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 33-7-9(d)(1)(C)(iii).

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 69A

TITLE OF RULE BEING AMENDED: Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

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

Offices of the Insurance Commissioner
Legislative Rule
Title 114, Series 69A

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

TITLE 114, SERIES 69A

BRIEF SUMMARY OF RULE

The amendments to Series 69a are to bring the rule into compliance with the NAIC model #815 which was recently amended in 2009. The amendments change the conditions under which the 2001 CSO Preferred Class Structure Table is permitted in a statutory financial statement.

Department of Revenue
Agency Questionnaire

Re: Legislative Rule to be Filed

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

TITLE 114, SERIES 69A

Question 1: Are regulations required?

This rule is not required.

Question 2: Is the rule you are proposing controversial? If yes, what are the pros and the cons?

This rule is not expected to be controversial.

Question 3: Is the rule you are proposing a copy of another state's rule? A model rule? Custom-drafted?

This rule is based upon the National Association of Insurance Commissioners' model 815, amended in 2009.

Question 4: What are the really important things you think the Secretary of Tax and Revenue should know about this rule and the issues that surround it?

The amendments to Series 69a are to bring the rule into compliance with the NAIC model #815 which was recently amended in 2009. The amendments change the conditions under which the 2001 CSO Preferred Class Structure Table is permitted in a statutory financial statement.

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: July 27, 2010

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: RECOGNITION OF PREFERRED MORTALITY TABLES FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES (TITLE 114, SERIES 69A)

1. Authorizing statute(s) citation:

W.Va. Code 33-2-10 and 33-7-9(d)(1)(C)(iii)

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

June 11, 2010.

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:

July 12, 2010.

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)
July 27, 2010

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

Timothy R. Murphy, Associate Counsel
Insurance Commission
P.O. Box 50540
Charleston WV 25305
304-558-0401 Ext 1210
304-558-1362 FAX
Timothy.Murphy@wvinsurance.gov

g. **IF DIFFERENT 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)**

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:**

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

ACLI
Financial Security. For Life.

Leah J. Walters
Regional Vice President, State Relations

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WV OFFICES OF THE
INS. COMM. LEGAL DIV.

July 9, 2010

Mr. Timothy R. Murphy
Associate Counsel
Insurance Commission
1124 Smith Street
P.O. Box 50540
Charleston, WV 25305-0540

RE: Proposed Rule 114-69A, Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities

Dear Mr. Murphy:

This letter is submitted on behalf of the American Council of Life Insurers (ACLI), a national trade association of legal reserve life insurance companies whose 300+ member companies represent over 90% of the assets and premiums of the U.S. life insurance and annuity industry. Two hundred and fifty-six ACLI member companies are licensed to do business in West Virginia and account for 93 percent of life insurance premiums and 96 percent of annuity considerations. ACLI appreciates the opportunity to comment on the above-captioned proposed rule regarding the recognition of the 2001 CSO Preferred Mortality Table.

ACLI would like to commend the West Virginia Insurance Department for amending Rule 114-69A so that it tracks NAIC Model #815. ACLI did, however, note one discrepancy with regard to the effective date for the use of the 2001 CSO Mortality Table. Specifically, §114-69A-3 provides that "For policies issued on or after May 6, 2005 and prior to January 1, 2007, these tables may be substituted with the consent of the Commissioner . . . "

Per NAIC Model #815, the date to be used in the above sentence is the effective date of the state's adoption of the NAIC Model Regulation 814, Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits. This NAIC Model (#814) has been adopted by West Virginia as Rule 114-69. Rule 114-69 was adopted via legislation (SB357) with a May 6, 2005 effective date. However, Rule 114-69 was also adopted via an Emergency Rule, effective November 1, 2004. In this Emergency Rule, §114-69-3.1 permitted the use of the 2001 CSO Mortality Table for policies issued on or after January 1, 2005.

Thus, since companies have been using the 2001 CSO Mortality Table for policies issued on or after January 1, 2005, ACLI respectfully suggests that proposed Rule 114-69A be amended to change the May 6, 2005 date to January 1, 2005 in §114-69A-3.

© American Council of Life Insurers
101 Constitution Avenue, NW, Washington, DC 20001-2133
(202) 624-2131 t (866) 953-4114 f leahwalters@acli.com
www.acli.com

The ACLI appreciates the opportunity to provide comments on Proposed Rule 114-69A. Please contact me directly at the number provided below if you have any questions regarding our comments.

Sincerely,

Leah J. Walters

Leah J. Walters

Insurance Commissioner
Title 114, Series 69A

ATTACHEMENT TO QUESTION 2 (d):

Comments were received from the American Council of Life Insurers ("ACLI") regarding the proposed amendments to Series 69A. ACLI commended OIC for adopting the recent amendments to NAIC Model #815 but noted one discrepancy with regard to the effective date for the use of the 2001 CSO Mortality Table. Section 114-69A-3 of the proposed amendment provides: "For policies *issued on or after May 6, 2005* and prior to January 1, 2007, these tables [the 2001 CSO Mortality table] may be substituted with the consent of the Commissioner." ACLI states that the model sets the date to be used in the above sentence as the effective date of the state's adoption of the NAIC Model Regulation #814, "Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits," which was adopted in West Virginia as a *legislative* rule (114 CSR 69) with a May 6, 2005 effective date, but that same rule had been previously adopted as an Emergency Rule (effective date -- November 1, 2004) that permitted, *through an internal effective date in section 3*, the use of the 2001 CSO Mortality Table for policies issued on or after January 1, 2005. ACLI suggests that since companies have been using the 2001 CSO Mortality Table for policies issued on or after January 1, 2005, that the proposed rule be amended to reflect this.

The Commissioner agrees with ACLI's analysis and will make the suggested change in §3:

§114-69A-3. 2001 CSO Preferred Class Structure Table.

At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this rule, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. <u>For policies issued on or after January 1, 2005 and prior to January 1, 2007, these tables may be substituted with the consent of the Commissioner and subject to the conditions of section 4 of this rule. In determining such consent, the Commissioner may rely on the consent of the commissioner of the company's state of domicile.</u> No election may be made until the company demonstrates at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of 114 CSR 69.

Offices of the Insurance Commissioner
Legislative Rule
Title 114, Series 69A

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

TITLE 114, SERIES 69A

STATEMENT OF CIRCUMSTANCES

The amendment to Series 69A is due to amendments that were made to the National Association of Insurance Commissioners' "Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities," Model 815, that was amended in 2009. The amendment allows the 2001 CSO preferred mortality tables to be used with contracts based on the 2001 CSO and issued prior to January 1, 2007 with approval by the Commissioner.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities (Title 114, Series 69A)

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

Agency: Insurance Commission

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: Timothy.Murphy@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.

None

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: Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities (Title 114, Series 69A)

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

None

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: _____

Signature of Agency Head or Authorized Representative

_____

Jane L. Cline, Insurance Commissioner

TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 69A
RECOGNITION OF PREFERRED MORTALITY TABLES FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES

Section.

114-69A-1. General.

114-69A-2. Definitions.

114-69A-3. 2001 CSO Preferred Class Structure Table.

114-69A-4. Conditions.

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SECRETARY OF STATE

TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 69A
RECOGNITION OF PREFERRED MORTALITY TABLES FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES

§114-69A-1. General.

1.1. Scope. -- The purpose of this rule is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with W. Va. Code §§33-7-9(d)(1)(C)(iii) and 33-13-30(4c)(h)(vii) and subsections 4.1 and 4.2 of WV 114CSR68. This rule is based upon the National Association of Insurance Commissioners' "Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities Model Regulation," (Model 815) as amended in 2009.

1.2. Authority. -- This rule is promulgated pursuant to the authority of W. Va. Code §§33-2-10 and 33-7-9(d)(1)(C)(iii).

1.3. Filing Date. -- ~~April 29, 2008.~~

1.4. Effective Date. -- ~~April 29, 2008.~~

§114-69A-2. Definitions.

2.1. "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners (NAIC) in December 2002. The 2001 CSO Mortality Table is included in the *Proceedings of the NAIC (2nd Quarter 2002)* and supplemented by the 2001 CSO Preferred Class Structure Mortality Table defined below in subdivision b. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO Mortality Table include the following:

a. "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

b. "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

c. "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

d. "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

2.2. "2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for super preferred nonsmokers, preferred nonsmokers, residual standard nonsmokers, preferred smokers, and residual standard smoker splits of the 2001 CSO Nonsmoker and Smoker Tables, as adopted by the NAIC at the September, 2006 national meeting and published in the *NAIC Proceedings {3rd Quarter 2006}*. Unless the context indicates otherwise, the "2001 CSO Preferred Class Structure Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

2.3. "Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

§114-69A-3. 2001 CSO Preferred Class Structure Table.

At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this rule, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. For policies issued on or after January 1, 2005 and prior to January 1, 2007, these tables may be substituted with the consent of the Commissioner and subject to the conditions of section 4 of this rule. In determining such consent, the Commissioner may rely on the consent of the commissioner of the company's state of domicile. No election may be made until the company demonstrates at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of 114 CSR 69.

§114-69A-4. Conditions.

4.1. For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the super preferred nonsmoker, preferred nonsmoker, and residual standard nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the residual standard nonsmoker table, the appointed actuary shall certify that:

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

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

4.2. For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the preferred smoker and residual standard smoker tables to substitute for the smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the preferred smoker table, the appointed actuary shall certify that:

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

b. The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table.

4.3. Unless exempted by the commissioner, every authorized insurer using the 2001 CSO Preferred Class Structure Table shall annually file with the commissioner, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary

or expedient for the administration of the provisions of this rule. The form of the reports shall be established by the commissioner or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner.

4.4. The use of the 2001 CSO Preferred Class Structure Table for the valuation of policies issued prior to January 1, 2007 shall not be permitted in any statutory financial statement in which a company reports, with respect to any policy or portion of a policy coinsured, either of the following:

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

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

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