

FAQs about Amending AG-38

The Life and Health Task Force of the NAIC may adopt a revision to current Actuarial Guideline 38 (AG 38). If adopted, the proposed revision may be effective by year end. Protective Life, West Coast Life and Empire General oppose the revision, and have compiled this information to help you more fully understand the issues. Read on for more information.

If AG 38 is revised, what products will be impacted?

Universal life insurance with secondary guarantees (ULSG) (“no lapse” universal life).

What is the impact?

We believe the proposed revision would unnecessarily increase reserves, which would in turn cause price increases. No one knows the specific impact, and it will differ from insurance company to insurance company. However, it is clear that the cost of producing these products would increase.

What would the proposed revision do?

The proposed revision would require companies to post reserves in excess of what many believe current law requires and in excess of what is reasonably and conservatively necessary to cover the policy liability. (Reserves in excess of what is reasonably and conservatively necessary to cover policy liabilities are often called “redundant reserves.”)

Who is in favor of the proposed revision?

The following companies (some of which do not offer ULSG) are in support of the proposed revision:

- New York Life Insurance Company and
- Northwestern Mutual Life Insurance Company
- Guardian Life Insurance Company of America
- The Western and Southern Life Insurance Company
- American International Group, Inc. (AIG)

Many of the regulators on the Life and Health Task Force also support the proposed revision, most notably those from the New York and California insurance departments.

Who is against the proposed revision?

Several regulators have stated that the regulation should not be revised and have expressed concern that the process is moving too quickly. In addition, the following companies have submitted letters in opposition to the proposed revision:

- AmerUs Group (AmerUs Life Insurance Company)
- Empire General Life Assurance Corporation
- Genworth Financial Inc.
- Jefferson-Pilot Financial
- John Hancock Life Insurance Company
- Lincoln National Corporation (Lincoln National Life Insurance Company)
- The Manufacturer's Life Insurance Company (U.S.A.)
- Midland National Life Insurance Company
- Mutual of Omaha Insurance Company
- North American Company for Life and Health Insurance
- Pacific Life Insurance Company
- Penn Mutual Life Insurance Company
- Principal Financial Group (Principal Life Insurance Company)
- Protective Life Insurance Company
- Prudential Financial, and
- Trustmark Insurance Companies

What have trade groups done?

NAILBA has submitted a letter urging the NAIC working group to carefully consider the issues and not act hastily. Because the ACLI has member companies on both sides of the issue, the ACLI has not taken a position.

What are the arguments in favor of the proposed revision?

Proponents at first argued that existing law allowed reserves to be too low and that solvency issues were being created. Several regulators questioned that assertion. Another argument is that the current guideline does not comply with the standard valuation law. But we believe the existing guideline is consistent with the law, and a national well-regarded insurance law firm has concluded that the existing guideline does not violate the standard valuation law. Moreover, it is highly unlikely that the NAIC would have adopted a guideline that is inconsistent with the standard valuation law. Finally, competitors have claimed that some companies have set up reserves that are inconsistent with the spirit of the guideline. We are confident that our reserves comply with the guideline and the standard valuation law, and we fully support the efforts of regulators to assure that reserves of all companies comply with the guideline.

Arguments have also been made that there is not a level playing field. We believe that a level playing field exists if all companies are free to offer these life insurance products. The fact that a company may not choose to offer a product does not mean that the product should be disadvantaged by a redundant reserve requirement.

Doesn't the revision process seem to be moving quickly?

We believe it is moving too quickly and without sufficient deliberation. This revision was officially proposed during a conference call on October 22, so it has been exposed for less than a month (a prior proposal was filed in August 2004 and several other proposals were filed in September). Although the Academy of Actuaries is studying this reserving issue, the proposed revision schedule will not allow time for them to report their findings. We believe the process is moving at an unusually fast pace.

Are there other proposals?

In an attempt to make it easier for regulators to ascertain that companies were holding adequate reserves, ten companies, including Protective, submitted a proposal to require companies to separately test and certify their reserves on a product basis. This would allow regulators to review these product lines more easily. At the current time, however, the NAIC actuarial committee is refusing to consider alternative proposals.

Would the proposed revision have an anti-competitive impact?

Yes. We believe that the proposal would make whole life insurance products more competitive with universal life insurance by needlessly increasing the cost of universal life insurance with secondary guarantees. Obviously, this helps certain companies, but it hurts others. More importantly, it hurts consumers.

When would the proposed revision take effect?

The revision is proposed to be effective by December 2004. In addition, some regulators, encouraged by certain companies, are seeking a retroactive impact, meaning that reserves would be changed for policies sold in previous years.

How can we know that companies are holding sufficient reserves?

Everyone wants to make sure that all companies hold sufficient reserves. Only the company and its regulator can know whether the company is holding sufficient reserves. Although some companies have suggested that other companies are holding insufficient reserves, there is no way they can lawfully know that. Companies simply do not share that kind of information with their competitors.

Throughout the Protective family of companies, we work hard to ensure that we conservatively and adequately reserve for every product while meeting the needs of our policyholders. We are confident that our reserve calculations conservatively meet the requirements of the existing guidelines.

A few regulators have stated that, if abuses exist, they should be handled on a case by case basis. The companies who oppose the proposal agree and in fact proposed a revision that would make it easier for regulators to identify any company holding insufficient reserves.

Several regulators have acknowledged that the proposal would result in redundant reserves. In other words, they have stated that the proposal would require reserves to be higher than necessary to cover the policy liabilities.

If the proposed revision increases reserves, won't it just make companies stronger?

No. Reserves ought to be adequate and conservative, but it is not in the long-term interest of the industry to require unduly redundant reserves. If unnecessary reserves are required, the cost of insurance is unnecessarily increased, meaning that fewer customers will be able to purchase insurance at the levels that they otherwise could or with the benefits that they choose. For stock companies, investors will be less likely to invest because the cost of producing the product artificially reduces the return on capital.

Will the NAIC hold hearings on this matter?

Unlike Congress or other legislative bodies, which often hold hearings to determine the facts, the NAIC generally acts without holding hearings. Thus, it is possible that action can be taken without a fact-finding process. To our knowledge, there is no evidence that any company is holding reserves that are not sufficient to cover the policy liabilities.

What can I do?

- Learn about this issue.
- Call or write your insurance department. Tell them:
 - The proposal needs to be studied.
 - If any company is holding inadequate reserves, address that particular company.
 - But if reserves are adequate, they should be left alone.
 - Excessive and redundant reserves are bad for consumers.
 - Consumers should be able to decide if they want high cash values or not; government should not make that choice for them.
 - Take the time to understand the issue and the impact it will have on their citizens.
 - Hasty action is not in anyone's best interest.
- Urge your trade association to get involved.
- Urge others in your business to get involved.