Consolidated Regulatory Impact Statement for the Ninth Amendment to 11 NYCRR 98 (Insurance Regulation 147) and Seventh Amendment to 11 NYCRR 100 (Insurance Regulation 179)

1. Statutory authority: The authority of the Superintendent of Financial Services (“Superintendent”) to promulgate the Ninth Amendment to Insurance Regulation 147 (11 NYCRR 98) and Seventh Amendment to Insurance Regulation 179 (11 NYCRR 100) derives from sections 202 and 302 of the Financial Services Law (“FSL”) and sections 301, 1304, 1308, 4217, 4218, 4221, 4224, 4240, and 4517 of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent as the head of the Department of Financial Services (“Department”).

FSL section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law, among other things.

Insurance Law section 1304 requires insurers to maintain reserve liabilities (“reserves”) for life insurance policies and certificates according to prescribed tables of mortality and rates of interest.

Insurance Law section 1308 sets forth the parameters for reinsuring risks and policy liabilities, and the effect that reinsurance has on an insurer’s reserves.

Insurance Law section 4217 requires the Superintendent to annually value, or cause to be valued, the reserve liabilities (“reserves”) for all outstanding policies and contracts of every life insurer doing business in New York State. Insurance Law section 4217(a)(1) specifies that the Superintendent may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods used in the calculation of reserves.

Insurance Law section 4217(c)(2)(A)(iii) permits, as a minimum standard of valuation for life insurance policies, any ordinary mortality table adopted by the National Association of Insurance Commissioners (“NAIC”) after 1980 and approved by the Superintendent.
Insurance Law section 4217(c)(2)(A)(iv) authorizes the Superintendent to adopt any mortality table or modifications of any table for any specific class of risk.

Section 4217(c)(6)(D) permits the Superintendent to issue, by regulation, guidelines for the application of the reserve valuation provisions of section 4217 to such policies and contracts as the Superintendent deems appropriate.

Section 4217(c)(9) requires that, in the case of any plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity that is of such a nature that the minimum reserves cannot be determined by the methods described in section 4217(c)(6) and section 4218, the reserves that are held under the plan must be appropriate in relation to the benefits and the pattern of premiums for that plan, and be computed by a method that is consistent with the principles of Insurance Law sections 4217 and 4218, as determined by the Superintendent.

Insurance Law section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net premium calculated on the basis of the commissioner’s reserve valuation method, the minimum reserve required for such policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy, or the reserve calculated by the commissioner’s reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which such modified net premium exceeds the actual premium.

Insurance Law section 4221(k)(9)(B)(vi) permits, for policies of ordinary insurance, the use of any ordinary mortality table adopted by the NAIC after 1980 and approved by the Superintendent for use in determining the minimum nonforfeiture standard.
Insurance Law section 4224(a)(1) prohibits unfair discrimination between individuals of the same class and of equal expectation of life, in the amount or payment or return of premiums, or rates charged for life insurance policies.

Insurance Law section 4240(d)(6) provides that the reserves for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees provided in the contract. Section 4240(d)(7) authorizes the Superintendent to promulgate regulations, as may be appropriate, to carry out the provisions of this section.

Insurance Law section 4517(b)(2) provides, with respect to fraternal benefit societies, that reserves according to the commissioner’s reserve valuation method for life insurance certificates that provide for a varying amount of benefits, or requiring the payment of varying premiums, shall be calculated by a method consistent with the principles of subsection (b). Section 4517(c)(2) requires fraternal benefit societies to comply with the minimum valuation standards of Section 4217 of the Insurance Law for life insurance certificates issued on or after January 1, 1980.

2. Legislative objectives: Maintaining solvency of insurers doing business in New York State is a principal focus of the Insurance Law. One fundamental way the Insurance Law seeks to ensure solvency is by requiring all insurers and fraternal benefit societies authorized to do business in New York State to hold reserve funds in an amount sufficient to meet the obligations made to policyholders. The Insurance Law prescribes the mortality tables and interest rates to be used for calculating such reserves. At the same time, an insurer benefits when it has adequate capital to use for company expansion, product innovation, and other forms of business development.

3. Needs and benefits: The Fifth Amendment to Insurance Regulation 147 and Third Amendment to Insurance Regulation 179 to modernize the regulatory scheme with respect to term life insurance and the Sixth Amendment to Insurance Regulation 147 and Fourth Amendment to Insurance Regulation 179 to modernize the
regulatory schedule with respect to universal life with secondary guarantee insurance reserves previously applied to such policies issued on or after January 1, 2015. The Seventh Amendment to Insurance Regulation 147 and Fifth Amendment to Insurance Regulation 179 added a sunset such that such standards would not apply to policies issued on or after January 1, 2018. The Eighth Amendment to Insurance Regulation 147 and Sixth Amendment to Insurance Regulation 179 further extended such sunset to policies issued prior to January 1, 2019. These concurrent amendments to Insurance Regulations 147 and 179 extend this sunset further to policies issued during 2019. The Department estimates that these concurrent amendments will result in up to a 30 percent reduction in reserves for universal life with secondary guarantee insurance and term life insurance on a prospective basis for policies issued during 2019.

The Fifth Amendment to Insurance Regulation 179 also prescribed the 2017 CSO Mortality Table as the minimum valuation standard for individual life insurance policies issued on or after January 1, 2020. However, such table should not apply to guaranteed issue life insurance policies. This proposed consolidated rulemaking prescribes the ultimate form of the 2001 CSO Mortality Table as the minimum valuation standard for guaranteed issue life insurance policies issued on or after January 1, 2020. There should be no impact on the current reserves because the 2001 CSO Mortality Table is the minimum valuation standard for policies issued prior to January 1, 2020.

4. Costs: The amendments should not impose any additional compliance costs on life insurers or the Department because the amendments merely continue the standards currently in place.

This rule does not impose compliance costs on any local government because no local government is affected by this rule.

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: The Department considered adopting the 2017 Commissions Guaranteed Issue Mortality Table; however, there were some concerns that not all experience collected to develop such table met the definition of guaranteed issue.

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: The amendments to the regulation apply to 2019 annual statements due March 1, 2020 and statements filed thereafter, which should give insurers ample time to comply. The amendments allow insurers to continue to utilize the minimum standards currently in effect and specify the mortality table to determine an insurer’s reserves for guaranteed issue life insurance universal life with secondary guarantee policies. The Department engaged in discussions with the affected insurers’ trade association, the Life Insurance Council of New York, who support these amendments.
Consolidated Statement Setting Forth the Basis for the Finding that the Ninth Amendment to 11 NYCRR 98 (Insurance Regulation 147) and Seventh Amendment to 11 NYCRR 100 (Insurance Regulation 179) Will Not Impose Any Adverse Economic Impact or Compliance Requirements on Small Businesses or Local Governments

The Department of Financial Services ("Department") 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). The Department 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.
Consolidated Rural Area Flexibility Analysis for the Ninth Amendment to 11 NYCRR 98 (Insurance Regulation 147) and Seventh Amendment to 11 NYCRR 100 (Insurance Regulation 179)

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. The amendments do not impose any additional requirements for professional services.

3. Costs: The amendments will not impose compliance costs on life insurers, including life insurers in rural areas, because the amendments permit the continued use of current standards.

4. Minimizing adverse impact: The amendments uniformly affect life insurers that are located in both rural and non-rural areas of New York State. The amendments 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 rulemaking process when the notice of proposed rulemaking is published in the State Register and posted on the Department of Financial Services’ website.
Consolidated Statement Setting Forth the Basis for the Finding that the Proposed Ninth Amendment to 11 NYCRR 98 (Insurance Regulation 147) and Seventh Amendment to 11 NYCRR 100 (Insurance Regulation 179) Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities

The proposed amendments to Insurance Regulations 147 and 179 should have no impact on jobs and employment opportunities. The amendments modify current Insurance Regulations 147 and 179 to specify that the Fifth and Sixth Amendments to Regulation 147 and the Third and Fourth Amendments to Regulation 179 only will apply to policies issued on or after January 1, 2015 and prior to January 1, 2017, or on or after January 1, 2015 and prior to January 1, 2020 with written notification provided to the Superintendent of Financial Services by February 28, 2020. The proposed consolidated amendments to Insurance Regulations 147 and 179 allow insurers to apply these two prior amendments, if optionally elected, for one additional year of policy issues. This proposed consolidated rulemaking also prescribes the ultimate form of the 2001 CSO Mortality Table as the minimum valuation standard for guaranteed issue life insurance policies issued on or after January 1, 2020. Insurers should not need to hire additional employees or independent contractors to comply with these amendments.