

**INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE**

**Actuarial Services**

**Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities**

**Adopted New Rules: N.J.A.C. 11:4-27A**

Proposed: November 5, 2007 at 39 N.J.R. 4540(a).

Adopted: February 25, 2008 by Steven M. Goldman, Commissioner, Department of Banking and Insurance.

Filed: February 25, 2008 as R. 2008 d.68, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15e and 17B:19-8.

Effective Date: March 17, 2008

Expiration Date: March 14, 2011.

**Summary** of Public Comments and Agency Responses:

The Department received comments from the United Services Automobile Association (USAA) and the American Council of Life Insurers (ACLI).

**COMMENT:** One comment concerned proposed N.J.A.C. 11:4-27A.4(c) that requires authorized insurers using the 2001 Commissioner's Standard Ordinary (CSO) Preferred Class Structure Table to annually file statistical reports with the Commissioner, as opposed to the National Association of Insurance Commissioners (NAIC) Model rule requirement that permits the reports to be filed with a state's commissioner, the NAIC or a statistical agent designated by the NAIC. The commenter stated that the intent of the NAIC Model permitting submission of reports to a statistical agent was so companies could submit data once and satisfy all state requirements. According to the commenter, submitting data to both a statistical agent and to

individual states will place additional burdens on companies, as well as the State to receive, keep secure and analyze the data.

**RESPONSE:** The Department agrees with the commenter that submission of statistical reports to the Commissioner would place a minimal additional administrative burden on an insurer. However, the Department believes that to delegate oversight in this instance would not be consistent with the Department's responsibility to monitor financial solvency. The Department further believes that the insurer's administrative burden will be small relative to the potential benefit of being allowed to use this standard of valuation. Furthermore, the new rules state that this requirement will not be imposed where the use of the table has no impact.

**COMMENT:** Both commenters were concerned about the proposed content of the statistical reports required by N.J.A.C. 11:4-27A.4(c) to be annually filed with the Commissioner. One commenter stated that the specific information required to be collected by the proposal is not required by the NAIC Model and will not be very useful to an individual state because it will be incomplete (from an industry-wide standpoint) and unwieldy. According to the commenter, the NAIC has adopted an Actuarial Guideline Tab (AG TAB) for this specific NAIC Model and Section 5, Communications and Disclosures, provides what statistical information must be submitted to the Commissioner by an actuary on an annual basis. In addition, the basis for determining which table to use depends on anticipated mortality experience, which is generally validated by looking at past experience. Policy size, type of product, underwriting criteria, number of applicants and number of rejections would provide no additional value for purposes of the Commissioner's implementing these rules. The commenter

added that Section 5 of the AG TAB should provide all the statistics necessary for a state to enforce the rule, and those reports are available for each state.

One of the commenters stated that the statistical report information being sought in the proposal is information collected in the application. For many companies, pre-policy issue information is not part of an experience study database, which normally captures information after a policy has been issued. Thus, reports unique to New Jersey would need to be developed to comply. The commenter suggested that an alternative requirement could be filing a statistical report that would have information only after policies have been issued, and the information should be collected by underwriting class and not at an individual level to protect the identity and privacy of the individual.

**RESPONSE:** The information to which the commenters object is information, which the Commissioner may specify, as necessary. The proposed rules do not require the submission of New Jersey-specific reports or the collection by the Commissioner of any specific item of information other than mortality data. The proposed rules do not, however, preclude the Commissioner from including other information in the report, particularly if his basis for the requirement is an Actuarial Guideline.

**COMMENT:** Both commenters were concerned about proposed N.J.A.C. 11:4-27A.3(c) that requires an insurer who elects to use the 2001 CSO Preferred Class Structure Mortality Table in a particular calendar year of issue to use the table in all future calendar years of issue, unless discontinuance is approved pursuant to rules promulgated by the Commissioner. One commenter stated that this provision contradicts proposed N.J.A.C. 11:4-27A.3(a) that permits an insurer to elect the preferred tables for each calendar year of issue. The commenter added that

for subsequent years, the insurer may no longer qualify to use the preferred tables and should not be required to do so.

One commenter expressed concern as to whether the Department would be drafting rules addressing this issue, as soon as possible in order to avoid a situation in which the rules have not been adopted and a company's experience proves to be worse than was anticipated when the preferred table was adopted and an immediate change is needed. The commenter suggested that the Department amend this provision to provide that the discontinuance of the use of a preferred mortality table is a reserve basis change subject to the approval of the Commissioner pursuant to the appropriate section of the New Jersey Standard Valuation Law (SLV), N.J.S.A. 17B:19-1, et seq.

**RESPONSE:** The Department believes that the intent of the rule is clear and that there is no inconsistency between the two rule provisions. A company should not adopt the use of the 2001 CSO Preferred Mortality Tables for a class of business if there is a likelihood that it will voluntarily discontinue use of the tables. Involuntary discontinuance due to poor experience would not be precluded by this rule and would logically be allowed by any rules subsequently adopted by the Department.

**COMMENT:** Both commenters recommended that the Department adopt the NAIC version of the model regulation, which has been reviewed, debated and modified extensively by regulators in the NAIC committees, so as to ensure uniformity across the country and to eliminate the need for companies to create "New Jersey only" reporting procedures and reports.

**RESPONSE:** Verbatim adoption of the NAIC version is not an option. Some aspects of the NAIC version were not sufficiently specific to meet the standards required of any New Jersey

rule by the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 et seq. and the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30. Thus, even if the Department were willing to accept such lack of specificity, it would not be in conformance with the requirements of the APA and the rules promulgated thereunder. It should be noted that the Department does not intend to create unique reporting procedures and reports, but rather is likely to be guided by national standards. However, the Department cannot adopt a rule that would preclude the Commissioner from establishing New Jersey specific standards regarding either the type of information to be reported or the procedures for reporting such information if determined to be necessary for the proper implementation of the provisions of N.J.S.A. 17B:19-8 and these rules.

### **Federal Standards Statement**

A Federal standards analysis is not required because the adopted new subchapter is not subject to any Federal requirements or standards. This adopted new subchapter is based on an NAIC Model.

**Full text** of the adopted new rules follows (additions to proposal indicated in boldface with asterisk **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

11:4-27A.6 Effective **\*[Date]\* \*date\***

This subchapter shall become effective on **\*[(the effective date of this subchapter)]\***

**\*March 17, 2008\***.