds (Column 6, Line 14)					
Guaranteed Interest Contracts (Column 2, Line 14)					
Annuities Certain (Column 3, Line 14)					
Supplemental Contracts (Column 4, Line 14)					
Dividend Accumulations or Refunds (Column 5, Line 14)					
Total Exhibit 7					
Exhibit 8 Part 1 Life (Page 3, Line 4.1)					
Health (Page 3, Line 4.2)					
Total Exhibit 8, Part 1					
Separate Accounts (Page 3, Line 27)					
TOTAL RESERVES					
IMR (General Account, Page 3 Line 9.4)					
<del>IMR (General Separate Accounts, Page 3 Line 27)</del>					
AVR (Page 3 Line 24.1)	(c)				
Net Deferred and Uncollected Premiums					
Notes: (a) The additional actuarial reserves are the reserves established under <del>Subsection Paragraph</del> 021.05.b. or 021.05.c. of this chapter. (b) The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in Subsection 021.04 of this chapter, by means of symbols which should be defined in footnotes to the table. (c) Allocated amount.					

(3-30-07)(\_\_\_\_)

c. If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should 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] or “certain critical aspects of the analysis performed in conjunction with forming my opinion”, as certified in the attached statement. I have reviewed the information relied upon for reasonableness.” ~~or~~

~~“I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement.”~~  
(3-30-07)(\_\_\_\_)

i. Such a statement of reliance on other experts should be accompanied by a statement by each of the experts of the form prescribed by Subsection 022.05. (3-30-07)

d. If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should also include the following:

“My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to [exhibits and schedules listed as applicable] of the company’s current annual statement.” (3-30-07)

e. 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 a third party~~, the reliance paragraph should include a sentence such as:

“In forming my opinion on [specify types of reserves] I relied upon data prepared by [name and title of company officer certifying in-force records 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 ~~actuarial~~ calculations ~~as~~ I considered necessary.”  
(3-30-07)(\_\_\_\_)

i. Such a section must be accompanied by a statement by each person relied upon of the form prescribed by Subsection 022.05 of this chapter. (3-30-07)

f. The opinion paragraph should include the following:

“In my opinion the reserves and related actuarial values concerning the statement items identified above:

- (a) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;
- (b) 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;
- (c) Meet the requirements of the Insurance Law and rule of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.
- (d) 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);
- (e) Include provision for all actuarial reserves and related statement items which ought to be established.

The reserves and related items, 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, 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.

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, which standards form the basis of this statement of opinion.

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) which 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 (1) of the above two (2) paragraphs, whichever is applicable.

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

(~~3-30-07~~)(\_\_\_\_)

**03. 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 022 of this chapter. (3-30-07)

**04. Adverse Opinions.** If the appointed actuary is unable to form an opinion, then he shall refuse to issue a statement of actuarial opinion. If the appointed actuary’s opinion is adverse or qualified, then he shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph. (7-1-97)

**05. Reliance on Data Furnished by Other Persons.** If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address and

telephone number of the person rendering the certification, as well as the date on which it is signed. (3-30-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**024. DESCRIPTION OF ACTUARIAL MEMORANDUM INCLUDING AN ASSET ADEQUACY ANALYSIS AND REGULATORY ASSET ADEQUACY ISSUES SUMMARY.**

**01. General.** (7-1-97)

a. In accordance with Section 41-612(12), Idaho Code, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his opinion regarding the reserves ~~under a Section 022 opinion~~. The memorandum shall be made available for examination by the Director upon his request but shall be returned to the company after such examination and shall not be considered a record of the insurance department or subject to automatic filing with the Director. (~~3-30-07~~)(\_\_\_\_)

b. In preparing the memorandum, the appointed actuary may rely on, and include as a part of his own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Subsection 021.02 of this chapter, with respect to the areas covered in such memoranda, and so state in their memoranda. (3-30-07)

c. If the Director requests a memorandum and no such memorandum exists or if the Director finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this Rule, the Director may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Director. (~~7-1-97~~)(\_\_\_\_)

d. The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Director; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as examination workpapers and shall be kept confidential to the same extent as is prescribed by Section 41-227, Idaho Code. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this rule for any one of the current year or the preceding three (3) years. (7-1-97)

e. In accordance with Section 41-612(12), Idaho Code, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in Subsection 024.03 of this chapter. The regulatory asset adequacy issues summary will be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary will be maintained as confidential and not subject to public disclosure by the director in accordance with Section 41-612(12), Idaho Code, and Section 9-340D(5) of the Idaho Public Records Act. (3-30-07)

f. In accordance with Section 41-612(12)(d)(iv), the director will accept the regulatory asset adequacy issues summary of a foreign or alien company filed by that company with the insurance supervisory official of another state if the director determines that the summary reasonably meets the requirements applicable to a company domiciled in Idaho. Therefore, foreign or alien insurers required to file the regulatory asset adequacy issues summary in their home state are exempt from filing in this state, except upon request of the director, provided the other state has substantially similar reporting requirements and the summary is filed with the director of the other state within the time specified. (5-8-09)

**02. Details of the Memorandum Section Documenting Asset Adequacy Analysis (Section 022).** When an actuarial opinion under Section 022 of this chapter is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in Subsection 021.04 of this chapter and any additional standards under this rule. It shall specify; (3-30-07)

- a. For reserves; (3-30-07)
  - i. Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant; (7-1-97)
  - ii. Source of liability in force; (7-1-97)
  - iii. Reserve method and basis; (7-1-97)
  - iv. Investment reserves; (7-1-97)
  - v. Reinsurance arrangements; and (3-30-07)
  - vi. Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis. (3-30-07)
- b. Documentation of assumptions to test reserves for the following: (3-30-07)
  - i. Lapse rates (both base and excess); (3-30-07)
  - ii. Interest crediting rate strategy; (3-30-07)
  - iii. Mortality; (3-30-07)
  - iv. Policyholder dividend strategy; (3-30-07)
  - v. Competitor or market interest rate; (3-30-07)
  - vi. Annuitization rates; (3-30-07)
  - vii. Commissions and expenses; and (3-30-07)
  - viii. Morbidity. (3-30-07)
  - ix. The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions. (3-30-07)
- c. For assets: (7-1-97)
  - i. Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets; (7-1-97)
  - ii. Investment and disinvestment assumptions; (7-1-97)
  - iii. Source of asset data; (7-1-97)
  - iv. Asset valuation bases. (7-1-97)
- d. Documentation of assumptions made for the following assets: (3-30-07)
  - i. Default costs; (3-30-07)
  - ii. Bond call function; (3-30-07)
  - iii. Mortgage prepayment function; (3-30-07)

- iv. Determining market value for assets sold due to disinvestment strategy; and (3-30-07)
- v. Determining yield on assets acquired through the investment strategy. (3-30-07)
- vi. The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions. (3-30-07)
- e. For the Analysis basis: (7-1-97)(\_\_\_\_)
- i. Methodology; (7-1-97)
- ii. Rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed; (7-1-97)
- iii. Rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business); (7-1-97)(\_\_\_\_)
- iv. Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); (7-1-97)(\_\_\_\_)
- v. Effect of Whether the impact of federal income taxes, was considered and the method of treating reinsurance and other relevant factors in the asset adequacy analysis. (7-1-97)(\_\_\_\_)
- f. Summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis; (3-30-07)
- g. Summary of Results; (7-1-97)
- h. Conclusion(s). (7-1-97)
- 03. Details of the Regulatory Asset Adequacy Issues Summary.** (3-30-07)
- a. The regulatory asset adequacy issues summary shall include: (3-30-07)
  - i. Descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force; (3-30-07)
  - ii. The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis; (3-30-07)
  - iii. The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion; (3-30-07)
  - iv. Comments on any interim results that may be of significant concern to the appointed actuary. For example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods; (3-30-07)(\_\_\_\_)
  - v. The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested; and (3-30-07)



vi. Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis. (3-30-07)

b. The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion. (3-30-07)

**04. Conformity to Standards of Practice.** The memorandum shall include a statement:

“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, which standards form the basis for this memorandum.” (7-1-97)

**05. Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve.** 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. Analysis of risks regarding asset default 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. 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. The amount of the assets used for the AVR must be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets must be disclosed in the memorandum. (7-1-97)

**06. Documentation.** The appointed actuary shall retain on file, for at least seven (7) 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. (7-1-97)

## IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

### 18.01.79 - RECOGNITION OF PREFERRED MORTALITY TABLES FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES

DOCKET NO. 18-0179-1001

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 41-211, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, no later than September 15, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This updates the rule to agree with the National Association of Insurance Commissioners model regulation #815 to apply the same standards to Idaho insurers offering life insurance products as are imposed by other states that have adopted the model. These revisions will allow the preferred mortality tables to be used as a valuation standard for any business issued using the 2001 CSO (Commissioners Standard Ordinary), as the valuation mortality table, with approval of the Director. Mortality tables are developed by studying mortality experience of insured people. The rule also includes a specific limitation related to the accounting used when there is a coinsurance treaty in effect.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

This rulemaking does not impose any fees.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed changes are from a National Association of Insurance Commissioners model regulation and the Idaho domiciled life insurance company supports adoption of it.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Georgia Siehl at (208) 334-4314.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2010.

DATED this 10th day of August, 2010.

Shad Priest  
Deputy Director  
Idaho Department of Insurance  
700 West State St., 3rd Floor  
Boise, Idaho 83720-0043  
Phone: (208) 334-4250  
Fax: (208) 334-4398

**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 18-0179-1001**

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.**

**01. Office Hours.** The Department of Insurance is open from 8 a.m. to 5 p.m. except ~~Saturday, Sunday~~  
weekends and legal holidays. (4-2-08)(\_\_\_\_)

**02. Mailing Address.** The department's mailing address is: Idaho Department of Insurance, P.O. Box  
83720, Boise, ID 83720-0043. (4-2-08)

**03. Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho  
~~83702-0043~~ 83720. (4-2-08)(\_\_\_\_)

**04. Web Site Address.** The Department's web address is <http://www.doi.idaho.gov>. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**011. 2001 CSO PREFERRED CLASS STRUCTURE TABLE.**

At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this regulation, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. For policies issued on or after January 1, 2004 and prior to January 1, 2007, these tables may be substituted with the consent of the Director and subject to the conditions of Section 012 of this chapter. In determining such consent, the Director may rely on the consent of the commissioner of the company's state of domicile. No such election shall be made until the company demonstrates at least twenty percent (20%) of the business to be valued on this table is in one (1) or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of IDAPA 18.01.59, "Recognition of the 2001 CSO Mortality Table For Use In Determining Minimum Reserve Liabilities And Nonforfeiture Benefits." (4-2-08)(\_\_\_\_)

**012. CONDITIONS.**

**01. Preferred Nonsmoker and Residual Standard Nonsmoker Tables.** For each plan of insurance with separate rates for Preferred and Standard Nonsmoker lives, an insurer may use the Super Preferred Nonsmoker, Preferred Nonsmoker, and Residual Standard Nonsmoker tables to substitute for the Nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the Residual Standard Nonsmoker Table, the appointed actuary shall certify that: (4-2-08)

**a.** The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class. (4-2-08)

**b.** The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class. (4-2-08)

**02. Preferred Smoker and Residual Standard Smoker Tables.** For each plan of insurance with

separate rates for Preferred and Standard Smoker lives, an insurer may use the Preferred Smoker and Residual Standard Smoker tables to substitute for the Smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the Preferred Smoker Table, the appointed actuary shall certify that: (4-2-08)

**a.** The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table corresponding to the valuation table being used for that class. (4-2-08)

**b.** The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table. (4-2-08)

**03. Unless Exempted By the Director.** Every authorized insurer using the 2001 CSO Preferred Class Structure Table shall annually file with the director, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the director, statistical reports showing mortality and such other information as the director may deem necessary or expedient for the administration of the provisions of this regulation. The form of the reports shall be established by the director or the director may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the director. (4-2-08)

**04. Reserve Credit for Policies Issued Prior to January 1, 2007.** The use of the 2001 CSO Preferred Class Structure Table for the valuation of policies issued prior to January 1, 2007 shall not be permitted in any statutory financial statement in which a company reports, with respect to any policy or portion of a policy cinsured, either of the following: ( )

**a.** In cases where the mode of payment of the reinsurance premium is less frequent than the mode of payment of the policy premium, a reserve credit that exceeds, by more than the amount specified in this paragraph as Y, the gross reserve calculated before reinsurance. Y is the amount of the gross reinsurance premium that (b) provides coverage for the period from the next policy premium due date to the earlier of the end of the policy year and the next reinsurance premium due date, and (a) would be refunded to the ceding entity upon the termination of the policy. ( )

**b.** In cases where the mode of payment of the reinsurance premium is more frequent than the mode of payment of the policy premium, a reserve credit that is less than the gross reserve, calculated before reinsurance, by an amount that is less than the amount specified in this paragraph as Z. Z is the amount of the gross reinsurance premium that the ceding entity would need to pay the assuming company to provide reinsurance coverage from the period of the next reinsurance premium due date to the next policy premium due date minus any liability established for the proportionate amount not remitted to the reinsurer. ( )

**05. Reserve Method.** For the purposes of the condition specified in Subsection 012.04 of this rule, the reserve (i) for the mean reserve method shall be defined as the mean reserve minus the deferred premium asset, and (ii) for the mid-terminal reserve method shall include the unearned premium reserve. A company may estimate and adjust its accounting on an aggregate basis in order to meet the conditions to use the 2001 CSO Preferred Class Structure Table. ( )