Sec. 38a-459-8. Reserves for synthetic guaranteed investment contracts

(a) An insurance company, at all times, shall hold minimum reserves in the general account or one or more separate accounts, as appropriate, equal to the excess, if any, of the value of the guaranteed contract liabilities, determined in accordance with subsections (f) and (g) of this section, over the market value of the assets in the segregated portfolio less the deductions provided for in subsection (b) of this section. The reserve requirements of this section shall be applied on a contract by contract basis.

(b) In determining compliance with the asset maintenance requirement and the reserve for guaranteed contract liabilities, the insurance company shall deduct a percentage of the market value of an asset as follows:

(1) (A) For debt instruments, the percentage shall be the National Association of Insurance Commissioners asset valuation reserve "reserve objective factor," as set forth in the instructions for the National Association of Insurance Commissioners Annual and Quarterly Statement Blank, but the factor shall be increased by 50 percent for the purpose of this calculation if the difference in durations of the assets and liabilities is more than 184 days.

(B) Notwithstanding the provisions of subparagraph (A) of this subdivision, in the event that, under the terms of a synthetic guaranteed investment contract, the asset default for debt instruments is borne solely by the contract holder, there shall be no asset valuation reserve percentage deduction from the market value of an asset, for purposes of complying with the asset maintenance requirement and the reserve for guaranteed contract liabilities specified in subsection (a) of this section.

(2) For assets that are not debt instruments, the percentage shall be the National Association of Insurance Commissioners asset valuation reserve "maximum reserve factor," as set forth in the instructions for the National Association of Insurance Commissioners Annual and Quarterly Statement Blank.

(c) To the extent that guaranteed contract liabilities are denominated in the currency of a foreign country and are supported by segregated portfolio assets denominated in the currency of the foreign country, the percentage deduction for these assets shall be the percentage deduction for a substantially similar investment denominated in the currency of the United States.

(d) To the extent that guaranteed contract liabilities are denominated in the currency of the United States and are supported by segregated portfolio assets denominated in the currency of a foreign country, and to the extent that guaranteed contract liabilities are denominated in the currency of a foreign country and are supported by segregated portfolio assets denominated in the currency of the United States, the deduction for debt instruments under subsection (b) of this section shall be increased by 15 percent of the market value of the assets unless the currency exchange risk on the assets has been adequately hedged, in which case the percentage deduction under subsection (b) of this section shall be increased by one-half percent. No guaranteed contract liabilities denominated in the currency of a foreign country shall be supported by segregated portfolio assets denominated in the currency of another foreign country without the approval of the insurance commissioner. For purposes of this section, the currency exchange risk on an asset is deemed adequately hedged if:

(1) It is an obligation of

(A) A jurisdiction rated in one of the two highest rating categories by an independent, nationally-recognized United States rating agency acceptable to the insurance commissioner;

(B) Any political subdivision or other governmental unit of such a jurisdiction, or any agency or instrumentality of a jurisdiction, political subdivision, or other governmental unit; or

(C) An institution that is organized under the laws of any such jurisdiction; and

(2) The principal amount of the obligation and scheduled interest payments on the obligation are at all times hedged against the United States dollar pursuant to contracts or agreements that are:

(A) Issued by or traded on a securities exchange or board of trade regulated under the laws of the United States, Canada, or a province of Canada;

(B) Entered into with a United States banking institution that has assets in excess of $5 billion and has obligations outstanding, or has a parent corporation that has obligations outstanding, rated in one of the two highest rating categories by an independent, nationally-recognized United States rating agency, or with a broker-dealer registered with the Securities and Exchange Commission that has net capital in excess of $250 million; or

(C) Entered into with any other banking institution that has assets in excess of $5 billion and that has obligations outstanding, or has a parent corporation that has obligations outstanding, rated in one of the two highest rating categories by an independent, nationally-recognized United States rating agency and that is organized under the laws of a jurisdiction that is rated in one of the two highest rating categories by an independent, nationally-recognized United States rating agency.

(e) A contract may provide for the allocation to one or more separate accounts of all or any portion of the amount needed to meet the asset maintenance requirement. If the contract provides that the assets in the separate account shall not be chargeable with liabilities arising out of any other business of the insurance company, the insurance company shall maintain in a distinct separate account that is so chargeable:

(1) That portion of the amount needed to meet the asset maintenance requirement that has been allocated to separate accounts; less

(2) The amounts contributed to separate accounts by the contract holder in accordance with the contract and the earnings on the contract.

(f) For purposes of this section, the minimum value of guaranteed contract liabilities is defined to be the sum of the expected guaranteed contract benefits, each discounted at a rate corresponding to the expected time of payment of the contract benefit that is not greater than the rate supportable by the expected return from the segregated portfolio assets (and in no event greater than the blended spot rate) as described in the plan of operation (pursuant to section 38a-459-3 of the Regulations of Connecticut State Agencies) or the actuarial opinion and memorandum (pursuant to subsection (h) of this section), except that if the expected time of payment of a contract benefit is more than 30 years, it shall be discounted from the expected date of payment to year 30 at a rate of no more than 80 percent of the thirty year blended spot rate and from year 30 to the date of valuation at a rate not greater than the thirty year blended spot rate.

(g) In calculating the minimum value of guaranteed contract benefits:

(1) All guaranteed benefits potentially available to the contract holder on an ongoing basis shall be considered in the valuation process and analysis, and the reserve held has to be sufficient to fund the greatest present value of each independent guaranteed contract benefit. For purposes of this subdivision, the right granted to the contract holder to exit the contract by discharging the insurance company of its guarantee obligation under the contract and taking control of the assets in the segregated portfolio shall not be considered a guaranteed benefit.

(2) To the extent that future guaranteed cash flows are dependent upon the benefit responsiveness of an employer-sponsored plan (e.g., the ability of a plan participant to elect to receive a benefit or make an investment transfer), a best estimate based on insurance company experience or other reasonable criteria if insurance company experience is not available shall be used in the projections of future cash flows.

(3) The minimum value of guaranteed contract benefits under a contract issued to a pooled fund representing multiple employer-sponsored plans shall be determined so as to reflect projected plan sponsor contract value withdrawals available to the member plans in such pooled fund. Projections of such future cash flows shall take into account known plan sponsor withdrawals and an estimate of future plan sponsor withdrawals. The estimate shall be based on company experience and other relevant criteria and shall include a margin for adverse deviation from such company experience and other relevant criteria. An insurance company shall determine a single valuation rate, consistent with subsection (f) of this section, that shall be equal to the lesser of the (i) expected return from the segregated portfolio of assets or (ii) blended spot rate based on the duration of the segregated portfolio of assets. The single valuation rate shall be used to model future market values of the segregated portfolio assets. Future credited interest rates shall be modeled according to the contractually defined crediting rate formula. Modeled future contract values shall reflect modeled future market values, modeled future credit interest rates, known future plan sponsor withdrawals, the estimate of future plan sponsor withdrawals, future withdrawals consistent with subdivision (2) of this subsection and any remaining final payment at the modeled contract termination date. The present values of all withdrawals and termination payments modeled under this subdivision shall be discounted by using the single valuation rate and the modeled times of those withdrawals and payments. The sum of these present values shall be deemed the minimum value of the guaranteed contract liabilities for a pooled fund contract.

(h) An insurance company that issues a synthetic guaranteed investment contract subject to sections 38a-459-1 to 38a-459-9, inclusive, of the Regulations of Connecticut State Agencies shall submit an actuarial opinion and, upon request, a memorandum to the insurance commissioner annually by March 1 following the December 31 valuation date showing the status of the accounts as of the prior December 31. The actuarial opinion and memorandum shall be in form and substance satisfactory to the insurance commissioner.

(i) The actuarial memorandum required by subsection (h) of this section is a memorandum as set forth in subdivision (3) of section 38a-78(c) of the Connecticut General Statutes. The actuarial memorandum may include any matter required by section 38a-78 of the Connecticut General Statutes and is subject to the confidentiality protections of subdivision (7) of section 38a-78(c) of the Connecticut General Statutes.

(j) Except in cases of fraud or willful misconduct, the valuation actuary shall not be liable for damages to any person (other than the insurance company or the insurance commissioner) for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(k) The statement of actuarial opinion submitted shall consist of:

(1) A paragraph identifying the valuation actuary and the valuation actuary's qualification;

(2) A scope paragraph identifying the subjects on which the opinion is to be expressed and describing the scope of the valuation actuary's work;

(3) A reliance paragraph describing those areas, if any, where the valuation actuary has deferred to other experts in developing data, procedures, or assumptions;

(4) An opinion paragraph expressing the valuation actuary's opinion with respect to the matters described in subsection (*l*) of this section; and

(5) One or more additional paragraphs as needed in individual insurance company cases as follows:

(A) If the valuation actuary considers it necessary to state a qualification of the valuation actuary's opinion;

(B) If the valuation actuary has to disclose an inconsistency in the method of analysis used at the prior opinion date with that used for this opinion;

(C) If the valuation actuary chooses to add a paragraph briefly describing the assumptions that form the basis of the actuarial opinion.

(*l*) The actuarial opinion shall state that after taking into account any risk charge payable, the segregated portfolio assets, and the amount of any reserve liability with respect to the asset maintenance requirement, the account assets make adequate provision for contract liabilities. The opinion shall also state:

(1) That reserves for contract liabilities are calculated pursuant to the requirements of subsection (a) of this section;

(2) That after taking into account any reserve liability with respect to the asset maintenance requirement, the amount of the account assets satisfied the asset maintenance requirement;

(3) That the fixed-income segregated portfolio conformed to and justified the rates used to discount contract liabilities for valuation pursuant to subsection (f) of this section;

(4) Whether any rates used, pursuant to subsection (f) of this section, to discount guaranteed contract liabilities and other items applicable to the segregated portfolio were modified from the rate or rates described in the plan of operation pursuant to section 38a-459-3 of the Regulations of Connecticut State Agencies; and

(5) That the level of risk charges, if any, retained in the general account was appropriate in view of such factors as the nature of the guaranteed contract liabilities and losses experienced in connection with account contracts and other pricing factors.

(m) The opinion shall be accompanied by a certificate of an officer of the insurance company responsible for monitoring compliance with the asset maintenance requirements for synthetic guaranteed investment contracts describing the extent to and manner in which, during the preceding year:

(1) Actual benefit payments conformed to the benefit payment estimated to be made as described in the plan of operation;

(2) The determination of the fair market value of the segregated portfolio conformed to the valuation procedures described in the plan of operation, including a statement of the procedures and sources used during the year; and

(3) Any assets were transferred to or from the insurance company's general account, or any amounts were paid to the insurance company by any contract holder to support the insurance company's guarantee.

(n) The actuarial memorandum shall:

(1) Substantially conform with those portions of section 38a-459-17 of the Regulations of Connecticut State Agencies that are applicable to asset adequacy testing and either:

(A) Demonstrate the adequacy of account assets based upon cash flow analysis, or

(B) Explain why cash flow testing analysis is not appropriate, describe the alternative methodology of asset adequacy testing used, and demonstrate the adequacy of account assets under that methodology;

(2) Clearly describe the assumptions the valuation actuary used in support of the actuarial opinion, including any assumptions made in projecting cash flows under each class of assets, and any dynamic portfolio hedging techniques utilized and the tests performed on the utilization of the techniques. As used in this section, "dynamic portfolio hedging techniques" includes techniques whereby an underlying portfolio of liabilities and their corresponding assets are hedged through the purchase or sale (owned or not owned by the hedger) of a hedging instrument, and such purchase or sale is managed so as to decrease the probability or severity of loss of the underlying portfolio due to changes in economic, market, insurable, or other events and the hedge is regularly adjusted or re-balanced through additional purchases or sales of assets, liabilities, or financial instruments (including options, futures, and derivatives) at regular, small intervals as the risks and characteristics of the underlying portfolio change, in a manner that incorporates recent events;

(3) Clearly describe how the valuation actuary has reflected the cost of capital;

(4) Clearly describe how the valuation actuary has reflected the risk of default and downgrades on obligations and mortgage loans, including obligations and mortgage loans that are not investment grade;

(5) Clearly describe how the valuation actuary has reflected withdrawal risks, if applicable, including a discussion of the positioning of the contracts within the benefit withdrawal priority order pertaining to the contracts, the impact of any dynamic lapse assumption and the results of sensitivity testing the estimate of future plan sponsor withdrawals pursuant to subsection (g)(3) of this section;

(6) If the plan of operation provides for investments in segregated portfolio assets other than United States government obligations, demonstrate that the rates used to discount contract liabilities accurately reflect expected investment returns, taking into account any foreign exchange risks;

(7) If the contracts provide that in certain circumstances they would cease to be funded by a segregated portfolio and instead become contracts funded by the general account, clearly describe how any increased reserves would be provided for if and to the extent these circumstances occurred;

(8) State the amount of account assets maintained in a separate account that are not chargeable with liabilities arising out of any other business of the insurance company;

(9) State the amount of reserves and supporting assets as of December 31 and where the reserves are shown in the annual statement;

(10) State the amount of any contingency reserve carried as part of surplus;

(11) State the market value of the segregated asset portfolio; and

(12) Where separate account assets are not chargeable with liabilities arising out of any other business of the insurance company, describe how the level of risk charges payable to the general account provides an appropriate compensation for the risk taken by the general account.

(o) When the insurance company issues a synthetic guaranteed investment contract complying with asset maintenance requirements it need not maintain an asset valuation reserve with respect to those account assets.

(p) Reserves for synthetic guaranteed investment contracts subject to sections 38a-459-1 to 38a-459-9, inclusive, of the Regulations of Connecticut State Agencies shall be an amount equal to the sum of the following:

(1) The amounts determined as the minimum reserve as required under subsection (a) of this section;

(2) Any additional amount determined by the insurance company's valuation actuary as necessary to make adequate provision for all contract liabilities; and

(3) Any additional amount determined as necessary by the insurance commissioner due to the nature of the benefits.

(q) The amount of any reserves required by this section shall be established by either:

(1) Allocating sufficient assets to one or more separate accounts; or

(2) Setting up the additional reserves in the general account.

(Adopted effective June 1, 2002; Amended December 8, 2017)