

Government of Puerto Rico  
**OFFICE OF THE COMMISSIONER OF INSURANCE**  
Guaynabo, Puerto Rico

**RULE 95**

**REQUIREMENTS FOR THE ACTUARIAL OPINION**

**SECTION 1. LEGAL BASIS**

The Office of the Commissioner of Insurance Puerto Rico (“OCS”) adopts Rule 95, “Requirements for the Actuarial Opinion,” under the authority conferred by the provisions of Section 2.030 of the Public Law No. 77, enacted on June 19, 1957, as amended, known as the Puerto Rico Insurance Code, as well as the provisions of Public Law No. 170, enacted on August 12, 1988, as amended, known as the Uniform Administrative Procedures Act of Puerto Rico.

This Rule is adopted in accordance with model regulation number 822 titled “Actuarial Opinion and Memorandum Regulation” as recommended by the National Association of Insurance Commissioners (NAIC).

**SECTION 2. PURPOSE**

The purpose of this Rule is to establish the requirements for the Actuarial Opinion that must be submitted in compliance with the provisions of Chapter 5 of the Puerto Rico Insurance Code, the rules for the designation of a named actuary, and the guidelines for determining the sufficiency of the reserves.

**SECTION 3. AUTHORITY OF THE COMMISSIONER**

This Rule is issued under the authority conferred on the Commissioner of Insurance in Chapter 2 of the Puerto Rico Insurance Code. The Rule will be effective for annual reports to be filed for 2011.

**SECTION 4. SCOPE**

This rule will apply to all life insurers and fraternal benefit societies that write insurance in Puerto Rico and all life insurers and fraternal benefit societies that are authorized to reinsure life insurance, annuities or accident insurance, and health insurance. Likewise,

the Rule will allow the named actuary to use his or her professional judgment to analyze assets and develop the Actuarial Opinion and any other supplementary memorandum, which shall be consistent with the relevant actuarial standards. However, the Commissioner will have the authority to specify the methods of actuarial analysis and actuarial assumptions when in the judgment of the Commissioner such methods are necessary for the delivery of an acceptable Actuarial Opinion with regard to the sufficiency of the reserves and any other related elements.

This rule will apply to all annual reports filed with the OCI following the effective date of the rule. An annual opinion will be required on the sufficiency of the reserves and related actuarial elements, based on an analysis of the sufficiency of assets in accordance with Section 7 and a supplementary memorandum under Section 8 of this Rule.

## **SECTION 5. DEFINITIONS**

- A. "Actuarial Standards Board" - Means the Board established by the American Academy of Actuaries to develop and promulgate standards for the practice of the actuarial profession.
- B. "Qualified Actuary" - Means any individual who fulfills the requirements established in Section 6B of this Rule.
- C. "Named Actuary" - Means any individual who is named or retained in accordance with the requirements established in Section 6C of this Rule. The named actuary will furnish the Actuarial Opinion and the supplementary memorandum required in Section 5.100 of the Puerto Rico Insurance Code.
- D. "Analysis of the sufficiency of assets" - Means the analysis performed according to the standards and other requirements established in Section 6D of this Rule.
- E. "Insurer" - Is the person who transacts insurance as defined in Section 1.050 of the Insurance Code. Without limiting the general sense of this definition, a reciprocal insurance association, a mutual association, a health services organization or a group of any kind, organized for profit or not, engaged in executing insurance treaties, is an insurer.
- F. "Insurance Code" - Means Public Law No. 77, enacted on June 19, 1957, as amended, known as the Puerto Rico Insurance Code.

- G. "Commissioner" - Means the Commissioner of Insurance of the Commonwealth of Puerto Rico.
- H. "Annual Statement" - Means the statement required in Section 3.310 of the Insurance Code.
- I. "Actuarial opinion" - Means the opinion of a named actuary regarding the sufficiency of the reserves and other actuarial elements. The opinion should be based on an appropriate analysis of assets, in accordance with Section 7 of this Rule and with the standards of practice.
- J. "Fraternal Benefit Society" - Means any non-stock incorporated entity, order or supreme lodge, operated for the sole benefit of its members and the beneficiaries of its members and not for profit, managed as a lodge or under a ritualistic system, with a representative form of government and having a payment arrangement as provided in Chapter 36 of the Insurance Code.

## **SECTION 6. GENERAL REQUIREMENTS**

### **A. Filing of the actuarial opinion**

- (1) The Actuarial Opinion prepared by a named actuary will be included along with page 1 of the annual statement filed with the OCI every year, beginning with the year in which this Rule enters into effect. The opinion should address whether the reserves and any other actuarial elements provide adequately for the obligations arising from the policies and treaties issued by the insurer as set forth in Section 7 of this Rule.
- (2) The Commissioner may grant an extension of time for filing the Actuarial Opinion if requested by the insurer in writing.

### **B. A qualified actuary is a person who:**

- (1) Is an accredited member of the American Academy of Actuaries;
- (2) Is qualified to sign the Actuarial Opinion for the annual statements of life and health insurers, in accordance with the standards of the American Academy of Actuaries;
- (3) Is familiarized with the valuation requirements applicable to life and health insurers;

- (4) Has not been found by the Commissioner (or if so found, has been reinstated as a qualified actuary), further to due notification and hearing, of:
- (a) Violating any provision of the Insurance Code in the performance of the functions of a qualified actuary;
  - (b) Being guilty of fraudulent or dishonest practices;
  - (c) Showing incompetence, lack of cooperation or unreliability in the performance of the functions of a qualified actuary.
  - (d) Submitting to the Commissioner an Actuarial Opinion or supplementary memorandum that has been rejected for failure to comply with the provisions of this Rule, including the standards established by the Actuarial Standards Board; or
  - (e) Resigning or being removed from the profession of actuary in the past five (5) years, as a result of acts or omissions shown in an adverse examination report or as a result of failing to comply with generally accepted actuarial standards; and
- (5) Has not failed to notify the Commissioner of any action taken against him or her by the Commissioner of Insurance of another with regard to Section 6B (4).

C. A "named actuary" is a qualified actuary who is named or retained to prepare the Actuarial Opinion required in this Rule, directly by, or under the authority of the Board of Directors granted to an executive officer who is not the qualified actuary. The insurer shall promptly file a written notification with the Commissioner showing the name, title (name of the firm, if the actuary is an external consultant), and the procedure for naming or retaining the actuary. Likewise, the insurer shall certify that the actuary complies with the provisions of Section 6B. Once the notification is filed, no subsequent notification will be necessary regarding that person, but the insurer shall notify the Commissioner, in writing and in a timely manner, if the actuary ceases to work for the insurer or ceases to comply with the requirements of Section 6B. If the named or retained actuary substitutes a previously named or retained actuary, the notification should indicate that fact and the reasons for the substitution.

#### D. Standards for the Analysis of Sufficiency of Assets

The Analysis of the Sufficiency of Assets should:

- (1) Comply with the standards of practice promulgated from time to time by the Actuarial Standards Board and any other additional standard established in this Rule, which will be the basis for the actuarial opinion; and
- (2) Be based on appropriate methods of analysis promulgated by the Actuarial Standards Board.

#### E. Liabilities to be covered

- (1) Under the provisions of Section 5.100 of the Insurance Code and Rule 48 of the Regulations of the Code, the Actuarial Opinion should be filed along with the annual statement. This applies for all insurance currently in effect on the date of the annual statement, whether directly written or assumed business, regardless of the time and place of issue.
- (2) If the named actuary should determine, further to the analysis of the sufficiency of assets, that an additional reserve should be established besides the aggregate reserve established by the insurer and calculated in accordance with the methods provided in Rule 48 of the Regulations of the Insurance Code, the insurer should establish the additional reserve.
- (3) The reserves established according to paragraph (2) and in subsequent years are deemed unnecessary maybe be released. The amount to be released may be established in the Actuarial Opinion of the applicable year. The release if the reserves will not be construed as lowering of the valuation standard.

### **SECTION 7. ACTUARIAL OPINION BASED ON THE ANALYSIS OF THE SUFFICIENCY OF ASSETS**

#### A. The Actuarial Opinion to be filed shall include:

- (1) a paragraph identifying the named actuary and his or her qualifications (see subsection B1 of this Section);
- (2) a paragraph identifying the topics covered by the opinion and describing the scope of the work performed by the named actuary, including a

summary of the reserves, in a table format, and of other related actuarial elements that were analyzed for the purpose of determining the sufficiency of the assets and the method of analysis employed (see subsection B (2) of this Section). Likewise, the reserves and related actuarial elements included in the opinion but were not analyzed should be identified;

- (3) a paragraph describing the areas, if any, that the actuary has delegated to other experts to develop data, procedures or assumptions (e.g. expected cash flows related to the assets of the insurer, including variations in these, based on economic scenarios (see subsection B(3) of this Section), supported by a statement from each expert in the manner provided in Subsection E of this Section; and
  - (4) A paragraph expressing the opinion of the named actuary with regard to the sufficiency of the assets until the maturity of liabilities (see subsection B (6) of this Section).
  - (5) Additional paragraphs will be required for individual cases of each insurer, as follows:
    - (a) If the named actuary considers it necessary to issue an opinion;
    - (b) If the named actuary needs to disclose any inconsistency in the method of analysis or the basis for assigning the assets used in the previous opinion in comparison with the current opinion;
    - (c) If the named actuary needs to disclose whether the additional reserves established in the previous opinion will be released and for how long;
    - (d) If the named actuary decides to add a paragraph that briefly describes the assumptions that are the basis of the actuarial opinion.
- B. Recommended Language. The following paragraphs should be included in the Actuarial Opinion in accordance with this subsection. The language will be defined as the language that should be included in the Actuarial Opinion under typical circumstances. This language may be modified, when necessary, to address the circumstances of a particular case, but the named actuary should use language that clearly expresses his or her professional judgment. Nevertheless, the opinion should include the relevant aspects as provided in this subsection.

- (1) The introductory paragraph should indicate in a general manner the relation of the named actuary with the insurer and the actuary's qualifications to sign the actuarial opinion. For an insurer's actuary, the introductory paragraph should include a statement such as the following:

"I, [name], am [title] of [name of the insurer] and member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the Commissioner dated [date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

For a consultant actuary, the introductory paragraph should include a statement such as the following:

"I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of the consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of the insurer] to render this opinion as stated in the letter to the Commissioner dated [date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

- (2) The paragraph regarding the scope of the Actuarial Opinion should contain a statement such as the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items, as shown in the annual statements of the company, as prepared for filing with state regulatory officials, as of December 31, 20[ ]."

The information regarding the reserves and other related actuarial elements that are part of the analysis of sufficiency of assets shall be submitted following the provisions established in the NAIC Manual of Instructions.

- (3) If the named actuary used other experts to develop certain parts of the analysis, the paragraph that defines scope of the opinion should include the following:

"I have relied on [name], [title] for [e.g., 'anticipated cash flows from currently owned assets, including variations in cash flows

according to economic scenarios' or 'certain critical aspects of the analysis performed in conjunction with forming my opinion'], as certified in the attached statement. I have reviewed the information relied upon for reasonableness."

The statement of delegation should be accompanied by a statement by each expert, as described in Subsection E.

- (4) If the named actuary has examined the assets and liabilities records, the paragraph describing the use of experts for issues pertaining to the actuarial opinion should include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to [exhibits and schedules listed as applicable] of the company's current annual statement."

- (5) If the named actuary has not examined the assets and liabilities records, but has used as a reference and has relied on data prepared by the insurer (e.g. A list and summary of policies in effect or records of assets), the paragraph describing the use of experts for elements of the actuarial opinion , should include the following:

"In forming my opinion on [specify the kinds of reserve] I relied upon data prepared by [name and title of the official of the insurer who certified the information] as certified in the attached statements. I evaluated that data for reasonableness and consistency. I also reconciled that data to [exhibits and schedules to be listed as applicable] of the company's current annual statement. In other respects, my examination included review of the actuarial assumptions and actuarial methods used and tests of the calculations I considered necessary."

The required documents should be accompanied by a statement by each expert to whom work was delegated, as specified in Subsection E.

- (6) The paragraph containing the opinion should contain a statement such as the following:

"In my opinion the reserves and related actuarial values concerning the statement items identified above:

- (a) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;
- (b) Are based on actuarial assumptions that produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;
- (c) Meet the requirements of the Insurance Law and regulation of the state of [state of domicile]; and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;
- (d) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end [with any exceptions noted below]; and
- (e) Include provisions for all actuarial reserves and related statement items which ought to be established.

The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial elements including, but not limited to, investment earnings on assets, and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion.

or

The following material changes which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion:  
(Describe the change(s).)

Note: Choose one the two (2) previous paragraphs, as applicable.

The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

\_\_\_\_\_  
Signature of Appointed Actuary

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address of Appointed Actuary

\_\_\_\_\_  
Telephone Number of Appointed Actuary

\_\_\_\_\_  
Date"

#### C. Assumptions for new elements

The adoption of new claims or liabilities for an actuarial assumption that differs from the assumptions used for previous elements, claims or liabilities is not a change in actuarial assumptions as defined in this Section.

#### D. Adverse Opinions

If the named actuary cannot prepare an opinion, the actuary should refuse to render the actuarial opinion. If the opinion is adverse or qualified, the actuary should prepare the opinion and explain the reasons. The statement should be submitted after the paragraph stating the scope and before the paragraph stating the opinion.

E. Reliance on information provided by others

If the named actuary based the preparation of the Actuarial Opinion on the certification by other persons with regard to the accuracy and integrity of the information, or the appropriateness of any information used by the named actuary, the Actuarial Opinion should state who provided the information, along with a precise statement of the elements on which the opinion was based. Furthermore, the persons who provided the information should submit a certification showing in precise detail the elements on which information was provided and a disclosure of the accuracy, thoroughness of the information, and applicability. The certification should include the signature, title, company, address, and telephone number of the person who prepared the certification and the date it was signed.

**SECTION 8. DESCRIPTION OF THE ACTUARIAL MEMORANDUM INCLUDING AN ANALYSIS OF THE SUFFICIENCY OF ASSETS AND THE REGULATORY SUMMARY ON THE SUFFICIENCY OF ASSETS**

A. General Provisions

- (1) In accordance with Rule 48 of the Regulations of the Insurance Code, the named actuary should submit an actuarial memorandum to the insurer, describing the analysis performed, in support of the opinion regarding the reserves. The actuarial memorandum should be available for review by the Commissioner when requested by the Commissioner and shall be returned to the insurer after the review. The memorandum should not be considered property of the OCI and will not be subject to automatic filing at the OCI.
- (2) In preparing the actuarial memorandum, the named actuary may depend on and include as part of the memorandum, other actuarial memoranda prepared and signed by other qualified actuaries in accordance with the provisions Section 6B, regarding matters covered in that memorandum mentioned in previous actuarial memoranda.
- (3) If the Commissioner requests an actuarial memorandum and there is none, or if the Commissioner deems that the analysis that was done does not comply with the standards of the Actuarial Standards Board or with the standards and requirements of this Rule, the Commissioner may designate a qualified actuary to review the opinion and prepare a supporting memorandum, as required for such review. The reasonable and necessary expenses of the independent review shall be paid for by the insurer, but will be reviewed and controlled by the Commissioner.

- (4) The actuary who is designated for the review shall be at the same level as an OCI examiner for the purpose of obtaining information from the insurer and the worksheets and other documents of the actuary designated for the review will be retained by the Commissioner. Any information provided by the insurer to the actuary designated for the review and included in the worksheets will be considered material submitted by the insurer to the Commissioner. The information will be kept confidential, in accordance with the provisions of applicable law regarding confidentiality of the documents provided by the insurer. The actuary designated for the review may not be an employee of the consulting firm involved in the preparation of any previous actuarial memorandum or actuarial opinion rendered for the insurer during the current year or during the preceding three (3) years.
- (5) The named actuary should prepare a summary of the material issues regarding the regulation on the sufficiency of assets. The content of the summary is discussed as part of Subsection C. The summary will be delivered no later than March 15 of each year following the year in which an Actuarial Opinion is required, based on the sufficiency of assets. The summary will be kept confidential, to the same degree and under the same circumstances as the actuarial memorandum.

B. Details of the section of the actuarial memorandum documenting the analysis of sufficiency of assets.

When an Actuarial Opinion is provided, the actuarial memorandum should show that the analysis was done according to the standards of sufficiency of assets referred to in Section 6D and any other applicable standard.

The analysis should specify the following:

- (1) For reserves:
  - (a) Descriptions of the products, including the description of the market, underwriting and other aspects of a risk profile; in addition, it should include specific risks the named actuary finds to be significant;
  - (b) Source of current liabilities;

- (c) Method and basis of the reserves;
- (d) Reserve investments;
- (e) Reinsurance contracts
- (f) Identification of explicit or implicit guarantees made in the general account, in support of the benefits provided through a separate account, policy or separate treaty; in addition, the methods used by the named actuary to provide for such guarantees, in the analysis of sufficiency of assets;
- (g) Documentation of the assumptions for verifying the following with respect to the reserves:
  - i. Lapse rates (base and excess)
  - ii. Interest crediting rate strategy;
  - iii. Mortality
  - iv. Policyholder dividend strategy;
  - v. Market or competitor interest rates;
  - vi. Annual revenue rates
  - vii. Commissions and expenses; and
  - viii. Morbidity

The documentation of the assumptions should be sufficient for the actuary designated for the review to reach a conclusion regarding the reasonability of the assumptions.

(2) For assets:

- (a) A description of the portfolio, including a risk profile showing the quality, distribution and kinds of assets;
- (b) Assumptions regarding investments and divestments;
- (c) Source of the information on the assets;
- (d) Basis for the valuation of assets; and

(e) Documentation on the assumptions for:

- i. Default costs;
- ii. Bond call function;
- iii. Mortgage prepayment function
- iv. Determination of market value for assets sold in relation to the divestment strategy; and
- v. Determination of the performance of the assets acquired as part of the investment strategy.

The documentation of the assumptions should be sufficient for the actuary designated for the review to reach a conclusion regarding the reasonability of the assumptions.

(3) For the basis of the analysis:

(a) Methodology

(c) Grounds for the inclusion or exclusion of different business areas and how associated risks are analyzed,

(d) The degree of rigor with which the different business areas were analyzed (including the degree of relevance used to determine the degree of rigor with which the different business areas should be analyzed).

(e) Criteria for determining the sufficiency of assets (including as part of the criteria the precise basis for determining whether the assets are adequate to cover the reserves in moderately adverse conditions “or other conditions, as specified in the standards of practice; and

(e) If the tax impact was considered and the method for treating reinsurance in the analysis of sufficiency of assets;

(4) Summary of significant changes in methods, procedures or assumptions since the previous analysis of sufficiency of assets of the previous year;

(5) Summary of results; and

(6) Conclusions.

C. Details of the regulatory summary of the sufficiency of assets

(1) the regulatory summary of the sufficiency of assets should include the following:

- (a) Description of the scenarios that were examined (including whether the scenarios are random or determined) and the susceptibility tests done with regard to those scenarios. If there are negative results with regard to the excess when the test is done in the aggregate, the actuary should describe the tests and the amount of the additional reserve at a the date of valuation that, if maintained, would result in the elimination of the negative aggregate excess value. The final values of the excess should be determined by extending the period of time of the projection until the assets and liabilities associated with the projection period are no longer material or by adjusting the amount of the excess at the end of the projected period in an amount that is an appropriate estimate of the reasonably expected value of the effective assets and liabilities;
- (b) The degree to which the named actuary used assumptions in the analysis of the sufficiency of assets that are significantly different from the assumptions used in the previous analysis of the sufficiency of assets;
- (c) The amount of the reserves and the identity of the product lines subject to analysis of the sufficiency of assets in the previous opinion, but that were not analyzed in the current Actuarial Opinion;
- (d) Comments on the partial results that could be of concern for the named actuary. For example, the impact of the insufficiency of assets to protect the payment of benefits and expenses and the establishment of statutory reserves during one or more partial periods;
- (e) The methods used by the actuary to recognize the impact of reinsurance on the insurer's cash flow, including the assets and liabilities in each of the scenarios that were examined; and

(f) If the actuary is satisfied with all of the options, whether explicit or not, for each asset or liability (including, but not limited to, those that affect the cash flow included in the fixed revenue values) and any capital value related to investments that have been considered appropriately in the analysis of sufficiency of assets.

(2) The regulatory summary on the sufficiency of assets should include the name of the insurer for whom it is being provided and should be signed and dated by the named actuary who renders the actuarial opinion.

#### D. Consistency with the standards of practice

The actuarial memorandum should contain a statement expressing the following:

“Actuarial methods, considerations and analysis used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum.”

#### E. Use of assets in support of interest maintenance reserve and the valuation of Sufficiency of Assets

An appropriate distribution of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, must be used in any analysis of the sufficiency of assets. The analysis of the risks associated with asset default may include an appropriate assignment of assets in support of the asset valuation reserve (AVR); these assets may not be applied to any other risk with regard to the sufficiency of the reserve. The analysis of this and other risks may include assets in support of other available reserves, whether mandatory or voluntary, to the degree that these are not used for risk analysis or support for the reserve.

The amount of assets for the AVR must be disclosed in the reserves and liabilities table of the opinion and the actuarial memorandum. The method used to select certain assets or parts of assigned assets must be disclosed in the memorandum.

## F. Documentation

The named actuary must retain for at least seven (7) years sufficient documentation to make it possible to determine the procedures that were followed, the analysis that was performed, the basis of the assumptions, and the results that were obtained.

## **SECTION 9. SEVERABILITY**

In any word, sentence, paragraph, subsection, section, or part of this Rule were found to be null and void by a Court of competent jurisdiction, the order of the Court will not affect nor invalidate the remaining provisions of this Rule and the effect of the order will be limited to the word, sentence, paragraph, subsection, section, or part that has been found to be void.

## **SECTION 10. EFFECTIVE DATE**

The provisions of this Rule, which will enter into effect thirty (30) days after filing with the Puerto Rico Department of State, under the provisions of Public Law No. 170, enacted on August 12, 1988, *supra*, shall enter into effect with regard to the financial reports for fiscal year 2011.

## **SIGNED**

**RAMÓN L. CRUZ COLÓN**  
**COMMISSIONER OF INSURANCE**

Date of approval: February 25, 2011

Date of Filing with  
the Department of State:

Date of Filing at  
the Legislative Library: