

# NEBRASKA

Good Life. Great Opportunity.

DEPARTMENT OF INSURANCE



Pete Ricketts, Governor

February 23, 2018

Interoffice Mail

Bess Boesiger  
Office of the Secretary of State  
Rules and Regulations  
P.O. Box 94608  
Lincoln, NE 68509-4608

RE: Title 210 Nebraska Administrative Code  
Chapter 80, Synthetic Guaranteed Investment Contracts

Dear Ms. Boesiger:


Enclosed please find the following documents:

- (1) Copy of the Notice of Hearing;
- (2) Draft copy of the proposed rule in paper form; and
- (3) Fiscal Impact Statement.

Additionally, an electronic copy of the regulation reflecting the proposed amendments was provided via electronic mail to [Bess.Boesiger@Nebraska.gov](mailto:Bess.Boesiger@Nebraska.gov).

If you have any questions, please contact me at 471-4503.

Sincerely,

  
Matthew W. Holman  
General Counsel

Enc.

Bruce R. Ramge, Director  
Department of Insurance

941 O Street, Suite 220  
PO Box 82089  
Lincoln, Nebraska 68501-2089

OFFICE 402-471-2201 FAX 402-471-4610  
[www.doi.nebraska.gov](http://www.doi.nebraska.gov)

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## N-O-T-I-C-E

Pete Ricketts, Governor

The Director of the Department of Insurance has scheduled a public hearing as required by Neb. Rev. Stat. §§ 84-901 to 84-920 for the proposed amendment of Title 210, Nebraska Administrative Code, Chapter 80, Synthetic Guaranteed Investment Contracts.

Chapter 80 outlines the requirements applicable to insurers offering or desiring to offer synthetic guaranteed investment contracts in Nebraska. The proposed amendment adopts changes to the National Association of Insurance Commissioners Model Regulation on which Chapter 80 is based, and applies updated market and financial requirements for insurers offering these products.

The proposed amendment will affect all insurers offering or desiring to offer synthetic guaranteed investment contracts in Nebraska. There is no fiscal impact to the Department of Insurance or political subdivisions; however, it does require some enhanced reporting and updated reserving requirements on regulated entities. These insurers may experience some fiscal impact from the adoption, but this impact is expected to be minimal.

The Department of Insurance is currently in a temporary location that will change prior to the hearing. As a result, copies of Chapter 80 with the proposed amendments are available for public examination at the Department of Banking and Finance, 1526 K Street, Suite 300, Lincoln, NE 68508, as well as the Office of the Secretary of State, 1201 N Street, Suite 120, Lincoln, NE 68509, the Secretary of State's website at [www.sos.ne.gov](http://www.sos.ne.gov) and through the Department of Insurance's website at [www.doi.nebraska.gov](http://www.doi.nebraska.gov). A copy of the Fiscal Impact Statement is also available at the Department of Banking and Finance and at the Department of Insurance's website [www.doi.nebraska.gov](http://www.doi.nebraska.gov). All persons interested in presenting oral or written views on the proposed amendment of Chapter 80 will be granted an opportunity at a hearing to be held before the Director of Insurance, beginning at **10:00 a.m. the 29th day of March, 2018**. Said hearing will be held at the Department of Banking and Finance, 1526 K Street, Suite 300, Lincoln, NE 68508. Interested persons may submit written comment to Matt Holman, General Counsel of the Department of Insurance, P.O. Box 82089, Lincoln, NE 68501-2089 or [matt.holman@nebraska.gov](mailto:matt.holman@nebraska.gov) before the date of the hearing, which will be entered into the record.

Reasonable accommodations will be provided to persons with disabilities upon advanced request. The hearing will be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

All persons interested therein may appear at said time and be heard in reference thereto.

Dated this 22<sup>nd</sup> day of February, 2018.

  
BRUCE R. RAMGE  
Director of Insurance

Bruce R. Ramge, Director  
Department of Insurance  
941 O Street, Suite 220  
PO Box 82089  
Lincoln, Nebraska 68501-2089

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## DRAFT FISCAL IMPACT STATEMENT

Agency: Nebraska Department of Insurance	
Title: 210	Prepared by: Matthew W. Holman
Chapter: 80	Date prepared: February 8, 2018
Subject: Synthetic Guaranteed Investment Contracts	Telephone: (402) 471-4503

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decreased Revenue	( )	( )	( )
Indeterminable	( )	( )	( )

Provide an Estimated Cost & Description of Impact:

State Agency:                      No Impact

Political  
Subdivision:                      No Impact

Regulated Public:                      No Significant Impact. The update to this regulation brings it in line with the National Association of Insurance Commissioners model regulation, and therefore the national standard. While there may be some costs associated with changing standards, bringing Nebraska requirements in line with the national standard will reduce costs to the regulated public while simultaneously increasing consumer protections.

If indeterminable, explain why: N/A

FEB 23 2018

**SUBMIT TO GOVERNOR BEFORE SUBMITTING TO EXECUTIVE BOARD AND  
BEFORE PUBLIC HEARING DATE IS SET**

**RULES AND REGULATIONS POLICY PRE-REVIEW CHECKLIST**

**Agency:** Department of Insurance  
**Title, Chapter of Rules submitted:** Title 210, Chapter 80  
**Subject:** Synthetic Guaranteed Investment Contracts  
**Prepared by:** Matthew W. Holman  
**Telephone:** 402-471-4503  
**Date submitted to Governor:** February 9, 2018

Projected dates for public hearings: As soon as possible following GPRO approval.

Projected deadline for final approval: We would like this regulation approved and in place by April 20<sup>th</sup>, 2018.

A copy of the section of laws or federal regulations that triggered these changes is attached.

**FOR GOVERNOR'S OFFICE RECORDS**

**Advisor Assigned:** \_\_\_\_\_

**Date approved to proceed:** \_\_\_\_\_

**Options for proceeding:** \_\_\_\_\_

- a) No further contact with GPRO is necessary until final rules have been approved by the Attorney General.
- b) Contact Governor through GPRO concerning issues raised in Negotiated Rulemaking procedures.
- c) Submit Rules and Regulations Policy Review Checklist to Governor if rules are changed hereafter and a new public hearing is scheduled.
- d) Keep the Governor informed through GPRO as issues arise in negotiations, drafting sessions, advisory board meetings, and public hearings.
- e) Specific policy comments per Governor's instructions is attached.

A. Policy Changes and Impacts

1. What does the regulation do and whom does it impact? Provide a brief description of the proposed rule or regulation and its impacts on state agencies, political subdivisions, and regulated persons or entities.

**210 Neb. Admin. Code § 80 is an existing regulation initially filed with the Secretary of State on March 28, 2005. The regulation was originally issued, as authorized by Neb. Rev. Stat. § 44-708.01(3), for the purpose of implementing Neb. Rev. Stat. § 44-708.01. The regulation establishes financial and market requirements, including required policy provisions and reserving requirements for synthetic guaranteed investment contracts (synthetic GICs). The regulation affects all life insurers issuing or desiring to issue synthetic guaranteed investment contracts in Nebraska.**

2. Describe changes being proposed to current policy and briefly provide rationale.

**The current regulation was passed in 2005, following the passage of LB 1047 in 2004, which authorized the sale of synthetic GICs in Nebraska. The regulation is based on a model regulation promulgated by the National Association of Insurance Commissioners, which was more recently updated in 2015. Members of the insurance industry have requested that the Department update our regulation to match the current NAIC model. The proposed changes offer a much clearer and more definitive approach to regulation of synthetic GICs. The proposed reserving requirements are more appropriate and financially sound. The proposed amendments include a phase in period in which a company may elect to operate under the new regulation at any time after it is effective, but all companies will be subject to the changes no later than January 1, 2019. This is intended to give current domestic industry participants sufficient time to implement necessary changes before compliance is mandatory.**

B. Why is the rule necessary? Explain and provide an identification of authorizing statute(s) or legislative bill(s).

1. Update of regulation (repeal of obsolete statutes, reflect current policy, editing or technical language changes, etc.) – **Yes, we propose to update the regulation to the latest version of the NAIC Model.**
2. Annual changes -- cost of living, hunting season schedules, etc. **No**
3. Law was changed -- federal \_\_\_ or state \_\_\_ [Cite authorizing statute(s) or legislative bill(s)] **No**
4. Extension of established policy or program, new initiatives or changes in policy (within statutory authority) **No**
5. Constituent initiated **Yes, the update has been requested by industry**

**members.**

6. Financial needs -- increases/decreases in fees **No**
7. Litigation requires changes in rules **No**
8. Addresses legal or constitutional concerns of Attorney General's office
9. Implements federal or court mandate **No.**
10. Other (explain) **The authorizing statute provides little guidance to companies regarding the requirements for Department approval of synthetic GIC contracts. The regulation is necessary to provide guidance to issuers of these products.**

C. What happens if these rules are not adopted?

**Failure to adopt these changes will reduce the effectiveness of the Department regulating synthetic GICs by leaving the products subject to outdated financial and market requirements.**

D. Policy Checklist

1. Is this an update or editorial change reflecting essentially no change in policy?  
**No.**
2. Does the policy in the proposed regulation reflect legislative intent? **Yes.**
3. Is the policy proposed in the regulation a state mandate on local government? Is it funded? **N/A.**
4. Is the policy proposed in the regulation a federal mandate on local government? Is it funded? **N/A.**

E. Fiscal Impact. In addition to completing the required Fiscal Impact Statement (a copy must be attached to this document), the agency must address the following:

1. Will the proposed regulation reduce, increase, or have no change in resources -- funds, personnel or FTE? **No change in Department resources.**
2. Have initial contacts been made with citizens or organizations that may be impacted by the proposed regulation? **Yes, discussions have taken place with industry representatives who are in support of this change. We have worked with multiple industry participants to ensure the proposed changes are workable with the industry.**
3. Does the proposed regulation impact another agency? **No.**
4. Will the proposed regulation reduce, increase, or have no change on reporting requirements of businesses? **The proposed amendments will expand somewhat on the type of information that must be reported to the Department, specifically requiring an actuarial opinion and memorandum**

**be filed related to the use of segregated portfolios governed by this regulation, if that information is not otherwise reported in the existing actuarial opinion and memorandum.**

5. What is the agency's best estimate of the additional or reduced spending? If there is none, please note. If receipt of federal funds is contingent upon approval of the proposed regulation, then indicate the amount and nature of the federal funds affected, and enclose laws or correspondence from federal officials substantiating the information. **No impact.**
6. Include a description of the impact that the proposed regulation will have on the number of state employees and how the agency intends to address proposed increases or decreases in FTE. **No impact.**
- F. Unique problems or issues and recommendations. **None.**
- G. Who is expected to be affected, or to oppose or support the proposed regulation? Explain what initial informal contacts have been made with organizations or citizens who may be affected by the regulation prior to the public hearing.

**This regulation affects all life insurers issuing or desiring to issue synthetic GICs in Nebraska. Discussions have taken place with industry, and we expect insurers to be in support of these amendments. No opposition is expected.**

- H. Are these proposed rules a likely candidate for negotiated rulemaking? Explain. Has the process been completed? If so, explain how the issues were addressed.

**No. The Department does not believe the proposed regulation is controversial or appropriate for negotiated rulemaking. We have worked informally with market participants prior to this proposal and expect the amendments to be uncontested.**

**Director's Verification of Review**

I have reviewed these proposals and verify that, at this stage of the regulation's development, these questions have been accurately addressed.

Director's Signature Bruce R. Range Date 2-9-2018

## **Title 210 – Nebraska Department of Insurance**

### **Chapter 80 – SYNTHETIC GUARANTEED INVESTMENT CONTRACTS**

#### 001. Authority.

This regulation is promulgated under the authority vested in the Director of Insurance by Neb. Rev. Stat. § 44-708.01(3).

#### 002. Purpose.

002.01 The purpose of this regulation is to implement Neb. Rev. Stat. § 44-708.01 by prescribing:

002.01A ~~-The setting forth the~~ terms and conditions under which life insurance companies may issue ~~synthetic-guaranteed-investment contracts-group annuity contracts and other agreements that in whole or in part establish the insurer's obligation by reference to a segregated portfolio of assets that is not owned by the insurer;~~

002.01B The essential operational features of the segregated portfolio of assets;

002.01C The reserve requirements for these group annuity contracts and agreements.

002.02 This regulation is intended to aid in the timely approval of such products by the Director, and recognizes that timely approval is essential given the competitive nature of the market for these products.

#### 003. Scope and Application.

003.01 This regulation applies to that portion of a group annuity contract or other agreement described in Section 004.24 and issued by a life insurer:

003.01A That functions as an accounting record for an accumulation fund; and



003.01B That has benefit guarantees relating to a principal amount and levels of interest at a fixed rate of return specified in advance.

003.02 The fixed rates of return:

003.02A Shall be constant over the applicable rate periods;

003.02B May reflect prior and current market conditions with respect to the segregated portfolio; and

003.02C Shall not reference future changes in market conditions.

003.03 This regulation is applicable to all contracts issued on or after January 1, 2019. An insurer may elect to apply this regulation to contracts issued on or after the effective date of this regulation. If a company elects to apply this regulation to contracts issued prior to January 1, 2019, the company must continue to apply the requirements of this regulation to all future contracts issued. Contracts that have been negotiated prior to January 1, 2019, or prior to a company's election if such an election occurs prior to January 1, 2019, need not be refiled with the Director.

#### 003004. Definitions.

As used in this regulation, the following terms shall have these meanings:

004.01 "Account assets" means the assets in the segregated portfolio plus any assets held in the general account or a separate account to meet the asset maintenance requirements.

004.02 "Actuarial opinion and memorandum" means the opinion and memorandum of the valuation actuary required to be submitted to the Director pursuant to Subsection 010.02 of this regulation.

004.03 "Affirmatively approved" means approval of an insurer's plan of operation for a class of contracts containing the form of contract under review, after the plan of operation associated with the class of contracts has been reviewed by the insurer's domiciliary insurance department, and the plan of operation has been found to be in compliance with guidelines substantially similar to the NAIC Synthetic Guaranteed Investment Contracts Model Regulation by the domiciliary insurance department. Affirmatively approved does not mean approval as a result of the deemer provision.

004.04 “Appointed actuary” means the qualified actuary appointed or retained either directly by or by the authority of the board of directors through an executive officer of the company to prepare the annual statement of actuarial opinion for the company as a whole pursuant to Neb. Rev. Stat. § 44-8905.

004.05 “Asset maintenance requirement” means the requirement to maintain assets to fund contract benefits in accordance with Section 010 of this regulation.

004.06 “Class of contracts” or “contracts in the class” means the set of all contracts to which a given plan of operation pertains.

~~003.01 “Contract” or “synthetic guaranteed investment contract” means a policy, contract or agreement, which establishes the insurance company’s obligations to the contractholder with regard to a segregated portfolio that is neither owned by nor in the possession of the insurance company. It shall be structured as an indemnity contract for payment of money upon the occurrence of specified contingencies relating to fluctuations in the market value of the segregated portfolio, except with assets in external custody. As used herein, the term “contract” refers to any document whereby obligations are memorialized, regardless of its caption or form.~~

~~003004.02–07 “Contract value record” means an accounting record established, provided by the contract in relation to the segregated portfolio of assets, that is credited with a fixed rate of return over regular periods, and that is used to measure the extent of the insurer’s obligation to the contractholder. The fixed rate of return credited to the contract value record is determined by means of a crediting rate formula or declared at the inception of the contract and valid for the entire term of the contract. contract value record is experience rated relative to the market value record and is used to measure the extent of the insurance company’s obligations to the contractholder with regard to the segregated portfolio.~~

004.08 “Crediting rate formula” means a mathematical formula used to calculate the fixed rate of return credited to the contract value record during any rate period and based in part upon the difference between the contract value record and the market value record amortized over an appropriate period. The fixed rate of return calculated by means of this formula may reflect prior and current market conditions with respect to the segregated portfolio, but may not reference future changes in market conditions.

004.09 “

| ~~003.03~~ "Department" means the Nebraska Department of Insurance and any employee of the Department authorized to act on behalf of the Department.

| ~~003004.0410~~ "Director" means the Director of the Nebraska Department of Insurance.

003004.05-11 “Duration” means, with respect to the segregated portfolio assets or guaranteed contract liabilities, a measure of price sensitivity to changes in interest rates, such as the Macaulay duration or option-adjusted duration. ~~Experience crediting formula” means a mathematical formula used to calculate the fixed rate of return to be credited to the contract value record during any rate period. The formula is based upon the differences between the contract value record and the market value record, over a period of time not to exceed the average duration of assets held in the segregated portfolio, and any other appropriate actuarial factors or methods.~~

003004.0612 "Fair market value" means a reasonable estimate of the amount that a knowledgeable buyer of an asset would be willing to pay, and a knowledgeable seller of an asset would be willing to accept, for the asset without duress in an arm's length transaction. In the case of a publicly traded security, the fair market value is the price at which the security is traded or, if no price is available, a price that appropriately reflects the latest bid and asked prices for the security. In the case of a debt instrument that is not publicly traded, the fair market value is the discounted present value of the asset calculated at a reasonable discount rate. For all other non-publicly traded assets, fair market value will be determined in accordance with valuation practices customarily used within the financial industry.

004.13 “Guaranteed minimum benefits” means contract benefits on a specified date that may be either:

004.13A A principal guarantee, with or without a fixed minimum interest rate guarantee, related to the segregated portfolio;

004.13B An assurance as to the future investment return or performance of the segregated portfolio; or

004.13C The fair market value of the segregated portfolio, to the extent that the fair market value of the assets determines the contractholder’s benefits.

004.14 “Hedging instrument” means:

004.14A An interest rate futures agreement or foreign currency futures agreement, an option to purchase or sell an interest rate futures agreement or foreign currency futures agreement, or any option to purchase or sell a security or foreign currency, used in a bona fide hedging transaction; or

004.14B An assurance as to the future investment return or performance of the segregated portfolio; or

004.14B A financial agreement or arrangement entered into with a broker, dealer or bank, qualified under applicable federal and state securities or

banking law and regulation, in connection with investment in one or more securities in order to reduce the risk of changes in market valuation or to create a synthetic investment that, when added to the portfolio, reduces the risk of changes in market valuation.

An instrument is ~~shall not be considered~~ a hedging instrument or a part of a bona fide hedging transaction if it is purchased in conjunction with another instrument where the effect of the combined transaction is an increase in the portfolio's exposure to market risk.

0043.07-15 “Investment guidelines” means the set of written guidelines established in advance by the ~~contractholder, and agreed to by the insurer, setting forth the quality, sector and duration corridors within which the investment manager may invest and reinvest assets within the segregated portfolio.~~ person with investment authority over the segregated portfolio, to be followed by the investment manager. The guidelines will ~~shall~~ include a description of:

004.15A The segregated portfolio's investment objectives and limitations;

004.15B The investment manager's degree of discretion;

004.15C The duration, asset class, quality, diversification, and other requirements of the segregated portfolio; and

004.15D The manner in which ~~derivative~~ instruments may be used, if at all, in the segregated portfolio.

0034.0816 “Investment manager” means the ~~insurerperson (including subcontractor) responsible for, if it is registered as an investment advisor under the Investment Advisors Act of 1940 and is managing the assets in the segregated portfolio, or any third party so registered as an investment advisor and approved by the insurer to manage the segregated portfolio~~ in accordance with the investment guidelines in a fiduciary capacity to the owner of the assets.

0034.09-17 “Market value record” means an accounting record ~~established provided~~ by the contract ~~in relation to the market value of the segregated portfolio and expressed as the sum of: (1)to reflect~~ the fair market value of the assets, ~~plus (2) any related cash or currency held in the~~ segregated portfolio.

0034.10-18 “Permitted custodial institution” means a bank, ~~savings and loan association, or trust company~~ or other licensed fiduciary services provider.-

0034.119 “Plan of operation” means a written plan meeting the requirements of Subsection 004005.03A of this regulation.

004.20 “Qualified actuary” means an individual who meets the qualification standards set forth in Neb. Rev. Stat. § 44-420(2).

004.3-2112 “Rate period” means the period of time during which the fixed rate of return credited to the contract value record is applicable between ~~experience~~ crediting formula adjustments.

0043.13-22 “Segregated portfolio” means:

004.22A~~(1) shares of a regulated investment company, or (2) a~~ portfolio or sub-portfolio of assets to which the contract pertains that is held in a custody or trust account by the permitted custodial institution and identified on the records of the permitted custodial institution as special custody assets held for the exclusive benefit of the retirement plans or other entities on whose behalf the contractholder holds the contract; and

004.22B ~~, plus (3) a~~ny related cash or currency received by the permitted custodial institution for the account of the contractholder and held in a deposit account for the exclusive benefit of the retirement plans or other entities on whose behalf the contractholder holds the contract.

004.23 “Spot rate”

004.23A “Treasury-based spot rate” corresponding to a given time of benefit payment means the yield on a zero-coupon non-callable and non-prepayable United States government obligation maturing at that time, or the zero-coupon yield implied by the price of a representative sampling of coupon-bearing, non-callable and non-prepayable United States government obligations in accordance with a formula set forth in the plan of operation.

004.23B “Index spot rate” corresponding to a given time of benefit payment means the zero-coupon yield implied by (x) the Barclays Short Term Corporate Index (for a given time of benefit payment under one year) or (y) the zero-coupon yield implied by the Barclays U.S. Corporate Investment Grade Bond Index (for a given time of benefit payment greater than or equal to one year).

004.23C “Blended spot rate” corresponding to a given time of benefit payment means a blend of 50% each of (i) the treasury-based spot rate, and (ii) the index spot rate. To the extent that guaranteed contract liabilities are denominated in the currency of a foreign country rated in one of the two (2) highest rating categories by an independent nationally recognized United States rating agency acceptable to the Director and are supported by investments denominated in the currency of the foreign country, the

treasury-based spot rate component of the blended spot rate may be determined by reference to substantially similar obligations of the government of the foreign country. For liabilities other than those described above, the blended spot rate shall be determined on a basis mutually agreed upon by the insurer and the Director.

004.24 “Synthetic guaranteed investment contract” or “contract” means a group annuity contract or other agreement that establishes the insurer’s obligations by reference to a segregated portfolio of assets that is not owned by the insurer. The contract functions as an accounting record for an accumulation fund and the fixed rate of return credited to the fund reflects an amortization of the segregated portfolio’s market gains and losses based on the period specified in the crediting rate formula, subject to any minimum interest rate guarantee.

004.25 “Unilateral contract termination event” means an event allowing the insurer to unilaterally and immediately terminate the contract, without future liability or obligation to the contractholder.

004.26 “United States government obligation” means a direct obligation issued, assumed, guaranteed or insured by the United States of America or by an agency or instrumentality of the United States government.

004.27 “Valuation actuary” means the appointed actuary or, alternatively, a qualified actuary designated by the appointed actuary to render the actuarial opinion pursuant to Section 010. Written documentation of any such designation shall be on file at the company and available for review by the Director upon request.

004005. Financial Requirements and Plan of Operation.

004005.01 A contract may not be delivered or issued for delivery in this state unless the issuing insurer is licensed as a life insurance company in this state and is financially qualified under the provisions of Subsection 004005.02 of this section. In addition, a domestic insurer may not deliver or issue for delivery, either in this state or outside this state, a contract belonging to a specific class of contracts unless the insurer has satisfied the requirements of Subsection 004005.03 of this section with respect to that ~~contract~~class of contracts.

004005.02 An insurer will be financially qualified under this section if its most recent statutory financial statements on file with the Director ~~of Insurance~~ reflect that it meets the financial requirements of Neb. Rev. Stat. § 44-708.01, and its risk-based capital results do not place it at a regulatory level of action. In lieu of the requirements in the preceding sentence, the insurer may be required to satisfy such other financial qualification requirements set forth by the Director as having been deemed necessary or appropriate in a particular case to protect the insurer's policyholders and the public.

~~004005.03~~ A domestic insurer will satisfy the requirements of this section with respect to a class of contracts if the insurer has filed a plan of operation pertaining to the class of contracts, together with copies of the forms of the contract in the class, with the ~~d~~Director, and the filing of the plan of operation has been approved.

~~004005.03A~~ The plan of operation for the-a class of contracts shall describe the financial implications for the insurer of the issuance of the contracts in the class, and shall include at least the following:

~~0045.03A(1)~~ A profile of the market the insurer expects to service with this contract form that includes: (a) an overview of the synthetic guaranteed investment contract market and how this contract form works within that market; (b) definitions specific to that market and contract not included in Section 003 of this regulation; (c) target markets and buyers; (d) marketing and distribution processes and description of arrangements to ensure adequate marketing supervision; (e) for the current and next three calendar years: (i) the number of contract forms to be sold, (ii) the minimum initial asset amount per contract, (iii) the maximum initial asset amount per contract, (iv) the average initial asset amount per contract, (v) the maximum insurer exposure per investment manager and contractholder, (vi) the insurer's total exposure to synthetic guaranteed investment contracts, (vii) the insurer's percentage of the segregated portfolio to which the contract pertains if the contract does not cover the entire segregated portfolio (if applicable) and (viii) the sales impact on insurer's business and liabilities; and (f) states in which this contract form is to be filed; A statement that the plan of operation will be administered in accordance with the requirements prescribed by the Director pursuant to this regulation, along with a statement that the insurer will comply with the plan of operation in its administration of the contract;

~~0054.03A(2)~~ A statement describing the reserve methodology used methods and procedures used to value statutory liabilities for purposes of Section ~~00910~~;

~~0054.03A(3)~~ A description of the criteria used by the insurer in approving the investment manager for the segregated portfolio of assets associated with the-a contract in the class, if the investment manager is an entity other than the insurer or its wholly owned subsidiary;



0054.03A(4) A description of the insurer's requirement for reports concerning the assets in each segregated portfolio and transactions involving the assets, and a description of how the insurer ~~will~~ can use the information in a report to determine that the segregated portfolio is being managed in accordance with its investment guidelines. The insurer shall require that the report be prepared no less frequently than quarterly, and include a complete statement of segregated portfolio holdings and their fair market value;

~~0054.03A(5) A demonstration of how the interest rate credited to the contract value record will be affected by changes in interest rates and withdrawal experience. The demonstration shall include at least seven (7) hypothetical interest rate scenarios (level, increasing, decreasing, pop up, pop down, increasing then decreasing, and decreasing then increasing) and for each of those interest rate scenarios, at least three (3) withdrawal scenarios (zero, moderate and high) shall be modeled. Additional scenarios may be required if the Department determines it to be necessary to fully understand the risks of the contract or agreement. The demonstration period shall be for the lesser of 15 years or the maximum potential life of the contract;~~  
A demonstration of financial results for one or more sample contracts from the class of contracts, showing at a minimum the projected contract value records, the applicable fixed rate or rates of return, and the projected market value records, describing how the investments in the segregated portfolio reflect provision for benefits insured by the contract and how the contract value and market values and the rates of return may be affected by changes in the investment returns of the segregated portfolio and reasonably anticipated deposits to and withdrawals from the segregated portfolio by the contractholder, as well as any advances made by the insurer to the contractholder. The sample contracts must shall be chosen to reasonably represent the range of results that could be expected from possible combinations of contract provisions of all contracts in the class. The demonstration shall include at least three (3) hypothetical return scenarios (level, increasing and decreasing) and for each of these scenarios, at least three (3) withdrawal scenarios (zero, moderate and high) shall be modeled. The Director may require additional scenarios if deemed necessary to fully understand the risks under the class of contracts. The demonstration period must shall be the greater of five (5) years or the minimum period the insurer must underwrite the risk;

~~0054.03A(6) A description of all termination features of the contract, including any causes, events, and situations where the insurer has the discretion to terminate the contract. The description~~

~~should include the timing of the termination and the method of payment determination; A statement that all contracts in the class of contracts satisfy the requirement of Section 009 regarding unilateral contract terminations, together with a description of all termination events, discontinuation triggers and options, notice requirements, corrective action procedures, all other contract safeguards, and the procedures to be followed when a unilateral contract termination event occurs;~~

~~0045.03A(7) A description of the allowable investment parameters (such as objectives, derivative strategies, asset classes, quality, duration and diversification requirements applied to the assets held within the segregated portfolio) ~~and any allowed hedging techniques to be employed, along with a discussion of the creation, design and management of investment strategy to mitigate deviation in the market value/contract value ratio, to be reflected in the investment guidelines applicable to the contract issued to which the submitted plan of operation applies; and a discussion of the underwriting criteria applied by the insurer in evaluating the appropriateness of any specific investment guidelines submitted by the contractholder; to be reflected in the investment guidelines applicable to each contract in the class to which the submitted plan of operation applies; and a description of the procedures that will be followed by the insurer in evaluating the appropriateness of any specific investment guidelines submitted by the contractholder.~~~~

~~005.03A(8) A description of the criteria used by the insurer in approving for contract issuance a pooled fund representing multiple employer-sponsored plans and in approving the investment manager for the segregated portfolio of assets associated with such pooled fund contract;~~

~~005.03A(9) A description of risk-mitigation techniques used by the insurer in connection with contracts issued to pooled funds representing multiple employer-sponsored plans;~~

~~0045.03A(810) A demonstration that the consideration charged by the insurer for the contract is appropriate in view of the risks to the insurer with respect to the contract; An unqualified opinion by a qualified actuary with expertise in these matters as to the adequacy of the consideration charged by the insurer for the risks it has assumed with respect to the contracts in the class to which the plan of operation applies;~~

005.03A(11) A statement that the actuarial opinion and memorandum required by Section 010 shall include, with respect to the class of contracts to which the plan of operation applies:

005.03A(11)(i) If a payment has been made by the insurer in the prior reporting period under a contract in the class, the amount of aggregate risk charges (net of administrative expenses) for contracts in the class, and the aggregate amount of any losses incurred; and

005.03A(11)(ii) An inventory of all material unilateral contract termination events in the class of contracts that have not been cured within the time period specified and that have occurred during the prior reporting period but where the company decided not to terminate the contract.

~~004.03A(9) A description of all guarantees and associated risks under which the contract might require the insurer to make payments or perform other obligations to the contractholder in support of the contract value record;~~

~~004.03A(10) A description of the insurer's ability to change fees and/or stop issuing contracts;~~

~~004.03A(11) A description of how contract fees, and investment management fees, if any, are to be reported on the annual financial statement;~~

~~004.03A(12) A statement that the segregated portfolio will be accounted for by the insurer with an accounting prepared no less frequently than quarterly, and which must include the following items: (a) a complete statement of segregated portfolio holdings and values (market or book/amortized value, as appropriate); and (b) the cash balance within the segregated portfolio;~~

~~004.03A(13) A statement that the insurer shall maintain a market value record at all times for each contract subject to this regulation, and that no less frequently than monthly, the insurer shall update the market value record to reflect the market value of the segregated portfolio. In performing the market value calculation, the method of valuation selected must be designed to reflect the fair market value of the segregated portfolio and may include the use of a vendor market value valuation service. The statement should be accompanied by a description as to how the market value record will~~

~~be calculated, including a summary description of the procedures to be followed by the insurer in verifying any market value reporting performed by the contractholder or the permitted custodial institution which the insurer may use as the basis for calculating the market value record; and~~

~~004.03A(14) A statement that the insurer shall maintain a contract value record at all times for each contract subject to this regulation. The statement should be accompanied by a description of the method by which the experience crediting formula reconciles the differences between the market value record and the contract value record.~~

~~004005.03B Review of the plan of operation by the Director may necessitate requests for information to supplement that furnished pursuant to Subsection 005.03. Replies made in compliance with this paragraph should be made in sufficient detail that any follow-up correspondence can be held to a minimum.The director may request, and the company shall provide, information to supplement that required by Paragraph 004.03A.~~

~~004005.04 If an insurer chooses to operate a contract with a material change from the approved plan of operation, the changed provision(s) shall be filed with and approved by the ~~director~~ Director in accordance with the requirements of Subsection ~~004005~~.03.~~

#### 005006. Required Contract Provisions and Filing Requirements.

~~005006.01 A contract may not be delivered or issued for delivery in this state unless the contract satisfies the requirements of Subsection ~~005006~~.02 of this section and the issuing insurer has satisfied the requirements of Subsection ~~005006~~.03 of this section with respect to the contract.~~

~~0065.02~~ The contract shall:

~~005006.02A Provide that the assets to which the contract pertains and for which a contract value record is established will be maintained in a segregated portfolio of a permitted custodial institution;~~

~~005006.02B Grant the insurer the right to perform audits and inspections of assets held in the segregated portfolio from time to time upon reasonable notice to the permitted custodial institution;~~

~~005006.02C Provide the insurer ~~with the rights to will~~ receive prior notice of; and the right to approve; any appointment or change of investment managers ~~and any change to the investment guidelines~~;~~

~~0056.02D~~ Give a description of how the contract value record will be determined and, where applicable, adjusted by a crediting rate formula; ~~including the method by which the fixed rate of return credited to the contract value record will be determined;~~

~~005006.02E~~ State the maximum rate period between ~~experience~~ crediting rate formula recalculations that will be permitted, if any;

~~005006.02F~~ Provide the insurer with the right to refuse to recognize any new deposits to the segregated portfolio unless there is a written agreement between the insurer and the contractholder as to the permissible levels and timing of new deposits;

~~005006.02G~~ Clearly ~~specify the insurer's obligations under the contract and~~ identify ~~the-all~~ circumstances under which insurer payments or advances to the contractholder are to be made;

~~005006.02H~~ ~~State the market value adjustment formula used in calculating the effect on the contract value record of certain withdrawals from the segregated portfolio, and e~~Clearly identify the types of withdrawals subject made on a to-market value basis ~~adjustment;~~

~~005006.02I~~ Provide ~~the methodology for paying the contract value record at the stated maturity of the contract, or if no stated maturity, the methodology~~either a fixed maturity schedule or a settlement option permitting the contractholder to receive the contract value record over time, provided that no unilateral contract termination event has occurred; and

~~005006.02J~~ Include a provision stating, or substantially similar to, the following:

"No waiver of remedies by the insurer that is a party to this agreement, following the breach of any contractual provision of the agreement or of the investment guidelines applicable to it, or failure to enforce the provisions or guidelines, which constitutes grounds for termination of this agreement for cause by the insurer, and is not cured within thirty (30) days following the insurer's discovery of it, shall be effective against an insurance director in any future rehabilitation or insolvency proceedings against the insurer unless approved in advance in writing by the director."~~Provide that forbearance by the insurer in a particular case shall not be a waiver as to actions that may be taken with regard to future non-compliance.~~

005006.03 An insurer will satisfy the filing and approval requirements of this section with respect to a contract if the insurer has filed the form of the contract (including application) with the ~~d~~Director and it is accompanied by the items specified in ~~Paragraphs~~ 005006.03A, B, C, D and E of this subsection, and the form has been approved. The contract form may not be used unless approved by the director.

005006.03A The form of contract filed for approval shall be accompanied by a statement that the contract meets the conditions of Subsection 005006.02 of this section.

005006.03B The form of contract filed for approval shall be accompanied by a statement:

005006.03B(1) Specifying the range of variation of variable contract provisions, if any, that could have a material effect on the risk assumed by the insurer under the contract, including withdrawal methodology, ~~experience~~-crediting rate formula and termination events;

005006.03B(2) Describing how fair market value will be determined, including a description of the procedures for valuing securities and other assets that are not publicly traded;

005006.03B(3) Describing the ~~experience~~-crediting rate formula, if any, and how it will operate to take into account the difference between the market value record and the contract value record over time; and

005006.03B(4) Listing events that give the insurer the right to unilaterally and immediately terminate the contract ~~immediately~~.

~~005.03C The form of contract filed for approval shall be accompanied by a signed actuarial certification stating that the pricing of the contract fees are reasonable and sufficient for the risks assumed by the insurer with respect to the contract. The signing actuary must be familiar with the pricing and valuation requirements for the contract and must be a member in good standing of the American Academy of Actuaries.~~

~~005.03D The form of contract filed for approval shall be accompanied by a signed certification from an officer of the insurer that the issuance of the contract is not hazardous to the public, or to its present or future policyholders, and any such additional statements as may be required by the director.~~

0056.03E-03C In the case that the plan of operation pertaining to the class of contracts to which the contract belongs:

005-6.03E03C(1) Has been affirmatively approved by the state in which the issuing insurer is domiciled, the form of contract filed for approval shall be accompanied by a statement indicating receipt of affirmative approval. ~~Upon request of the director, the insurer shall furnish the plan of operation pertaining to the contract.~~

006.03C(2) In the case that the plan of operation pertaining to the class of contracts to which the contract belongs has been deemed approved in the state in which the issuing insurer is domiciled, the form of contract filed for approval must ~~shall~~ be accompanied by a statement indicating that the issuing insurer has met the requirements for deemed approval.

005006.03E03C(23) Has not been affirmatively approved, either affirmatively or by deemer, in the state in which the issuing insurer is domiciled, the form of contract filed for approval shall be accompanied by a statement of this fact, together with the plan of operation pertaining to the contract.

005006.04 The ~~director~~ Director may disapprove a contract form filing upon a finding that the form of contract contemplates practices that are unfair or unreasonable or otherwise inconsistent with the provisions of Chapter 44 of the Revised Statutes of Nebraska, including the requirements of this regulation, specifying in what regard the contract form is unfair or unreasonable or otherwise inconsistent with the provisions of Chapter 44 of the Revised Statutes of Nebraska.

005006.05 The ~~director~~ Director may withdraw an approval of a contract form on any basis that would have justified initial disapproval. The ~~director~~ Director shall notify the insurer in writing of the reason for the withdrawal of the contract form approval. The insurer may, within 15 days of the withdrawal of approval, make a written request for a hearing before the ~~director~~ Director to determine the reasonableness of the ~~director's~~ Director's action. The hearing shall be held within 30 days of the request.

#### 0076. Investment Management of the Segregated Portfolio.

006007.01 The investment manager must have full responsibility for, and control ~~of over,~~ the ~~investment~~ management of ~~the funds in the segregated portfolio~~ all segregated portfolio assets within the constraints specified in the investment guidelines.

~~006007.02~~ The investment guidelines, ~~and changes thereto, must shall~~ be approved submitted to ~~by~~ the insurer for underwriting review before the contract becomes effective.

007.03 If the ~~insurer~~ accepts a proposed change to the investment guidelines or allows the contract to operate in accordance with investment guidelines not meeting the criteria established in Subsection 005.03A(7), approval of the non-conforming investment guidelines must be obtained pursuant to Subsection 005.04.

007008. Purchase of Annuities.

For contracts that are group annuity contracts, and which that make available to the contractholder the purchase of immediate or deferred annuities for the benefit of individual members of the group, ~~no an~~ annuity may not be purchased without the ~~prior~~ delivery of the contractually-agreed upon annuity consideration in cash to the insurer from the segregated portfolio for allocation to the insurer's general account or separate account. The insurer shall collect adequate consideration for the cost of annuities purchased under contract option by transfer from the segregated portfolio where the annuity's reserve assets will be held.

008009. Unilateral Contract Terminations.

008009.01 A contract subject to this regulation shall allow the insurer to unilaterally and immediately terminate, ~~with refund of any unearned contract fees or investment management fees,~~ without future liability of the insurer or obligation to provide further benefits, upon the occurrence of any one of the following events that is material and that is not cured within thirty (30) days following the insurer's discovery of it:

008009.01A The investment guidelines are changed without the advance consent of the insurer and the investment manager is not controlling, controlled by or under common control with the insurer;

008009.01B The segregated portfolio, if managed by an entity that is not controlling, controlled by or under common control with the insurer, is invested in a manner that does not comply with the investment guidelines;

008009.01C Investment discretion over the segregated portfolio is exercised by or granted to anyone other than the investment manager without the approval of the insurer; or

008009.01D Any act of fraud, misrepresentation of material facts, deceit or any other unauthorized action of the contractholder that has a material adverse affect on the insurer.



009010. Reserves.

~~Risk reserves shall be equal to 009.01 plus 009.02:~~

~~009.01 Gross unearned contract fees.~~

~~009.02 Each year, the reserve shall be increased by at least 30% of any excess of contract fees received over claims paid during the year. This amount shall be accumulated without interest. The maximum required reserve shall be 150% of the current annualized contract fees. The reserve may be reduced, with the result never less than zero, by any excess of claims paid over the contract fees received during the year.~~

010.01 Asset maintenance requirements for segregated portfolios governed by this regulation:

010.01A At all times an insurer shall hold minimum reserves in the general account or one or more separate accounts, as appropriate, equal to the excess, if any, of the value of the guaranteed contract liabilities, determined in accordance with Sections 010.01(F) and 010.01(G) of this subsection, over the market value of the assets in the segregated portfolio less the deductions provided for in Section 010.01B of this subsection. The reserve requirements of this subsection shall be applied on a contract-by-contract basis.

010.01B In determining compliance with the asset maintenance requirement and the reserve for guaranteed contract liabilities specified in section Subsection 010.01A, the insurer shall deduct a percentage of the market value of an asset as follows:

010.01B(1) For debt instruments, the percentage shall be the NAIC asset valuation reserve "reserve objective factor," but the factor shall be increased by fifty percent (50%) for the purpose of this calculation if the difference in durations of the assets and liabilities is more than one-half year. The above notwithstanding, in the event that, under the terms of the synthetic guaranteed investment contract, the asset default risk for debt instruments is borne solely by the contractholder, there shall be no asset valuation reserve percentage deduction from the market value of an asset, for purposes of complying with the asset maintenance requirement and the reserve for guaranteed contract liabilities specified in section Subsection 010.01A.

010.01B(2) For assets that are not debt instruments, the percentage shall be the NAIC asset valuation reserve “maximum reserve factor.”

010.01C To the extent that guaranteed contract liabilities are denominated in the currency of a foreign country and are supported by segregated portfolio assets denominated in the currency of the foreign country, the percentage deduction for these assets under ~~section~~ Subsection 010.01B shall be that for a substantially similar investment denominated in the currency of the United States.

010.01D To the extent that guaranteed contract liabilities are denominated in the currency of the United States and are supported by segregated portfolio assets denominated in the currency of a foreign country, and to the extent that guaranteed contract liabilities are denominated in the currency of a foreign country and are supported by segregated portfolio assets denominated in the currency of the United States, the deduction for debt instruments under 010.01B of this subsection shall be increased by fifteen percent (15%) of the market value of the assets unless the currency exchange risk on the assets has been adequately hedged, in which case the percentage deduction under 010.01B of this subsection shall be increased by one-half percent (.5%). No guaranteed contract liabilities denominated in the currency of a foreign country shall be supported by segregated portfolio assets denominated in the currency of another foreign country without the approval of the Director. For purposes of this paragraph, the currency exchange risk on an asset is deemed to be adequately hedged if:

010.01D(1) It is an obligation of

010.01D(1)(i) A jurisdiction that is rated in one of the two (2) highest rating categories by an independent nationally recognized United States rating agency acceptable to the Director;

010.01D(1)(ii) Any political subdivision or other governmental unit of such a jurisdiction, or any agency or instrumentality of jurisdiction, political subdivision or other governmental unit; or

010.01D(1)(iii) An institution that is organized under the laws of any such jurisdiction; and

010.01D(2) At all times the principal amount of the obligation and scheduled interest payments on the obligation are hedged against the United States dollar pursuant to contracts or agreements that are:

010.01D(2)(i) Issued by or traded on a securities exchange or board of trade regulated under the laws of the United States or Canada or a province of Canada;

010.01D(2)(ii) Entered into with a United States banking institution that has assets in excess of \$5 billion and that has obligations outstanding, or has a parent corporation that has obligations outstanding, that are rated in one of the two (2) highest rating categories by an independent, nationally recognized, United States rating agency, or with a broker-dealer registered with the Securities and Exchange Commission that has net capital in excess of \$250 million;  
or

010.01D(2)(iii) Entered into with any other banking institution that has assets in excess of \$5 billion and that has obligations outstanding, or has a parent corporation that has obligations outstanding, that are rated in one of the two (2) highest rating categories by an independent, nationally recognized, United States rating agency and that is organized under the laws of a jurisdiction that is rated in one of the two (2) highest rating categories by an independent, nationally recognized United States rating agency.

010.01E These contracts may provide for the allocation to one or more separate accounts of all or any portion of the amount needed to meet the asset maintenance requirement. If the contract provides that the assets in the separate account shall not be chargeable with liabilities arising out of any other business of the insurer, the insurer shall maintain in a distinct separate account that is so chargeable:

010.01E(1) That portion of the amount needed to meet the asset maintenance requirement that has been allocated to separate accounts; less

010.01E(2) The amounts contributed to separate accounts by the contractholder in accordance with the contract and the earnings on the contract.

010.01F For purposes of this section, the minimum value of guaranteed contract liabilities is defined to be the sum of the expected guaranteed contract benefits, each discounted at a rate corresponding to the expected time of payment of the contract benefit that is not greater than the spot rate supportable by the expected return from the segregated portfolio assets, and

in no event greater than the blended spot rate as described in the plan of operation (pursuant to Section 005) or the actuary's opinion and memorandum (pursuant to Subsection 010.02), except that if the expected time of payment of a contract benefit is more than thirty (30) years, it shall be discounted from the expected date of payment to year thirty (30) at a rate of no more than eighty percent (80%) of the thirty-year blended spot rate and from year thirty (30) to the date of valuation at a rate not greater than the thirty-year blended spot rate.

010.01G In calculating the minimum value of guaranteed contract benefits:

010.01G(1) All guaranteed benefits potentially available to the contractholder on an ongoing basis shall be considered in the valuation process and analysis, and the reserve held must be sufficient to fund the greatest present value of each independent guaranteed contract benefit. For purposes of this subparagraph, the right granted to the contractholder to exit the contract by discharging the insurer of its guarantee obligation under the contract and taking control of the assets in the segregated portfolio shall not be considered a guaranteed benefit.

010.01G(2) To the extent that future guaranteed cash flows are dependent upon the benefit responsiveness of an employer-sponsored plan, a best estimate based on company experience, or other reasonable criteria if company experience is not available, shall be used in the projections of future cash flows.

010.01G(3) The minimum value of guaranteed contract benefits under a contract issued to a pooled fund representing multiple employer-sponsored plans shall be determined so as to reflect projected plan sponsor contract value withdrawals available to the member plans in the pooled fund.

Projections of such future cash flows shall take into account (i) known plan sponsor withdrawals, and (ii) a prudent estimate of future plan sponsor withdrawals. The prudent estimate shall be based on company experience and other relevant criteria.

A single valuation rate shall be determined, consistent with Subsection 010.01F, equal to the lesser of:

010.01G(3)(i) The expected return from the segregated portfolio of assets, or

010.01G(3)(ii) The blended spot rate based on the duration of the segregated portfolio of assets.

This single valuation rate shall be used to model future market values of the segregated portfolio of assets. Future credited interest rates shall be modeled according to the contractually defined crediting rate formula. Modeled future contract values shall reflect modeled future market values, modeled future credited interest rates, known future plan sponsor withdrawals, the prudent estimate of future plan sponsor withdrawals, future withdrawals consistent with Subsection 010.01G(2) and any remaining final payment at the modeled contract termination date. All such modeled withdrawals and termination payments shall be discounted using the single valuation rate and the modeled times of those withdrawals and payments. The sum of these present values shall be deemed the minimum value of the guaranteed contract liabilities for a pooled fund contract.

010.02 Actuarial opinion and supporting memorandum for segregated portfolios governed by this regulation.

010.02A An insurer that issues a synthetic guaranteed investment contract subject to this regulation shall submit an actuarial opinion and, upon request, a supporting memorandum to the Director annually by March 1 following the December 31 valuation date showing the status of the accounts as of the prior December 31. For purposes of clarity, if an insurer submits to the Director an opinion and, if requested by the Director, a supporting memorandum in accordance with Title 210 Neb. Admin. Code § 69 that comply with the requirements set forth in Neb. Rev. Stat. § 44-8905, and such opinion and supporting memorandum collectively address the matters set forth in Subsections 010.02D, 010.02E and 010.02G, the insurer shall not be required to submit to the Director a separate actuarial opinion and supporting memorandum relating only to synthetic guaranteed investment contracts. The actuarial opinion and memorandum shall be in form and substance satisfactory to the Director.

010.02B The actuarial memorandum (or portion thereof) required by this regulation is deemed to be confidential to the same extent, and under the same conditions, as the actuarial memorandum required by Neb. Rev. Stat. § 44-8905.

010.02C Except in cases of fraud or willful misconduct, the valuation actuary shall not be liable for damages to any person (other than the insurance company and the Director) for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

010.02D The statement of actuarial opinion and/or supporting memorandum submitted in accordance with Subsection 010.02A shall consist of:

010.02D(1) A paragraph identifying the valuation actuary and his or her qualification;

010.02D(2) A scope paragraph identifying the subjects on which the opinion and/or memorandum is to be expressed and describing the scope of the valuation actuary's work;

010.02D(3) A reliance paragraph describing those areas, if any, where the valuation actuary has deferred to other experts in developing data, procedures or assumptions;

010.02D(4) An opinion paragraph expressing the valuation actuary's opinion with respect to the matters described in Subsections 010.02E(1) and (2) below; and

010.02D(5) One or more additional paragraphs may be needed in individual company cases as follows:

010.02D(5)(i) If the valuation actuary considers it necessary to state a qualification of his or her opinion;

010.02D(5)(ii) If the valuation actuary must disclose an inconsistency in the method of analysis used at the prior opinion date with that used for this opinion;

010.02D(5)(iii) If the valuation actuary chooses to add a paragraph briefly describing the assumptions which form the basis of the actuarial opinion.

010.02E Contents of the actuarial opinion or supporting memorandum paragraph of the actuarial opinion.

010.02E(1) The actuarial opinion or supporting memorandum shall include an asset adequacy analysis that measures the segregated portfolio assets, and the amount of any reserve liability with respect to the asset maintenance requirement, to determine whether the account assets make adequate provision for contract liabilities after taking into account any risk charge payable.

010.02E(2) The actuarial opinion or supporting memorandum shall also substantively state that:

010.02E(2)(i) Reserves for contract liabilities are calculated pursuant to the requirements of Subsection 010.01A;

010.02E(2)(ii) After taking into account any reserve liability with respect to the asset maintenance requirement, the amount of the account assets satisfied the asset maintenance requirement;

010.02E(2)(iii) The fixed-income segregated portfolio conformed to and justified the rates used to discount contract liabilities for valuation pursuant to Subsection 010.01F;

010.02E(2)(iv) Whether any rates used pursuant to Subsection 010.01F to discount guaranteed contract liabilities and other items applicable to the segregated portfolio were modified from the rate or rates described in the plan of operation filed pursuant to Section 005; and

010.02E(2)(v) The level of risk charges, if any, retained in the general account was appropriate in view of such factors as the nature of the guaranteed contract liabilities and losses experienced in connection with account contracts and other pricing factors.

010.02F The actuarial opinion and supporting memorandum shall be accompanied by a certificate of an officer of the insurance company responsible for monitoring compliance with the asset maintenance requirements for synthetic guaranteed investment contracts describing the extent to and manner in which, during the preceding year:

010.02F(1) Actual benefit payments conformed to the benefit payment estimated to be made as described in the plan of operation;

010.02F(2) The determination of the fair market value of the segregated portfolio conformed to the valuation procedures described in the plan of operation, including a statement of the procedures and sources used during the year; and

010.02F(3) Any assets were transferred to or from the insurer's general account, or any amounts were paid to the insurer by any contractholder to support the insurer's guarantee.

010.02G The actuarial memorandum supporting the actuarial opinion shall:

010.02G(1) Substantially conform with those portions of Title 210 Neb. Admin. Code § 69 that are applicable to asset adequacy testing and either:

010.02G(1)(i) Demonstrate the adequacy of account assets based upon cash flow analysis, or

010.02G(1)(ii) Explain why cash flow testing analysis is not appropriate, describe the alternative methodology of asset adequacy testing used, and demonstrate the adequacy of account assets under that methodology;

010.02G(2) Clearly describe the assumptions the valuation actuary used in support of the actuarial opinion, including any assumptions made in projecting cash flows under each class of assets, and any dynamic portfolio hedging techniques utilized and the tests performed on the utilization of the techniques;

010.02G(3) Clearly describe how the valuation actuary has reflected the cost of capital;

010.02G(4) Clearly describe how the valuation actuary has reflected the risk of default on obligations and mortgage loans, including obligations and mortgage loans that are not investment grade;

010.02G(5) Clearly describe how the valuation actuary has reflected withdrawal risks, if applicable, including a discussion of the positioning of the contracts within the benefit withdrawal priority order pertaining to the contracts, the impact of any dynamic lapse assumption and the results of sensitivity testing the prudent estimate of future plan sponsor withdrawals pursuant to Subsection 010.01G(3);

010.02G(6) If the plan of operation provides for investments in segregated portfolio assets other than United States government obligations, demonstrate that the rates used to discount contract liabilities pursuant to Subsection 010.01G conservatively reflect expected investment returns, taken into account any foreign exchange risks;

010.02G(7) If the contracts provide that in certain circumstances they would cease to be funded by a segregated portfolio and, instead would become contracts funded by the general account, clearly



describe how any increased reserves would be provided for if and to the extent these circumstances occurred;

010.02G(8) State the amount of account assets maintained in a separate account that are not chargeable with liabilities arising out of any other business of the insurance company;

010.02G(9) State the amount of reserves and supporting assets as of December 31 and where the reserves are shown in the annual statement;

010.02G(10) State the amount of any contingency reserve carried as part of surplus;

010.02G(11) State the market value of the segregated asset portfolio; and

010.02G(12) Where separate account assets are not chargeable with liabilities arising out of any other business of the insurance company, describe how the level of risk charges payable to the general account provides an appropriate compensation for the risk taken by the general account.

010.03 When the insurer issues a synthetic guaranteed investment contract and complies with the asset maintenance requirements of Subsection 010.01, it need not maintain an asset valuation reserve with respect to those account assets.

010.04 This section describes the reserve valuation requirements for contracts subject to this regulation.

010.04A Reserves for synthetic investment contracts subject to this regulation shall be an amount equal to the sum of the following:

010.04A(1) The amounts determined as the minimum reserve as required under Subsection 010.01A;

010.04A(2) Any additional amount determined by the insurer's valuation actuary as necessary to make adequate provision for all contract liabilities; and

010.04A(3) Any additional amount determined as necessary by the Director due to the nature of the benefits.

010.04B The amount of any reserves required by Subsection 010.04A may be established by either:

010.04B(1) Allocating sufficient assets to one or more separate accounts; or

010.04B(2) Setting up the additional reserves in the general account.

010011. Severability.

If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected.