WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY W.Va. Code §§33-2-10 and 33-13A-4

AMENDMENT TO AN EXISTING RULE: YES__ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 11D

TITLE OF RULE BEING PROPOSED: Variable Life Insurance

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

#8.60

Insurance Commissioner
Legislative Rule
Title 114, Series 11D

VARIABLE LIFE INSURANCE

TITLE 114, SERIES 11D

BRIEF SUMMARY OF RULE

A "variable life policy" provides life insurance for which the amount or duration varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to that policy. The rule, which is based on a National Associate of Insurance Commissioners' model, is a comprehensive regulation of companies and agents (producers) that sell such policies. It covers the qualifications of companies, what must be included in such policies, the reserve requirements applicable to the companies, how separate accounts are governed and what information must be furnished to applicants for such a policy. It also requires the insurer to annually disclose to the policyholder certain information pertaining to the policy, such as the cash surrender value. The rule also has provisions for qualifications of agents.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER
ATTN: Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

LEGISLATIVE RULE TITLE: Variable Life Insurance, Title 114, Seris 11D

1. **Authorizing statute(s) citation:**

   WV Code §§33-2-10 & 33-13A-4

2. a. **Date filed in State Register with Notice of Hearing or Public Comment Period:**

   May 26, 2009 - Comment Period.

   b. **What other notice, including advertising, did you give of the hearing?**

   N/A

   c. **Date of Public Hearing(s) or Public Comment Period ended:**

   June 25, 2009. - End of Comment Period.

   d. **Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.**

   Attached ___X___ **No comments received** _____

   e. **Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)**

f. Name, title, address and <u>phone/fax/e-mail numbers</u> of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Timothy R. Murphy, Associate Counsel
West Virginia Insurance Commission
Legal Division
P.O. Box 50540
Charleston, WV 25305-0540
Phone: (304) 558-6279, Ext. 1210
Fax: (304) 558-1362
E-mail: timothy.murphy@wvinsurance.gov

g. <u>IF DIFFERENT</u> FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Same.

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

N/A

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

N/A

Timothy Murphy

From: Leah Walters [LeahWalters@acli.com]

Sent: Thursday, June 25, 2009 6:38 PM

To: Victor Mullins

Cc: Timothy Murphy

Subject: Legislative Rules

Mr. Mullins, these comments are submitted on behalf of the American Council of Life Insurers, a national trade association representing 340 member companies operating in the United States which account for 93% of total life insurance company assets, 94% of the life insurance premiums, and 94% of annuity considerations.

The ACLI commends and thanks the WV Insurance Department for proposing the following legislative rules: Rule 114-89 (Use of Senior-Specific Certification and Designations); Rule 114-11E (Annuity Disclosure) and Rule 114-11D (Variable Life Insurance).

In 2005, ACLI's Board of Directors committed to improving the annuity environment. Part of that process was to start encouraging all states to adopt the NAIC Annuity Disclosure Model Regulation. When this Model is adopted in conjunction with the NAIC Suitability Model Regulation and the NAIC Senior Specific Certification and Designation Model Regulation, consumers are offered the greatest protections and disclosures when considering the purchase of an annuity product.

Again, ACLI commends the WV Insurance Department for proposing these NAIC Model Regulations and we also appreciate that the Department is adopting these model regulations word for word. Uniformity among the states is critical to both insurers and producers as they offer these products to consumers.

Thank you for the opportunity to provide comments on these very important consumer protection rules.

Leah J. Walters
American Council of Life Insurers | Financial Security. For Life.
Regional Vice President, State Relations
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Insurance Commissioner
Title 114, Series 11D

ATTACHEMENT TO QUESTION 2 (d):

Only one comment was received by The American Council of Life Insurers (ACLI). ACLI commended and thanked the Insurance Commissioner for amending the rule to track the NAIC model and thereby bringing West Virginia into conformity with a majority of states. No changes to the proposed rule were suggested.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Variable Life Insurance (Title 114 - Series 11D)

Type of Rule: X Legislative ____ Interpretive ____ Procedural ____ Emergency

Agency: Insurance Commissioner

Address: Post Office Box 50540

1124 Smith Street, Greenbrooke Building

Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: Victor.Mullins@wvinsurance.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule will have no additional fiscal impact upon state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	N/A	N/A	N/A
Personal Services	N/A	N/A	N/A
Current Expenses	N/A	N/A	N/A
Repairs & Alterations	N/A	N/A	N/A
Assets	N/A	N/A	N/A
Other	N/A	N/A	N/A
2. Estimated Total Revenues	N/A	N/A	N/A

Rule Title: Variable Life Insurance (Title 114 - Series 11D)

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: May 26, 2009

Signature of Agency Head or Authorized Representative

Timothy Murphy, Associate Counsel

TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 11D
VARIABLE LIFE INSURANCE

Section

114-11D-1. General.

114-11D-2. Definitions

114-11D-3. Qualification of Insurer to Issue Variable Life Insurance .

114-11D-4. Insurance Policy Requirements.

114-11D-5. Reserve Liabilities for Variable Life Insurance.

114-11D-6. Separate Accounts.

114-11D-7. Information Furnished to Applicants.

114-11D-8. Applications.

114-11D-9. Annual Report to Policyholders and Certificate Holders.

114-11D-10. Foreign Companies.

Insurance Commissioner
Legislative Rule
Title 114, Series 11D

VARIABLE LIFE INSURANCE

TITLE 114, SERIES 11D

STATEMENT OF CIRCUMSTANCES

For the past several years, a delegate has expressed interest in enacting legislation requiring insurers that issue variable life insurance policies to provide their policyholders with an annual report. After the Offices of the Insurance Commissioner ("OIC") drafted a rule that addressed only the disclosure to policyholders on an annual basis, a major industry trade group (ACLI - American Council of Life Insurers) recommended that the entire NAIC model on which the proposed rule was based be adopted. ACLI suggested that the model provided significant consumer protections that went hand in hand with other recent OIC rules aimed at the life and annuity companies. The Commissioner decided that the comprehensive approach provided by the rule was a more appropriate response to the issue.

TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 11D
VARIABLE LIFE INSURANCE

§114-11D-1. General.

1.1. Scope. -- The purpose of this rule is to ensure that a policyholder is provided with a thorough disclosure concerning the operation of his or her variable life insurance policy and with current, reliable information concerning the status of his or her variable life insurance coverage. This rule is based on the National Association of Insurance Commissioner's "Variable Life Insurance Model Regulation," (Model 270), as amended in 1983.

1.2. Authority. -- W. Va. Code §§33-2-10 and 33-13A-4.

1.3. Filing Date. --

1.4. Effective Date. --

§114-11D-2. Definitions.

2.1. "Affiliate" of an insurer means a person, directly or indirectly, controlling, controlled by, or under common control with the insurer; a person who regularly furnishes investment advice to the insurer with respect to its separate accounts for which a specific fee or commission is charged; or any director, officer, partner or employee of the insurer, controlling or controlled person, or person providing investment advice or any member of the immediate family of such person.

2.2. "Assumed investment rate" means the rate of investment return that would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.

2.3. "Benefit base" means the amount to which the net investment return is applied.

2.4. "Commissioner" means the West Virginia insurance commissioner.

2.5. "Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing more than ten percent (10%) of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the Commissioner that control does not exist in fact. The Commissioner may determine, after furnishing to all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

2.6. "Flexible premium policy " means any variable life insurance policy other than a scheduled premium policy under which both the amount and timing of premium payments are fixed by the insurer.

2.7. "General account" means all assets of the insurer other than assets in separate accounts established pursuant W. Va. Code §33-13A-1 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

2.8. "Incidental insurance benefit" means all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including but not limited to, accidental death and dismemberment benefits, disability benefits, guaranteed insurability options, family income or term riders.

2.9. "Minimum death benefit" means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.

2.10. "Net investment return" means the rate of investment return in a separate account to be applied to the benefit base.

2.11. "Person" means an individual, corporation, partnership, association, trust or fund.

2.12. "Policy processing day" means the day on which charges authorized in the policy are deducted from the policy's cash value.

2.13. "Producer" means a person, corporation, partnership or other legal entity that is

licensed by this state as a life insurance producer.

2.14. "Scheduled premium policy" means a variable life insurance policy under which both the amount and timing of premium payments are fixed by the insurer.

2.15. "Separate account" means a separate account established pursuant to W. Va. Code §33-13A-1 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

2.16. "Variable death benefit" means the amount of the death benefit, other than incidental insurance benefits, payable under a variable life insurance policy dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of any minimum death benefit.

2.17. "Variable life insurance policy" means an individual policy that provides for life insurance the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to the policy, pursuant to W. Va. Code §33-13A-1 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

§114-11D-3. Qualification of Insurer to Issue Variable Life Insurance.

3.1. The requirements of this section are applicable to all insurers either seeking authority to issue variable life insurance in this state or having authority to issue variable life insurance in this state.

3.2. Licensing and Approval to do Business in This State. An insurer shall not deliver or issue for delivery in this state any variable life insurance policies unless:

a. The insurer is licensed or organized to do a life insurance business in this state;

b. The insurer has obtained the written approval of the Commissioner for the issuance of variable life insurance policies in this state. The Commissioner shall grant written approval only after the Commissioner has found that:

1. The plan of operation for the issuance of variable life insurance policies is not unsound;

2. The general character, reputation and experience of the management

and those persons or firms proposed to supply consulting, investment, administrative or custodial services to the insurer are such as to reasonably assure competent operation of the variable life insurance business of the insurer in this state; and

3. The present and foreseeable future financial condition of the insurer and its method of operation in connection with the issuance of such policies is not likely to render its operation hazardous to the public or its policyholders in this state. The Commissioner shall consider, among other things:

A. The history of operation and financial condition of the insurer;

B. The qualifications, fitness, character, responsibility, reputation and experience of the officers and directors and other management of the insurer and those persons or firms proposed to supply consulting, investment, administrative or custodial services to the insurer;

C. The applicable law and regulations under which the insurer is authorized in its state of domicile to issue variable life insurance policies. The state of entry of an alien insurer shall be deemed its state of domicile for this purpose; and

D. If the insurer is a subsidiary of, or is affiliated by common management or ownership with another company, its relationship to such other company and the degree to which the requesting insurer, as well as the other company, meets these standards.

3.3. Filing for Approval to do Business in This State. The Commissioner may, at his or her discretion, require that an insurer, before it delivers or issues for delivery any variable life insurance policy in this state, file with the Commissioner the following information for the consideration of the Commissioner in making the determination required by subdivision b, subsection 3.2 of this section:

a. Copies of and a general description of the variable life insurance policies it intends to issue;

b. A general description of the methods of operation of the variable life insurance business of the insurer, including methods of distribution of policies and the names of those persons or firms proposed to supply consulting, investment, administrative, custodial or distribution services to the insurer;

c. With respect to any separate account maintained by an insurer for a variable

life insurance policy, a statement of the investment policy the issuer intends to follow for the investment of the assets held in the separate account and a statement of procedures for changing the investment policy. The statement of investment policy shall include a description of the investment objectives intended for the separate account;

d. A description of any investment advisory services contemplated as required by subsection 6.9 of this rule;

e. A copy of the statutes and regulations of the state of domicile of the insurer under which it is authorized to issue variable life insurance policies;

f. Biographical data with respect to officers and directors of the insurer on the National Association of Insurance Commissioners Uniform Biographical Data Form; and

g. A statement of the insurer's actuary describing the mortality and expense risks which the insurer will bear under the policy.

3.4. Standards of Suitability. Every insurer seeking approval to enter into the variable life insurance business in this state shall establish and maintain a written statement specifying the standards of suitability to be used by the insurer. The standards of suitability shall specify that no recommendation shall be made to an applicant to purchase a variable life insurance policy and that no variable life insurance policy shall be issued in the absence of reasonable grounds to believe that the purchase of the policy is not unsuitable for the applicant on the basis of information furnished after reasonable inquiry of the applicant concerning the applicant's insurance and investment objectives, financial situation and needs, and any other information known to the insurer or the producer making the recommendation.

3.5. Use of Sales Materials. An insurer authorized to transact variable life insurance business in this state shall not use any sales material, advertising material or descriptive literature or other materials of any kind in connection with its variable life insurance business in this state which is false, misleading, deceptive or inaccurate. Variable life insurance sales material, advertising material and descriptive literature shall be subject to the additional requirements of W. Va. Code of St. R. §114 CSR 11.

3.6. Requirements Applicable to Contractual Services. Any material contract between an insurer and suppliers of consulting, investment, administrative, sales, marketing, custodial or other services with respect to variable life insurance operations shall be in writing and provide that the supplier of such services shall furnish the Commissioner with any information or reports in connection with the services which the Commissioner may request in order to ascertain whether the variable life insurance operations of the insurer are being conducted in a manner

consistent with these rules, and any other applicable law or rules.

3.7. Reports to the Commissioner.

a. An insurer authorized to transact the business of variable life insurance in this state shall submit to the Commissioner, in addition to any other materials that may be required by this rule or any other applicable laws or rules:

1. An annual statement of the business of its separate account or accounts in such forms as may be prescribed by the National Association of Insurance Commissioners; and

2. Prior to the use in this state any information furnished to applicants as provided for in section 7 of this rule; and

3. Prior to the use in this state the form of any of the reports to policyholders as provided for in section 9 of this rule; and

4. Such additional information concerning its variable life insurance operations or its separate accounts as the Commissioner shall deem necessary.

b. Any material submitted to the Commissioner under this section shall be disapproved if it is found to be false, misleading, deceptive or inaccurate in any material respect and, if previously distributed, the Commissioner shall require the distribution of amended material.

3.8. Authority of Commissioner to Disapprove. Any material required to be filed with and approved by the Commissioner is subject to disapproval if at any time it is found by him or her not to comply with the standards established in this rule.

§114-11D-4. Insurance Policy Requirements.

4.1. Policy Qualification. The Commissioner shall not approve any variable life insurance form filed pursuant to this rule unless it conforms to the requirements of this section.

4.2. Filing of Variable Life Insurance Policies. All variable life insurance policies, and all riders, endorsements, applications and other documents that are to be attached to be made a part of the policy and which relate to the variable nature of the policy, shall be filed with the Commissioner and approved by him or her prior to delivery or issuance for delivery in this state.

a. The procedures and requirements for filing and approval shall be, to the extent appropriate and not inconsistent with this rule, the same as those otherwise applicable to other life insurance policies.

b. The Commissioner may approve variable life insurance policies and related forms with provisions the Commissioner deems to be not less favorable to the policyholder and the beneficiary than those required by this rule.

4.3. Mandatory Policy Benefit and Design Requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements.

a. Mortality and expense risks shall be borne by the insurer. The mortality and expense charges shall be subject to the maximums stated in the contract.

b. For scheduled premium policies, a minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid (subject to the provisions of subsection 4.5 of this section);

c. The policy shall reflect the investment experience of one or more separate accounts established and maintained by the insurer. The insurer shall demonstrate that the reflection of investment experience in the variable life insurance policy is actuarially sound.

d. Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.

e. Any changes in variable death benefits of each variable life insurance policy shall be determined at least annually.

f. The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other nonforfeiture benefits, as described either in the policy or in a statement filed with the commissioner of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation shall be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values to the minimum values required by W. Va. Code §33-13-30 for a general account policy with such premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under the Standard Nonforfeiture Law of this state. If the policy does not contain an assumed investment rate this

demonstration shall be based on the maximum interest rate permitted under the Standard Nonforfeiture Law. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

g. The computation of values required for each variable life insurance policy may be based upon such reasonable and necessary approximations as are acceptable to the Commissioner.

4.4. Mandatory Policy Provisions. Every variable life insurance policy filed for approval in this state shall contain at least the following:

a. The cover page or pages corresponding to the cover page of each policy shall contain:

1. A prominent statement in either contrasting color or in bold-faced type that the amount or duration of death benefit may be variable or fixed under specified conditions;

2. A prominent statement in either contrasting color or in bold-faced type that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;

3. A statement describing any minimum death benefit required pursuant to subdivision b, subsection 4.3 of this section;

4. The method, or a reference to the policy provision which describes the method, for determining the amount of insurance payable at death;

5. To the extent permitted by state law, a captioned provision that the policyholder may return the variable life insurance policy within ten (10) days of receipt of the policy by the policyholder and receive a refund equal to the sum of the difference between the premiums paid including any policy fees or other charges and the amounts allocated to any separate accounts under the policy and the value of the amounts allocated to any separate accounts under the policy, on the date the returned policy is received by the insurer or its producer. Until such time as state law authorizes the return of payments as calculated in the preceding sentence, the amount of the refund shall be the total of all premium payments for such policy; and

6. Such other items as are currently required for fixed benefit life insurance policies and which are not inconsistent with this rule.

b. 1. For scheduled premium policies, a provision for a grace period of not less than thirty-one (31) days from the premium due date which shall provide that when the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date.

2. For flexible premium policies, a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amounts available under the policy to pay such charges in accordance with the terms of the policy. The grace period shall end on a date not less than sixty-one (61) days after the mailing date of the Report to Policyholders required by subdivision c, subsection 9.1 of this rule.

3. The death benefit payable during the grace period will equal the death benefit in effect immediately prior to such period less any overdue charges. If the policy processing days occur monthly, the insurer may require the payment of not more than three (3) times the charges that were due on the policy processing day on which the amounts available under the policy were insufficient to pay all charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day.

c. For scheduled premium policies, a provision that the policy will be reinstated at any time within three (3) years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

1. All overdue premiums with interest at a rate not exceeding six percent (6%) per annum compounded annually and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding six percent (6%) per annum compounded annually; or

2. One hundred ten percent (110%) of the increase in cash value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding six percent (6%) per annum compounded annually.

d. A full description of the benefit base and of the method of calculation and

application of any factors used to adjust variable benefits under the policy;

e. A provision designating the separate account to be used and stating that:

1. The assets of the separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account.

2. The assets of the separate account shall be valued at least as often as any policy benefits vary but at least monthly.

f. A provision specifying what documents constitute the entire insurance contract under state law;

g. A designation of the officers who are empowered to make an agreement or representation on behalf of the insurer and an indication that statements by the insured, or on his or her behalf, shall be considered as representations and not warranties;

h. An identification of the owner of the insurance contract;

i. A provision setting forth conditions or requirements as to the designation, or change of designation, of a beneficiary and a provision for disbursement of benefits in the absence of a beneficiary designation;

j. A statement of any conditions or requirements concerning the assignment of the policy;

k. A description of any adjustments in policy values to be made in the event of misstatement of age or sex of the insured;

l. A provision that the policy shall be incontestable by the insurer after it has been in force for two (2) years during the lifetime of the insured. However, any increase in the amount of the policy's death benefits subsequent to the policy issue date, which occurred upon a new application or request of the owner and was subject to satisfactory proof of the insured's insurability, shall be incontestable after the increase has been in force, during the lifetime of the insured, for two (2) years from the date of issue of increase;

m. A provision stating that the investment policy of the separate account shall not be changed without the approval of the insurance commissioner of the state of domicile of the

insurer, and that the approval process is on file with the Commissioner;

n. A provision that payment of variable death benefits in excess of any minimum death benefits, cash values, policy loans or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:

1. For up to six (6) months from the date of request, if the payments are based on policy values which do not depend on the investment performance of the separate account; or

2. Otherwise, for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical;

o. If settlement options are provided, at least one option shall be provided on a fixed basis only;

p. A description of the basis for computing the cash value and the surrender value under the policy shall be included;

q. Premiums or charges for incidental insurance benefits shall be stated separately;

r. Any other policy provision required by this rule;

s. Such other items as are currently required for fixed benefit life insurance policies and are not inconsistent with this rule; and

t. A provision for nonforfeiture insurance benefits. The insurer may establish a reasonable minimum cash value below which any nonforfeiture insurance options will not be available.

4.5. Policy Loan Provisions. Every variable life insurance policy, other than term insurance policies and pure endowment policies delivered or issued for delivery in this state shall contain provisions which are not less favorable to the policyholder than a provision for policy loans after the policy has been in force for two (2) full years which provides the following:

a. At least seventy-five percent (75%) of the policy's cash surrender value may be borrowed.

b. The amount borrowed shall bear interest at a rate not to exceed that permitted by state insurance law.

c. Any indebtedness shall be deducted from the proceeds payable on death.

d. Any indebtedness shall be deducted from the cash surrender value upon surrender or in determining any nonforfeiture benefit.

e. For scheduled premium policies, whenever the indebtedness exceeds the cash surrender value, the insurer shall give notice of any intent to cancel the policy if the excess indebtedness is not repaid within thirty-one (31) days after the date of mailing of notice. For flexible premium policies, whenever the total charges authorized by the policy that are necessary to keep the policy in force until the next following policy processing day exceed the amounts available under the policy to pay the charges, a report must be sent to the policyholder containing the information specified by subdivision c, subsection 9.1 of this rule.

f. The policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase the variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding one hundred ten percent (110 %) of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request.

g. The policy may specify a reasonable minimum amount that may be borrowed at any time but the minimum shall not apply to any automatic premium loan provision.

h. No policy loan provision is required if the policy is under extended insurance nonforfeiture option.

i. The policy loan provisions shall be constructed so that variable life insurance policyholders who have not exercised such provisions are not disadvantaged by the exercise thereof.

j. Amounts paid to the policyholders upon the exercise of any policy loan provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment except that a stock insurer may provide the amounts for policy loans from the general account.

4.6. Other Policy Provisions. The following provision may in substance be included in a variable life insurance policy or related form delivered or issued for delivery in this state:

a. An exclusion for suicide within two (2) years of the issue date of the policy; provided, however, that to the extent of the increased death benefits only, the policy may provide an exclusion for suicide within two (2) years of any increase in death benefits which result from an application of the owner subsequent to the policy issue date;

b. Incidental insurance benefits may be offered on a fixed or variable basis;

c. Policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, such policies may offer the following dividend options:

1. The amount of the dividend may be credited against premium payments;

2. The amount of the dividend may be applied to provide amounts of additional fixed or variable benefit life insurance;

3. The amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

4. The amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance;

5. The amount of the dividend may be deposited as a variable deposit in a separate account.

d. A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans under subsection 4.5 of this section, except that a restriction that no more than two (2) consecutive premiums can be paid under this provision may be imposed;

e. A provision allowing the policyholder to make partial withdrawals; and

f. Any other policy provision approved by the Commissioner.

§114-11D-5. Reserve Liabilities For Variable Life Insurance.

5.1. Reserve Liabilities Under Standard Valuation Law. Reserves liabilities for variable life insurance policies shall be established under W. Va. Code §33-7-9 in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

5.2. Reserve Liabilities for the Guaranteed Minimum Death Benefit. Reserve liabilities for the guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and shall be maintained in the general account of the insurer and shall not be less than the greater of the following minimum reserves:

a. The aggregate total of the term costs, if any, covering a period of one full year from the valuation date or, if less, covering the period provided for in the guarantee not otherwise provided for by the reserves held in the separate account, on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets in the separate account followed by a net investment return equal to the assumed investment rate; or

b. The aggregate total of the "attained age level" reserves on each variable life insurance contract. The "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall equal the "residue," as described in paragraph 1of this subdivision, of the prior year's "attained age level" reserve on the contract, with any such "residue," increased or decreased by a payment computed on an attained age basis as described in paragraph 2 of this subdivision.

1. The "residue" of the prior year's "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall be determined by adding interest at the valuation interest rate to the prior year's reserve, deducting the tabular claims based on the "excess," if any, of the guaranteed minimum death benefit over the death benefit that would be payable in the absence of a guarantee, and dividing the net result by the tabular probability of survival. The "excess" referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.

2. The payment referred to in this paragraph shall be computed so that the present value of a level payment of that amount each year over the future period for which charges for this risk will be collected under the contract, is equal to (A) minus (B) minus (C), where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future death benefits that would be payable in the absence of such guarantee, and (C) is any "residue," as described in paragraph 1 of this subdivision, of the prior year's "attained age level" reserve on such variable life insurance contract. If no future charges for this risk will be collected under the contract, the payment shall equal (A) minus (B) minus (C). The amounts of the future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate or the valuation interest but in no event may exceed the maximum interest rate permitted for the

valuation of life contracts.

c. The valuation interest rate and mortality table used in computing the two minimum reserves described in subdivision a and b of this subsection shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserves, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

5.3. Incidental Insurance Benefit. Reserve liabilities for all fixed incidental insurance benefits and any guarantees associated with variable incidental insurance benefits shall be maintained in the general account and reserve liabilities for all variable aspects of the variable incidental insurance benefits shall be maintained in a separate account, in amounts determined in accordance with the actuarial procedures appropriate to the benefit.

114-11D-6. Separate Accounts.

6.1. The requirements of this section apply to the establishment and administration of variable life insurance separate accounts by a domestic insurer.

6.2. Establishment and Administration of Separate Accounts. A domestic insurer issuing variable life insurance shall establish one or more separate accounts pursuant to W. Va. Code §33-13A-1.

a. If no law or other regulation provides for the custody of separate account assets and if the insurer is not the custodian of the separate account assets, all contracts for custody of these assets shall be in writing and the Commissioner shall have authority to review and approve of both the terms of the contract and the proposed custodian prior to the transfer of custody.

b. The insurer shall not without prior written approval of the Commissioner employ in any material connection with the handling of separate account assets any person who:

1. Within the last ten (10) years has been convicted of any felony or a misdemeanor arising out of such person's conduct involving embezzlement, fraudulent conversion, or misappropriation of funds or securities or involving violation of Sections 1341, 1342 or 1343 of Title 18, United States Code; or

2. Within the last ten (10) years has been found by any state regulatory authority to have violated or has acknowledged violation of any provision of any state insurance law involving fraud, deceit or knowing misrepresentation; or

3. Within the last ten (10) years has been found by federal or state regulatory authorities to have violated or has acknowledged violation of any provision of federal or state securities laws involving fraud, deceit or knowing misrepresentation.

c. All persons with access to the cash, securities, or other assets of the separate account shall be under bond in the amount of not less than $25,000.

d. The assets of separate accounts shall be valued at least as often as variable benefits are determined but in any event at least monthly.

6.3. Amounts in the Separate Account. The insurer shall maintain in each separate account assets with a value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for these policies.

6.4. Investments by the Separate Account.

a. No sale, exchange, or other transfer of assets may be made by an insurer or any of its affiliates between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

1. In case of transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the policies with respect to the separate account to which the transfer is made; and

2. The transfer, whether into or from a separate account, is made by a transfer of cash; but other assets may be transferred if approved by the Commissioner in advance.

b. The separate account shall have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under policies funded by the account.

6.5. Limitations on Ownership.

a. A separate account shall not purchase or otherwise acquire the securities of an issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after the purchase or acquisition the value of the investment, together with prior investments of the account in the security valued as required by these rules, would exceed ten percent (10%) of the value of the assets of the separate account. The Commissioner may waive this limitation in writing if the Commissioner believes the waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

b. No separate account shall purchase or otherwise acquire the voting securities of any issuer if as a result of the acquisition the insurer and its separate accounts in the aggregate, will own more than ten percent (10%) of the total issued and outstanding voting securities of the issuer. The Commissioner may waive this limitation in writing if he or she believes the waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state or jeopardize the independent operation of the issuer of these securities.

c. The percentage limitation specified in subdivision a of this subsection shall not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940 or other pools of investment assets if the investments and investment policies of such investment companies or asset pools comply substantially with the provisions of subsection 6.4 of this section and other applicable portions of this rule.

6.6. Valuation of Separate Account Assets. Investments of the separate account shall be valued at their market value on the date of valuation, or at amortized cost if it approximates market value.

6.7. Separate Account Investment Policy. The investment policy of a separate account operated by a domestic insurer filed under subdivision c, subsection 3.3 of this rule shall not be changed without first filing the change with the Commissioner.

a. Any change filed pursuant to this section shall be effective sixty (60) days after the date it was filed with the Commissioner, unless the Commissioner notifies the insurer before the end of the sixty-day period of his or her disapproval of the proposed change. At any time the Commissioner may, after notice and public hearing, disapprove any change that has become effective pursuant to this section.

b. The Commissioner may disapprove the change if he or she determines that the change would be detrimental to the interests of the policyholders participating in the separate accounts.

6.8. Charges Against Separate Account. The insurer shall disclose in writing, prior to or contemporaneously with delivery of the policy, all charges that may be made against the separate account, including, but not limited to, the following:

a. Taxes or reserves for taxes attributable to investment gains and income of the separate account;

b. Actual cost of reasonable brokerage fees and similar direct acquisition and sale

costs incurred in the purchase or sale of separate account assets;

c. Actuarially determined costs of insurance (tabular costs) and the release of separate account liabilities;

d. Charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account;

e. A charge, at a rate specified in the policy, for mortality and expense guarantees;

f. Any amounts in excess of those required to be held in the separate accounts; and

g. Charges for incidental insurance benefits.

6.9. Standards of Conduct. Every insurer seeking approval to enter into the variable life insurance business in this state shall adopt by formal action of its board of directors a written statement specifying the standards of conduct of the insurer, its officers, directors, employees and affiliates with respect to the purchase or sale of investments of separate accounts. The standards of conduct shall be binding on the insurer and those to whom it refers. A code or codes of ethics meeting the requirements of Section 17j under the Investment Company Act of 1940 and its applicable rules and regulations shall satisfy the provisions of this section.

6.10. Conflicts of Interest. Rules under any provision of the insurance laws of this state or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee or other similar body.

6.11. Investment Advisory Services to a Separate Account.

a. An insurer shall not enter into a contract under which any person undertakes, for a fee, to regularly furnish investment advice to such insurer with respect to its separate accounts maintained for variable life insurance policies unless:

1. The person providing advice is registered as an investment adviser under the Investment Advice Act of 1940; or

2. The person providing advice is an investment manager under the

Employee Retirement Income Security Act of 1974 with respect to the assets of each employee benefit plan allocated to the separate account; or

3. The insurer has filed with the Commissioner and continues to file annually the following information and statements concerning the proposed advisor:

A. The name and form of organization, state of organization, and its principal place of business;

B. The names and addresses of its partners, officers, directors and persons performing similar functions or, if the investment advisory is an individual, of the individual;

C. A written standard of conduct complying in substance with the requirements of subsection 6.7 of this section which has been adopted by the investment advisor and is applicable to the investment advisor, its officers, directors, and affiliates;

D. A statement provided by the proposed advisor as to whether the advisor or any person associated therewith:

1. Has been convicted within ten (10) years of a felony or misdemeanor arising out of the person's conduct as an employee, salesman, officer or director of an insurance company, a banker, an insurance producer, a securities broker or an investment advisor involving embezzlement, fraudulent conversion or misappropriation of funds or securities, or involving the violation of Sections 1341, 1342, or 1343 of Title 18 of United States Code;

2. Has been permanently or temporarily enjoined by an order, judgment or decree of a court of competent jurisdiction from acting as an investment advisor, underwriter, broker or dealer, or as an affiliated person or as an employee of an investment company, bank or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity;

3. Has been found by federal or state regulatory authorities to have willfully violated or have acknowledged willful violation of any provision of federal or state securities laws or state insurance laws or of any rule or regulation under these laws; or

4. Has been censured, denied an investment advisor registration, had a registration as an investment advisor revoked or suspended, or been barred or suspended from being associated with an investment advisor by order of federal or state

regulatory authorities; and

4. The investment advisory contract shall be in writing and provide that it may be terminated by the insurer without penalty to the insurer or the separate account upon no more than sixty (60) days' written notice to the investment advisor.

b. The Commissioner may, after notice and opportunity for hearing, by order require the investment advisory contract to be terminated if the Commissioner deems continued operation under the contract to be hazardous to the public or the insurer's policyholders.

§114-11D-7. Information Furnished to Applicants.

7.1. An insurer delivering or issuing for delivery in this state a variable life insurance policy shall deliver the following to the applicant for the policy, and obtain a written acknowledgment of receipt from the applicant coincident with or prior to the execution of the application. The requirements of this section shall be deemed to have been satisfied to the extent that a disclosure containing information required by this section is delivered, either in the form of a prospectus included in the requirements of the Securities Act of 1933 and which was declared effective by the Securities and Exchange Commission; or all information and reports required by the Employee Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to Section 3(a)(2) thereof.

a. A summary explanation, in non-technical terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors that affect the variation. The explanation shall include notices of the provision required by paragraph 5, subdivision a, subsection 4.4 and subdivision f, subsection 4.4 of this rule;

b. A statement of the investment policy of the separate account, including:

1. A description of the investment objectives intended for the separate account and the principal types of investments intended to be made; and

2. Any restrictions or limitations on the manner in which the operations of the separate account are intended to be conducted;

c. A statement of the net investment return of the separate account for each of the last ten (10) years or such lesser period as the separate account has been in existence;

d. A statement of the charges levied against the separate account during the

previous year;

e. A summary of the method to be used in valuing assets held by the separate account;

f. A summary of the federal income tax aspects of the policy applicable to the insured, the policyholder and the beneficiary; and

g. Illustrations of benefits payable under the variable life insurance contract. The illustrations shall be prepared by the insurer and shall not include projections of past investment experience into the future or attempted predictions of future investments experience, provided that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that the assumed rates are hypothetical only.

§114-11D-8. Applications.

8.1. The application for a variable life insurance policy shall contain:

a. A prominent statement that the death benefit may be variable or fixed under specified conditions;

b. A prominent statement that cash values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees); and

c. Questions designed to elicit information that enables the insurer to determine the suitability of variable life insurance for the applicant.

§114-11D-9. Annual Report to Policyholders and Certificate Holders.

9.1. An insurer delivering or issuing for delivery in this state a variable life insurance policy shall mail to each variable life insurance policyholder at his or her last known address the following reports:

a. Within thirty (30) days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge, any optional payments allowed pursuant to subsection 4.5 of this rule under the policy computed as of the policy anniversary date. However, the statement may be furnished within thirty (30) days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than sixty (60) days prior to the mailing of the notice. This statement shall state that, in accordance with the investment experience of the

separate account, the cash values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by this section. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in the statement, the statement shall be modified to so indicate. For flexible premium policies, the report shall contain a reconciliation of the change since the previous report in cash value and cash surrender value, if different, because of payments made (less deductions for expense charges), withdrawals, investment experience, insurance charges and any other charges made against the cash value. In addition, the report shall show the projected cash value and cash surrender value, if different, as of one year from the end of the period covered by the report assuming that planned periodic premiums, if any, are paid as scheduled; guaranteed costs of insurance are deducted; and the net return is equal to the guaranteed rate or, in the absence of a guaranteed rate, is not greater than zero. If the projected value is less than zero, a warning message shall be included that states that the policy may be in danger of terminating without value in the next twelve (12) months unless additional premium is paid.

b. An annual statement or statements that include:

1. A summary of the financial statement of the separate account based on the last annual statement filed with the Commissioner;

2. The net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of not less than five (5) years when available;

3. A list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the Commissioner;

4. Any charges levied against the separate account during the previous year; and

5. A statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account or in the investment advisor of the separate account.

c. For flexible premium policies, a report shall be sent to the policyholder if the amounts available under the policy on any policy processing day to pay the charges authorized by

the policy are less than the amount necessary to keep the policy in force until the next following policy processing day. The report shall indicate the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of the amount.

§114-11D-10. Foreign Companies.

If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public that is substantially similar to that provided by these rules, the Commissioner to the extent deemed appropriate by the Commissioner in his or her discretion, may consider compliance with such law or regulation as compliance with these rules.