

## **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 terms and conditions under which life insurance companies may issue 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.

#### 004. 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.

004.07 “Contract value record” means an accounting record, 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.

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 “Department” means the Nebraska Department of Insurance and any employee of the Department authorized to act on behalf of the Department.

004.10 “Director” means the Director of the Nebraska Department of Insurance.

004.11 “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..

004.12 “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 not 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.

004.15 "Investment guidelines" means the set of written guidelines established in advance by the person with investment authority over the segregated portfolio, to be followed by the investment manager. The guidelines will 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.

004.16 "Investment manager" means the person (including subcontractor) responsible for managing the assets in the segregated portfolio in accordance with the investment guidelines in a fiduciary capacity to the owner of the assets.

004.17 "Market value record" means an accounting record provided by the contract to reflect the fair market value of the segregated portfolio.

004.18 “Permitted custodial institution” means a bank, trust company or other licensed fiduciary services provider.

004.19 “Plan of operation” means a written plan meeting the requirements of Subsection 005.03A of this regulation.

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

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

004.22 “Segregated portfolio” means:

004.22A 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 Any 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.

## 005. Financial Requirements and Plan of Operation.

005.01 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 005.02 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 005.03 of this section with respect to that class of contracts.

005.02 An insurer will be financially qualified under this section if its most recent statutory financial statements on file with the Director 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.

005.03 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 Director, and the filing of the plan of operation has been approved.

005.03A The plan of operation for 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:

005.03A(1) 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;

005.03A(2) A statement describing the methods and procedures used to value statutory liabilities for purposes of Section 010;

005.03A(3) A description of the criteria used by the insurer in approving the investment manager for the segregated portfolio of assets associated with a contract in the class, if the investment manager is an entity other than the insurer or its wholly owned subsidiary;

005.03A(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 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;

005.03A(5) 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 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 be the greater of five (5) years or the minimum period the insurer must underwrite the risk;

005.03A(6) 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;

005.03A(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) 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;

005.03A(10) 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.

005.03B 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.

005.04 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 in accordance with the requirements of Subsection 005.03.

006. Required Contract Provisions and Filing Requirements.

006.01 A contract may not be delivered or issued for delivery in this state unless the contract satisfies the requirements of Subsection 006.02 of this section and the issuing insurer has satisfied the requirements of Subsection 006.03 of this section with respect to the contract.

006.02 The contract shall:

006.02A 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;

006.02B 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;

006.02C Provide the insurer will receive prior notice of and the right to approve any appointment or change of investment managers;

006.02D Give a description of how the contract value record will be determined and, where applicable, adjusted by a crediting rate formula;

006.02E State the maximum rate period between crediting rate formula recalculations that will be permitted, if any;

006.02F 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;

006.02G Clearly identify all circumstances under which insurer payments or advances to the contractholder are to be made;

006.02H Clearly identify the types of withdrawals made on a market value basis;

006.02I Provide 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

006.02J 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.”

006.03 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 Director and it is accompanied by the items specified in 006.03A, 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.

006.03A The form of contract filed for approval shall be accompanied by a statement that the contract meets the conditions of Subsection 006.02 of this section.

006.03B The form of contract filed for approval shall be accompanied by a statement:

006.03B(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, crediting rate formula and termination events;

006.03B(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;

006.03B(3) Describing the 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

006.03B(4) Listing events that give the insurer the right to unilaterally and immediately terminate the contract.

006.03C In the case that the plan of operation pertaining to the class of contracts to which the contract belongs:

006.03C(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.

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 be accompanied by a statement indicating that the issuing insurer has met the requirements for deemed approval.

006.03C(3) 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.

006.04 The 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.

006.05 The Director may withdraw an approval of a contract form on any basis that would have justified initial disapproval. The 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 to determine the reasonableness of the Director's action. The hearing shall be held within 30 days of the request.

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

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

007.02 The investment guidelines shall be submitted to 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.

008. Purchase of Annuities.

For contracts that are group annuity contracts, and that make available to the contractholder the purchase of immediate or deferred annuities for the benefit of individual members of the group, an annuity may not be purchased without the delivery of the contractually-agreed upon 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.

009. Unilateral Contract Terminations.

009.01 A contract subject to this regulation shall allow the insurer to unilaterally and immediately terminate, 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:

009.01A 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;

009.01B 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;

009.01C 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

009.01D 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.

010. Reserves.

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 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 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 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 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 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.

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:

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.

## 011. 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.