Regulatory Impact Statement for the First Amendment to 11 NYCRR 103 (Insurance Regulation 213)

1. Statutory authority: Financial Services Law sections 201, 202, 301, and 302 and Insurance Law sections 301, 4217, and 4517.

Financial Services Law section 201 sets forth a declaration of policy, Financial Services Law section 202 establishes the office of the Superintendent of Financial Services (“Superintendent”), and Financial Services Law section 301 sets forth the Superintendent’s powers.

Financial Services Law section 302 and Insurance Law section 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other law, and to prescribe regulations interpreting the Insurance Law.

Insurance Law section 4217 sets forth rules for the valuation of insurance policies and contracts. Insurance Law section 4217(d) provides that reserves for all individual and group accident and health insurance policies must reflect a sound value placed on the liabilities of such policies and permits the Superintendent to issue, by regulation, guidelines for the application of reserve valuation provisions for such policies. Insurance Law section 4217(g) requires authorized life insurance companies and fraternal benefit societies (collectively, “life insurers”) to use principle-based reserving (“PBR”) for certain individual and group life insurance policies and annuity contracts upon the Superintendent’s approval of the National Association of Insurance Commissioners’ (“NAIC’s”) valuation manual (the “Manual”), subject to the Superintendent’s adopting any amendment to the Manual by regulation.

Insurance Law section 4517 makes Insurance Law section 4217 applicable to the valuation of life insurance and annuity certificates issued by fraternal benefit societies.

2. Legislative objectives: Insurance Law section 4217 sets forth rules for the valuation of insurance policies and contracts. In December 2018, Governor Andrew M. Cuomo signed into law a bill that added a new
Insurance Law section 4217(g) to allow PBR for certain individual and group life insurance policies and annuity contracts beginning in 2019.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law section 4217(g) when it adopted PBR for life insurers, by making clear that the Superintendent may require a life insurer to change an assumption or method that in the Superintendent’s opinion is necessary to comply with the Manual adopted by the Superintendent and section 4217(g), and that the life insurer must adjust the reserves as the Superintendent requires.

3. Needs and benefits: Life insurers set aside funds (called “reserves”) to pay insurance claims when they become due. Insurance Law section 4217 and regulations promulgated thereunder set forth rules surrounding the setting aside of reserves. Insurance Law section 4517 makes Insurance Law section 4217 applicable to the valuation of life insurance and annuity certificates issued by fraternal benefit societies. The NAIC revised its model Standard Valuation Law in 2009 to establish PBR. According to the NAIC, as of May 3, 2019, 51 jurisdictions have enacted legislation implementing PBR.

Beginning January 1, 2020, the 2009 revisions to the NAIC’s Standard Valuation Law will become an accreditation standard. NAIC accreditation is a certification that a state receives once it demonstrates that it has met and continues to meet certain legal, financial, and organizational standards. The purpose of the NAIC accreditation program is to ensure effective insurer financial solvency regulation across the United States.

This rule seeks to conform to the 2009 revisions to the NAIC’s Standard Valuation Law to comply with the NAIC’s accreditation standards.

4. Costs: This rule may impose compliance costs on life insurers because an insurer must adjust its reserves as the Superintendent deems necessary to comply with the Manual and Insurance Law section 4217(g). This is a consequence of new Insurance Law section 4217(g), which requires that the minimum standard for the valuation of certain life insurance policies and annuity contracts will be the standard prescribed in the Manual
with modifications by the Superintendent. However, under the law, a domestic insurance company and a
fraternal benefit society that only writes business in New York may, with the Superintendent’s approval, obtain
an exemption for specific product forms or product lines.

The Department of Financial Services (“DFS”) also may incur costs for the implementation and
continuation of this rule, because DFS will need to monitor reserves to ensure conformance with the Manual
and Insurance Law section 4217(g). However, any additional costs incurred should be minimal and DFS should
be able to absorb the costs in its ordinary budget.

This rule does not impose compliance costs on any local government.

5. Local government mandates: This rule does not impose any program, service, duty, or responsibility
upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: This rule imposes reporting requirements related to the insurance policies and contracts
subject to the minimum valuation standards prescribed by this rule.

7. Duplication: This rule does not duplicate, overlap, or conflict with any existing state or federal rules or
other legal requirements.

8. Alternatives: Significant alternatives considered by DFS to the proposed rule include adopting the
valuation requirements of the Manual without modifications or maintaining the current valuation requirements
as the minimum valuation standards. This rule incorporates aspects of the two alternatives considered in a
manner that best serves the policyholders of New York State.

9. Federal standards: The rule does not exceed any minimum standards of the federal government for the
same or similar subject areas.

10. Compliance schedule: A life insurer must comply with the rule upon publication of the Notice of
Adoption in the State Register.
Statement Setting Forth the Basis for the Finding that the First Amendment to 11 NYCRR 103 (Insurance Regulation 213) Will Not Impose Any Adverse Economic Impact or Compliance Requirements on Small Businesses or Local Governments.

The Department of Financial Services ("DFS") finds that this proposed rulemaking will not impose any adverse economic impact or compliance requirements on small businesses or local governments. The basis for this finding is that this rule is directed at life insurance companies and fraternal benefit societies (collectively, "life insurers"), none of which are local governments or come within the definition of a "small business" as defined in State Administrative Procedure Act section 102(8). DFS reviewed filed reports on examination and annual statements of such life insurers and concluded that none of these life insurers come within the definition of "small business" because there are none that are both independently owned and have fewer than 100 employees.
Rural Area Flexibility Analysis for the First Amendment to 11 NYCRR 103 (Insurance Regulation 213).

1. Types and estimated numbers of rural areas: Life insurance companies and fraternal benefit societies (collectively, “life insurers”) affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act section 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This rule imposes reporting requirements related to the insurance policies and contracts subject to the minimum valuation standards prescribed by this rule. A life insurer in a rural area may need to retain professional services, such as actuaries, to comply with this rule.

3. Costs: This rule may impose compliance costs on life insurers, including life insurers in rural areas, because a life insurer must adjust its reserves as the Superintendent of Financial Services (“Superintendent”) deems necessary to comply with the National Association of Insurance Commissioners’ valuation manual (the “Manual”) and Insurance Law section 4217(g). This is a consequence of new Insurance Law section 4217(g), which requires that the minimum standard for the valuation of certain life insurance policies and annuity contracts will be the standard prescribed in the Manual with modifications by the Superintendent. However, under the law, a domestic insurance company and a fraternal benefit society that only writes business in New York may, with the Superintendent’s approval, obtain an exemption for specific product forms or product lines.

4. Minimizing adverse impact: This rule uniformly affects life insurers that are located in both rural and non-rural areas of New York State. The rule should not have an adverse impact on rural areas.

5. Rural area participation: Life insurers in rural areas will have an opportunity to participate in the rule-making process when the notice of proposed rule-making is published in the State Register and posted on the Department of Financial Services’ website.
Statement Setting Forth the Basis for the Finding that the First Amendment to 11 NYCRR 103 (Insurance Regulation 213) Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities.

This rule should not adversely impact jobs or employment opportunities in New York State. This rule prescribes the minimum standards for valuing statutory reserves subject to the requirements of the National Association of Insurance Commissioners’ valuation manual (the “Manual”) adopted by the Superintendent of Financial Services (“Superintendent”) and Insurance Law section 4217(g). Insurance Law section 4217(g) authorizes the Superintendent to deviate, through regulations, from the reserve standards, valuation methods, assumptions, and related requirements in the Manual, provided that such deviations shall not result in reserve valuations that are lower than the minimum standards prescribed in the Manual. This rule may create new jobs or employment opportunities because life insurance companies and fraternal benefit societies may need to hire additional personnel, such as actuaries, to comply with this rule.