

## IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

### Consumer Services

#### 18.03.03 – Variable Contracts

##### **Who does this rule apply to?**

*This rule applies to insurers of variable contracts.*

##### **What is the purpose of this rule?**

*The purpose of this rule provides a comprehensive plan: including, qualification and licensing of insurers, separate accounts and investments, policy and contract forms, reporting, licensing of agents, records, and standards of sales practices.*

##### **What is the legal authority for the agency to promulgate this rule?**

*This rule implements the following statutes passed by the Idaho Legislature:*

- [41-19, et seq., Idaho Code](#) – Life Insurance Policies and Annuity Contracts
- [41-1965, Idaho Code](#) – Authority to Promulgate Rules

##### **Who do I contact for more information on this rule?**

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## 18.03.03 – VARIABLE CONTRACTS

### 000. LEGAL AUTHORITY.

Title 41, Chapter 19, Idaho Code.

(3-31-22)

### 001. PURPOSE.

To provide a comprehensive plan: for the qualification and licensing of insurers to write policies or contracts on a variable basis; for establishment of separate accounts and the investment of assets contained therein; for the filing and approval of policy and contract forms; for reports to contract holders; for the qualification, examination and licensing of agents and other persons; providing for the establishment and preservation of certain records and the establishment of other standards pertaining to the offering and sale of such contracts.

(3-31-22)

### 002. -- 009. (RESERVED).

### 010. DEFINITIONS.

**01. Variable Contracts.** Any policy or contract that provides for insurance or annuity benefits which vary according to the investment experience of any separate account or accounts maintained by the insurer as to such policy or contract.

(3-31-22)

**02. Agent.** Any person, corporation, partnership, or other legal entity which under the laws of this state is licensed as a life insurance agent.

(3-31-22)

**03. Variable Contract Agent.** An agent who sells or offers to sell any contract on a variable basis.

(3-31-22)

**04. Satisfactory Alternative Examination.** Part I of the written examination includes any securities examination that is declared by the Director to be an equivalent examination. The following are satisfactory alternative examinations:

(3-31-22)

**a.** The Financial Industry Regulatory Authority (FINRA), Examination for Principals, or Examination for Qualification as a Registered Representative;

(3-31-22)

**b.** The various securities examinations needed by the New York Stock Exchange, the American Stock Exchange, or the Pacific Coast Stock Exchange;

(3-31-22)

**c.** The Securities and Exchange Commission test given pursuant to Section 15(b)(8) of the Securities Exchange Act of 1934, as amended;

(3-31-22)

**d.** The examination recommended for the testing of variable contract agents by the National Association of Insurance Commissioners, when adopted by the Insurance Department of any State or Territory of the United States and approved for use by such Department by the Securities and Exchange Commission; and

(3-31-22)

**e.** Any State Securities Sales Examination accepted by the Securities and Exchange Commission.

(3-31-22)

### 011. QUALIFICATIONS OF INSURANCE COMPANIES TO ISSUE VARIABLE CONTRACTS.

**01. Parent or Affiliated Insurer.** An insurer that issues variable contracts and that is a subsidiary of, or affiliated through common management or ownership with, another life insurer authorized to transact such insurance in this state meets the provisions of this Section if either it or the parent or affiliated insurer meets the provisions hereof.

(3-31-22)

**02. Delivery.** Before any insurer delivers or issues for delivery variable contracts in this state, it will submit to the Director a general description of the kinds of variable contracts it intends to issue;

(3-31-22)

### 012. SEPARATE ACCOUNTS.

**01. Domestic Life Insurer.** A domestic life insurer issuing variable contracts and establishing one (1) or more separate accounts pursuant to Sections 41-1936 and 41-734 of the Idaho Insurance Code is subject to the following provisions:

(3-31-22)

**a.** To the extent that the company's reserve liability with regard to: (a) benefits guaranteed as to dollar

amount and duration, and (b) funds guaranteed as to principal amount or stated rate of interest is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability are invested in accordance with the laws of this state governing the investments of life insurance companies. (3-31-22)

**b.** With respect to seventy-five percent (75%) of the market value of the total assets in a separate account no insurer may purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market value, would exceed ten percent (10%) of the market value of the assets of said separate account. The Director may waive such limitation if such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this state. (3-31-22)

**c.** Unless otherwise permitted by law or approved by the Director, no insurer may purchase or acquire for its separate accounts the voting securities of any issuer if as a result of such acquisition the insurance company and its separate accounts, in the aggregate, will own more than ten percent (10%) of the total issued and outstanding voting securities of such issuer. The foregoing does not apply with respect to securities held in separate accounts with voting rights exercisable only in accordance with instructions from persons having interests in such accounts. (3-31-22)

**d.** The limitations provided in Subsections 012.01.b. and 012.01.c. above do not apply to the investment with respect to a separate account in the securities of an investment company registered under the Investment Company Act of 1940, provided that the investments of such investment company comply in substance with Subsections 012.01.b. and 012.01.c. (3-31-22)

**02. Chargeability of Assets with Liabilities.** That portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account is not chargeable with liabilities arising out of any other business the insurer may conduct. Notwithstanding any other provisions of law an insurer may: (3-31-22)

**a.** With respect to any separate account registered with the Securities and Exchange Commission as a unit investment trust, exercise voting rights in connection with any securities of a regulated investment company registered under the Investment Company Act of 1940 and held in such separate accounts in accordance with instructions from persons having interests in such accounts ratably as determined by the insurer, or (3-31-22)

**b.** With respect to any separate account registered with the Securities and Exchange Commission as a management investment company, establish for such account a committee, board, or other body, the members of which may or cannot be affiliated with such company and may be elected to such membership by the vote of persons having interests in such account ratably as determined by the insurer. Such committee, board or other body may have the power, exercisable alone or in conjunction with others, to manage such separate account and the investment of its assets. An insurer, committee, board or other body, may make such other provisions in respect to any such separate account which are appropriate to facilitate compliance with requirements of any Federal or State law, provided that the Director approves such provisions as not hazardous to the public or the company's policyholders in this state. (3-31-22)

**03. Assets Equal to Reserves and Liabilities.** The company will maintain in each such separate account assets with a value at least equal to the reserves and other contract liabilities with respect to such account. (3-31-22)

**04. Officers and Directors.** Rules under any provision of the Insurance Law of this state of any rule applicable to the officers and directors of insurance companies with respect to conflicts of interest also apply to members of any separate account's committee, board or other similar body. No officer or director of such company nor any member of the committee, board or body of a separate account will receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of such separate account. (3-31-22)

**013. FILING OF CONTRACTS.**

Each insurer will submit to the Director a copy of each prospectus adopted by it for use in conjunction with the sale of

any contract offered for sale in this state. (3-31-22)

**014. CONTRACTS PROVIDING FOR VARIABLE BENEFITS.**

**01. Illustrations.** Illustrations of benefits payable under any variable contract providing benefits payable in variable amounts cannot include projections of past investment experience into the future or attempted predictions of future investment experience. (3-31-22)

**02. Payment of Periodic Stipulated Payments.** No individual variable annuity contract calling for the payment of periodic stipulated payments will be delivered or issued for delivery unless it contains in substance the following provisions or provisions which are more favorable to the holders of such contracts: (3-31-22)

**a.** The grace period is for one (1) month, but not less than thirty (30) days, in which any stipulated payment to the insurer falling due after the first may be made, during which period of grace the contract will continue in force. The contract may include a statement of the basis for determining the date that any such payment received during the period of grace is applied to produce the values under the contract; (3-31-22)

**b.** At any time within one (1) year from the date of default in making periodic stipulated payments to the insurer during the life of the annuitant, unless the cash surrender value has been paid, the contract may be reinstated upon payment to the insurer of such overdue payments as prescribed by the contract, and payment or reinstatement of all indebtedness to the insurer on the contract, including interest. The contract may include a statement of the basis for determining the date which the amount to cover such overdue payments and indebtedness is applied to produce the values under the contract; (3-31-22)

**c.** Specifying the options available in the event of default in a periodic stipulated payment, which may include an option to surrender the contract for a cash value as determined by the contract, and will include an option to receive a paid-up annuity if the contract is not surrendered for cash, the amount of such paid-up annuity being determined by applying the value of the contract at the annuity commencement date in accordance with the terms of the contract. (3-31-22)

**03. Investment Increment Factor.** Any individual variable annuity contract delivered or issued for delivery in this state will stipulate the investment increment factor to be used in computing the dollar amount of variable benefits or other contractual payments or values thereunder, and may guarantee that expense and/or mortality results do not adversely affect such dollar amounts. If not guaranteed, the expense and mortality factors are also to be stipulated in the contract. In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable contract: (3-31-22)

**a.** The annual net investment increment assumption will not exceed five percent (5%), except with the approval of the Director. (3-31-22)

**b.** To the extent that the level of benefits may be affected by future mortality results, the mortality factor is to be determined from the Annuity Mortality Table for 1949, Ultimate, or any modification of that table not having a higher mortality rate at any age, or, if approved by the Director, from another table. (3-31-22)

**c.** "Expense," as used in this subsection, may exclude part or all taxes, as stipulated in the contract. (3-31-22)

**04. Reserve Liability.** The reserve liability for variable contracts is to be established pursuant to the requirements of the standard valuation law in accordance with actuarial procedures that recognize the variable nature of the benefits provided, and any mortality guarantees. (3-31-22)

**015. REQUISITE REPORTS.**

**01. Statement Reporting the Investments.** Any insurer issuing individual variable contracts providing benefits in variable amounts will mail to the contract holder at least once in each contract year after the first at the last address known to the company, a statement or statements reporting the investments held in the separate account and, in the case of contracts under which payments have not yet commenced, a statement reporting as of a

date not more than four (4) months previous to the date of mailing, (a) the number of accumulation units credited to such contracts and the dollar value of a unit, or (b) the value of the contract holder's account. (3-31-22)

**02. Statement of Business to Director.** The insurer will submit annually to the Insurance Director a statement of the business of its separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners. (3-31-22)

**016. FOREIGN INSURERS.**

If the law or rule in the place of domicile of a foreign insurer provides a degree of protection to the policyholders and the public which is substantially equal to that provided by these rules, the Director, at their discretion, may consider compliance with such law or rule as compliance with these rules. (3-31-22)

**017. -- 999. (RESERVED).**