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Federal Tax Issues Under the 2001 CSO Mortality Tables

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Federal legislation enacted in the 1980s introduced the notion that the tax treatment of life insurers and life insurance contracts should depend on the mortality tables "prevailing" at the time that the contracts are issued and the reserves for the contracts are first established. In 1984, Congress coined and defined the term "prevailing commissioners' standard tables" for life insurance company tax purposes, thereby creating a device by which the deductible amount of life insurance reserves could be restricted to the lowest amount supportable by the officially promulgated mortality standards for determining reserves that were current when the reserves were set up. Then, with some modifications, in 1988 Congress copied this device for the broader purpose of constraining the investment orientation of life insurance. After the 1988 legislation, the prevailing commissioners' standard tables limited the scope of life insurance contracts that could generate tax-free death benefits and a cash-value buildup not currently taxed, and even further limited those from which lifetime distributions could be taken in a tax-favored manner.

The congressional insistence on "currency" in the mortality assumptions to be utilized in calculating the deductible reserve amounts and the maximum premiums or cash values under life insurance contracts necessitated the crafting of a complex set of rules in the tax law—hardly a surprise—including both rules of definition and rules of transition. The definitional rules were needed to say what mortality standard was current, or prevailing, at any given time for a specified class of reserves (and later on for contracts themselves), while the transitional rules were needed to address the prospect that the standard would change with the passage of time. Congress was no stranger to the latter possibility in 1984; the 1980 Commissioners Standard Ordinary Tables ("1980 CSO Tables") were in the process of becoming the new prevailing tables, supplanting their 1958 predecessor, as Congress was completing its historic re-write of the life insurance company tax rules.

Now, with improvements in mortality rates over the two decades since the advent of the 1980 CSO Tables, the NAIC is about to promulgate the 2001 Commissioners Standard Ordinary Tables ("2001 CSO Tables"). Commentators have suggested that the improved mortality rates embedded in the 2001 CSO Tables will reduce life insurers' reserve requirements by an average of some 20 percent. By virtue of tax legislation of the 1980s, these improved rates likewise will lower, per dollar of death benefit, the deductible amounts of life insurers' reserves and the tax law's premium and cash value limits for life insurance contracts.

The manner in which, and the time at which, the advent of the 2001 CSO Tables will affect life insurers' reserve deductions are fairly certain, and yet, given the revenue sums potentially at stake, official guidance applying the governing rules of the federal income tax likely will be forthcoming. In some degree of contrast, the manner and the timing of the new tabular rates' impact on the premium and cash-value limits applicable to life insurance contracts under the tax law are imbued with uncertainty. As life insurance industry representatives have been urging upon government officials of late, formal guidance from the U.S. Department of Treasury and Internal Revenue Service (the "IRS") on the tax law's requirements in this respect is virtually a necessity. Such answers exist, along with the as-yet-unanswered questions and are recounted in the balance of this article.

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Mortality Tables and Life Insurance Company Taxation

Reserve Requirements

An increase in the amount of a life insurance company's "life insurance reserves" within the meaning of Internal Revenue Code section 807(c)(1)[1] from one taxable year to the next is deductible in determining the company's federal income tax liability.[2] The amount of such reserves is, in turn, determined under section 807(d)(1) with respect to each contract for which life insurance reserves are held; it is the greater of the contract's "net surrender value" or its "federally prescribed reserve."[3] Section 807(d)(2)

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then defines the means for computing this federally prescribed reserve—the device for restricting the deductible amount of the reserve to the lowest amount officially supportable when the reserve was set up—requiring that it be based on (among other elements) the prevailing commissioners' standard tables applicable to the contract underlying the reserve.[4]

Section 807(d)(5)(A) defines these prevailing tables to be used in the federally prescribed reserve calculation by looking to the mortality tables applicable to the reserves for a contract *at the time it was issued*. In particular, the statute says that the prevailing tables, with respect to a contract when it was issued, are the commissioners' standard tables that were then (1) most recently prescribed by the NAIC and (2) permitted to be used by at least 26 states in valuing the reserve for that contract. Because the 2001 CSO Tables will soon be the most recent NAIC-prescribed tables for valuing life insurance liabilities, they will become the prevailing tables under section 807(d) as soon as the 26th State permits their use. In creating the section 807(d) rules in 1984, Congress made use of the NAIC-approved mortality tables, as implemented in a majority of the states, to provide a reserve deduction that was at least as great as the reserve required to be held in most states, but not a greater amount.[5] To achieve the goal of defining the minimum reserve amount generally required under state law, which then would be allowed as a deduction for tax purposes, it was necessary for Congress also to define a maximum interest rate and a reserve method, as well as to address a number of other details. This Congress did this elsewhere in section 807(d) and in section 807(e), while also crafting special rules for market-valued separate account reserves in section 817 (and, in 1996, in section 817A for "modified guaranteed contracts"). However, in an effort to maximize tax revenues during a period of deficit closing in 1987, Congress diverged from the state-defined minimum reserve by requiring the federally prescribed reserves to be based upon an interest rate equal to the greater of the maximum rate allowed by most States and a special version of the "applicable federal rate," one designed (oddly enough) to discount the unpaid losses of property-casualty insurers under section 846. This was done not only to constrict the reserve deduction, potentially augmenting tax revenues from life insurers, but also in recognition of the primacy of the states in (and the absence of federal rules for) regulating life insurance companies and assuring their solvency.

Hence, subject to the transition rules discussed below, the mortality rates in the 2001 CSO Tables will apply in determining the federally prescribed reserves for contracts issued after the use of the new rates is first permitted by the 26th state. Given the tables that are defined by section 807(d)(5) as prevailing are determined when a contract is issued, guidance is needed to clarify how the prevailing-table rule operates in the case of master group contracts. Similarly, given that there can be a number of tables that fit the definition of "prevailing" set forth in section 807(d)(5)(A), and recognizing that Congress made use of the prevailing table concept to limit reserves (from a tax perspective) to the lowest state-required amount, guidance also is needed to clarify how the rule operates where multiple tables potentially apply. This was true under the 1980 CSO Tables, and it certainly will be the case under the 2001 CSO Tables—some 84 of them, by one count.

Master group contracts

The statute endeavors to speak to these needs through two special rules included in the original 1984 enactment. First, a special rule in section 807(e)(2) provides that in the case of a group life insurance contract, the contract's issue date for purposes of section 807(d) is the issue date of the "master plan." That said, however, the statute goes on to stipulate that with respect to a benefit under a group contract that was guaranteed to a "participant" at a date after the master plan's issue date, the later date of that guarantee is the relevant date for section 807(d) purposes. The statute, in other words, views the group contract as if it were merely a collection of individual contracts, with each participant's coverage—presumably

meaning the coverage typically evidenced by a certificate issued to the insured—constituting a separate contract, and consistently with this view it adopts the date that such coverage was guaranteed to the participant as the issue date utilized to identify the mortality table applicable in determining the federally prescribed reserve for the coverage. Thus, under the section 807(e)(2) rule, where a group contract was issued prior to the date when the 2001 CSO Tables become prevailing (taking account of the transition rules described under the next heading), the federally prescribed reserves for the coverages provided under the contract could be determined using two different mortality tables, i.e., the 2001 CSO Tables with respect to coverages guaranteed on or after that date, and the 1980 CSO Tables for the pre-existing coverages.

Multiple Tables/Options

A second special rule, appearing in section 807(d)(5)(E), addresses the problem where multiple tables otherwise fit the definition of prevailing tables in section 807(d)(5)(A). The rule in 807(d)(5)(E) requires that, with respect to any "category of risks" for which two or more tables meet the general definition of prevailing, or for which multiple "options" under one or more tables are prevailing, the table and option "generally" yielding the "lowest reserves" are to be used. (The reference to options was included specifically to address the availability of select and ultimate mortality rates under the 1980 CSO Tables.) This rule is somewhat vague in its phrasing, but it hints liberally at the result desired by describing the production of the lowest reserves as its reason for being.

In the context of the 2001 CSO Tables, this lowest-reserves rule raises questions about the use of (1) select and ultimate mortality versus ultimate mortality and (2) smoker/nonsmoker tables versus composite tables. Anticipating these questions, a recent report by a working group of the American Academy of Actuaries to the NAIC's Life and Health Actuarial Task Force on the 2001 CSO Tables, making use of a study undertaken by the American Council of Life Insurers (ACLI), observed that, "the reserves on an Ultimate basis are less than the reserves on a Select and Ultimate basis for the industry and its current mix of products."[6] In addition, the report noted, "[I]n regards to unismoke versus smoker distinct, the same ACLI study reports that there is no material difference in the aggregate results of using either version."[7] Thus, if the lowest-reserves rule is implemented utilizing the Academy's observations, the federally prescribed reserves will be based upon ultimate mortality and on smoking status as used for annual statement reserves. That said, in view of the paucity of authorities interpreting that rule to date and the tax revenues potentially at stake, the IRS may well decide to review the questions involved and issue its formal guidance for life insurers and revenue agents to follow.

Timing and Transition

At this writing, the proposed 2001 CSO Tables are expected to gain NAIC approval during the association's meeting in December 2002. Whereas the 1980 CSO Tables generally were adopted by statutory enactments in the states, that will not be the case with the 2001 CSO Tables. Rather, pursuant to enabling legislation on the books of virtually every state, the new tables will be adopted by regulations promulgated by each state's insurance regulator. This should lead to adoption of the 2001 CSO Tables with some rapidity, and to facilitate this process, the NAIC will have a proposed model regulation to implement the new mortality standard this December. The model, as currently envisioned, will allow insurers to utilize the 2001 CSO Tables on a plan-by-plan basis, with a requirement that the new tables be used for all products offered for sale beginning on January 1, 2009—the so-called "mandatory date."

Given the ability of the states to adopt the 2001 CSO Tables by regulation, and assuming the NAIC gives its approval to the new tables before the end of 2002, it is possible that the new tables will become prevailing under section 807(d) due to the 26th state's adoption some time in 2003, and it seems quite likely that the requisite State adoptions will have been completed before the end of 2004. The life insurance industry will, of course, be following the state approval process quite closely, and the IRS will undoubtedly be doing the same. As it has done before, the IRS can be expected to issue formal guidance announcing the 26th state's approval, and hence the advent of the 2001 CSO Tables as "prevailing," not long after that approval occurs.

Congress, aware of the practical and other issues involved in a transition to a new mortality standard as it wrote the section 807(d) rules in 1984, provided detailed statutory guidance relating to the transition. This guidance appears in section 807(d)(5)(B) in the form of a three-year transition rule, which is permissive in nature. Specifically, section 807(d)(5)(B) provides that if there is a change to new prevailing tables during a calendar year, the insurer *may* use the previously

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prevailing tables to value reserves for contracts issued through the end of the calendar year three years after the year of change. Thus, if the 2001 CSO Tables become prevailing in mid-2003, the 1980 CSO Tables may be used for contracts issued through 2006. For purposes of the federally prescribed reserves, the mandatory date (in this example) would then move up to January 1, 2007.

Furthermore, according to the express terms of section 807(d)(5)(B), the permission to continue use of the "old" tables is granted "with respect to any contract." This wording suggests that an insurer may choose to employ the new standard in determining the reserves for some contracts while continuing use of the old standard for others. This grant of discretion to the taxpayer, however, presumably is constrained by the plan-by-plan adoption rule contained in the proposed NAIC model regulation. It also is limited by the section 807(d)(1) rule precluding the federally prescribed reserve for a contract from exceeding the annual statement reserve for the contract.

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Mortality Tables and Life Insurance Product Taxation

Sections 7702 and 7702A

Both section 7702, defining a "life insurance contract" for tax purposes, and section 7702A, defining a "modified endowment contract," make use of the prevailing table rule of section 807(d) by requiring "reasonable" mortality to be assumed in determining the net-single premiums and guideline premiums under section 7702 and the seven-pay premiums under section 7702A. Specifically, section 7702(c)(3)(B)(i) requires the guideline premiums for a life insurance contract to be based, inter alia, on "reasonable mortality charges" which do not exceed the "mortality charges specified" in the prevailing tables within the meaning of section 807(d)(5) as of the time the contract is issued. Section 7702(c)(3)(B)(i), reasonable mortality requirement, introduced into the statute in 1988, applies to net-single premiums under section 7702(b)(2)(B) as well, and to seven-pay premiums under section 7702A(c)(1)(B).[8] Under section 7702(c)(3)(B)(i), the prevailing tabular rates constitute a general ceiling for the mortality assumptions that may be employed in the section 7702 and 7702A calculations, although the statute allows the U.S. Department of Treasury and the IRS to write regulations that increase or decrease these rates, e.g., to raise the ceiling in the case of substandard risks (discussed further below).

When the 2001 CSO Tables become prevailing for section 807(d) purposes, the wording of section 7702(c)(3)(B)(i) will automatically invoke their use in the section 7702 and 7702A calculations. In the context of the life insurance product tax rules, this transition to the new standard will bring with it significant reductions per dollar of death benefit in the guideline premiums, net single premiums, and seven-pay premiums for contracts.[9] The transition also promises to raise many more questions than the few that present themselves in the corporate tax context—primarily for the reason that the transition to the new standard was well thought out in the crafting of the section 807(d) rules in 1984 and was not at all considered when the reasonable mortality requirement was inserted into section 7702 in 1988. The balance of this article addresses a number of these questions.

Which Tables?

As noted above, many 2001 CSO Tables will be published, and one apparent question is which of these tables may be used as providing "reasonable" mortality rates for purposes of sections 7702 and 7702A? Immediately following the 1988 enactment of the reasonable mortality requirement, IRS Notice 88-128[10] generally allowed the use of sex-distinct, smoker/ nonsmoker/aggregate mortality rates under the 1980 CSO Tables for these purposes. Proposed regulations under section 7702, issued in 1991 but never finalized, permitted far greater leeway, subject to a consistency rule.[11] Under the proposed regulations, 1980 CSO-based mortality rates were deemed reasonable, if consistently applied within a class of contracts, whether or not distinctions were made according to the insured's sex or tobacco use. Any new regulations promulgated by the U.S. Department of Treasury and the IRS in response to the advent of the 2001 CSO Tables would do well to follow the earlier proposed regulations in granting similar leeway to insurers. The section 7702 and 7702A calculations with respect to any contract should be able to draw upon any rates derived from the new Tables as appropriate for that contract.

Transition: Three-Year Rule and the Need for Regulations

When the 2001 CSO Tables become prevailing within the meaning of section 807(d), insurers are permitted the three-year transition period as set forth in section 807(d)(5)(B) in determining their federally prescribed reserves for newly issued life insurance contracts. Another question that the transition to the new mortality standard raises under sections 7702 and 7702A is whether or not the same three-year transition period apply? As noted above, the rule in section 807(d)(5)(B) provides that if there is a change to new prevailing tables during a calendar year, the insurer may use the previously prevailing tables for a contract issued through the

end of the calendar year three years after the year of change. Further, the rule is permissive, and the permission to continue to use the old standard is granted contract by contract. The answer appears to be that, it will apply, for the reason that section 7702(c)(3)(B)(i) refers to section 807(d)(5), not simply section 807(d)(5)(A), in its effort to incorporate the prevailing tables as the basis for reasonable mortality. The reference to section 807(d)(5), as a matter of statutory construction, includes section 807(d)(5)(B)—the three-year rule—thus importing that rule into the reasonable mortality requirement.

All that said, whether or not the three-year transition period applies to the section 7702 and 7702A calculations is at best a stalking horse for the deeper concern presented by the arrival of the 2001 CSO Tables as prevailing. The truth is that the section 807(d)(5)(A) rule, built to address the valuation of insurers' liabilities, interacts awkwardly, at best, with the nonforfeiture requirements that state law imposes on life insurance contracts. If state X withholds its approval of the 2001 CSO Tables beyond the time that those tables become prevailing (plus three full years, assuming that section 807(5)(5)(B) applies), contracts issued in state X after that time must continue to meet the requirements of the nonforfeiture law incorporating mortality based upon the 1980 CSO Tables, even though the section 7702 and 7702A premium limits will then be calculated using the rates in the 2001 CSO Tables. Such a conflict raises the specter of a federal "ceiling" that falls below the state "floor," rendering the issuance of a contract problematic and even, in the case of contracts attempting to qualify under section 7702's cash value accumulation test, impossible.

To preclude the occurrence of such difficulties, the ACLI has asked the U.S. Department of Treasury and the IRS to issue formal guidance paving the way for an orderly transition to the 2001 CSO Tables. Such guidance could, of course, adhere strictly to the reserve rules, including the three-year delay, casting aside the problems of coordination with the nonforfeiture law, but the U.S. Department of Treasury and the IRS presumably will work toward achieving a more sensible result. One possibility assuring effective coordination would be to delay the implementation of the 2001 CSO Tables until the mandatory date under the proposed NAIC model regulation. It is questionable, however, whether the government would tolerate continued use of 1980 CSO mortality for new contracts issued until 2009. An alternative for guidance includes the imposition of the 2001 CSO Tables as the reasonable mortality

standard for contracts issued in a given state within a specified period of time after that state allows use of the tables. This, however, brings with it the prospect that different requirements will apply simultaneously in different states.[12] The authors understand that the ACLI is asking the U.S. Department of Treasury and IRS to issue guidance that combines the preceding two ideas, providing that the Notice 88-128 safe harbor remains in place until the earlier of the 2009 mandatory date or the actual date of issue for a contract issued using the 2001 CSO Tables in its underlying computations. Another alternative would entail the stipulation of a uniform period, several years into the future, for transition to the 2001 CSO Tables nationwide. While formal guidance from the U.S. Department of Treasury and the IRS on transition to the 2001 CSO Tables is expected, the timing of such guidance currently is unknown.

Substandard Risks

If formal guidance is forthcoming from the government on the subject of reasonable mortality under the 2001 CSO Tables, that guidance might also address the treatment of substandard risks. Notice 88-128 was silent on this topic, and the 1991 proposed regulations under section 7702, that attempted to address it. It was proved controversial and never has been finalized. This leaves the transition rule provided in TAMRA as the governing law on the matter (i.e., which somewhat vaguely provided that the mortality charges assumed in the section 7702 and 7702A calculations for a contract covering a known substandard risk were reasonable if they did not differ materially from the charges

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actually imposed under the contract.) While the associated uncertainty has not hindered the issuance of coverage on substandard lives, the advent of the 2001 CSO Tables alters the situation to an extent. This follows from the tendency of the new tables to move the "standard" for standard mortality, placing greater pressure on the substandard risk classification. It remains to be seen whether the life insurance industry and the government will seek to give sharper definition to the treatment of substandard risks under sections 7702 and 7702A in the course of dealing with the transition to the new tables.

Maturity Dates

For purposes of the calculations under sections 7702 and 7702A, a life insurance contract's maturity date is deemed to be between the insured's ages 95 and 100. This maximum maturity assumption, imposed by one of the so-called computational rules of section 7702,[13] was consistent with the limiting age of 100 under the 1980 CSO Tables, the "new" mortality standard coming into being when section 7702 was enacted. At the time of its creation, section 7702 contained no external standard of "reasonable" mortality, but instead relied on contractual guarantees to determine the mortality component of its premium limits. The upper-age limit on the computational rule was included in the statute because it was thought to be an appropriate means of discouraging abuse of the statute via contractual charges based upon the assumed post-age 100 survivorship of insureds.

While formal guidance from the Treasury and the IRS on transition to the 2001 CSO Tables is expected, the timing of such guidance is currently unknown.

The facts of mortality have changed with the times, however, and the 2001 CSO Tables now assume that a portion of the cohort of insureds will survive through age 120. Fortunately, nothing in section 7702 requires a life insurance contract to endow at age 100, or precludes an insurer from charging for mortality based upon the more favorable assumptions of the 2001 CSO Tables. The advent of the new tables, however, presents several conceptual challenges to section 7702's maturity date computational rule. First, the use of the statute's age-100 limitation, versus an age-121 limitation derived from the 2001 CSO Tables, leads to slightly higher premium limits under certain assumptions. While this difference would not seem material enough to warrant statutory change, the prospect of insureds surviving past age 100, as more and more people do with the passage of time, leads to the question of whether the premium limits of sections 7702 and 7702A should extend beyond age 100. Under the statute as written, the premium limits arguably would stop at the maximum deemed maturity date of a contract, although that is not entirely clear. What is clear though is that a change in the age-100 rule would require congressional action, and that itself a daunting prospect filled with possibilities and pitfalls for the life insurance industry.

Material Change Issues

At least one more potentially overarching question is presented by the arrival of the 2001 CSO Tables (assuming that they have become prevailing as of a given date for newly issued life insurance contracts): what changes, if any, in a pre-existing contract could require the use of the new tables in the section 7702 and 7702A calculations for that contract? The legislative history of section 7702 provides that certain changes in contracts that are deemed "material" can lead to new-issuance treatment. This is also true with respect to section 7702A, as expressly provided in section 7702A(c)(3) and as built into that statute's own transition rules. While the prospect of new-issuance treatment is not exactly a new concern with respect to the application of sections 7702 or 7702A (or other Internal Revenue Code provisions) to life insurance contracts—a number of IRS private letter rulings have addressed the material change issue—the advent of the new mortality standard will likely bring with it a new focus on the point. Contracts today tend to have maximum flexibility built into their structures, and it is arguable that any adjustment event under section 7702(f)(7)(A) or material change under section 7702A(c)(3) would trigger application of the new standard, potentially posing significant difficulties for compliance with the two statutes.

To obtain clarity on the material change question as it relates to the 2001 CSO Tables, and also to obtain a measure of relief from the possible application of the new standard, the industry may decide to request specific guidance from the U.S. Department of Treasury and the IRS. The government, it would seem, would likewise have an interest in addressing the issue. Any such effort, however, should be undertaken with eyes wide open, as the answers it provokes could prove quite troublesome. The Treasury and the IRS may find it fitting to exclude certain kinds of changes in contractual benefits from categorization as material changes in the 2001 CSO context, but any such conclusion may be difficult to reconcile with broader concepts of material change under the federal tax law. The industry may also find that changes it has not heretofore treated as triggering the application

of new mortality standards, such as when the 1980 CSO Tables replaced their predecessor in the 1980s, would receive contrary treatment in the view of the U.S. Department of Treasury and the IRS.

Conclusion

The advent of the 2001 CSO Tables raise significant federal tax issues for life insurers, especially at the product level. It is likely that U.S. Department of Treasury and IRS guidance will be forthcoming to address some of the unanswered questions, although the substance and timing of such guidance currently are unclear. Actuaries and others charged with oversight of corporate income tax obligations or the design of life insurance products will need to pay close attention as action is taken by the federal tax authorities and the mist slowly lifts from the mortality component of the federally prescribed reserve and reasonable mortality rules of the tax law.

Footnotes

1) Unless otherwise noted, all references herein to "sections" are to sections of the Internal Revenue Code of 1986, as amended. References to regulations are to the Income Tax Regulations.

2) The deduction is provided under section 805(a), relying upon the rules of section 807(a) and (b). The latter rules also provide for an income item under section 803(a) in the event of a decline in reserves. Whether a life insurance company is treated as such for federal income tax purposes, invoking the rules discussed in this part, is determined by applying the so-called reserve ratio test set out in section 816(a).

3) Section 807(e)(1)(A) requires the net surrender value of a contract to be determined by subtracting any applicable surrender charges but by disregarding any market value adjustment. In addition, the total amount of the reserve for a contract claimed for tax purposes cannot exceed the contract's reserve as reported on the insurer's annual statement filed with State regulators. *See* section 807(d)(1).

4) The federally prescribed reserve rules were enacted as part of the revision of the life insurance company tax provisions contained in the Deficit Reduction Act of 1984, Pub. L. No. 98-369 ("DEFRA"). Technically, the purpose of the provision was to limit life insurance reserves, in the context of deductions allowed in determining insurers' federal income tax liability, to the state-mandated minimum. Lowering the deducible amounts of life insurance reserves generally had the effect of increasing life insurers' federal income taxes over the amount payable under prior law, all else being equal.

5) The net surrender value of a contract, if greater, is allowed as the deductible amount of the reserve, but this was done with the recognition that the valuation law for life insurance generally would require such a greater amount to be held as the reserve for the contract.

6) Report of the American Academy of Actuaries' Commissioners Standard Ordinary (CSO) Implications Working Group, Presented to the National Association of Insurance Commissioners' Life and Health Actuarial Task Force (Sept. 2002) (the "AAA report"), at p. 10.

7) *Id*. In making the comparison, a weighted average of smoker/nonsmoker reserves was employed, with the weights based upon the underlying distribution of smokers and nonsmokers in the 1990-95 mortality study from which the new standard was derived.

8) The reasonable mortality charge rule was enacted as part of the Technical and Miscellaneous Revenue Act of 1988, or "TAMRA," Pub. L. No. 100-647, with the avowed purpose of combating artificial inflation of mortality assumptions in net single premiums and guideline premiums, and also limiting the 7-pay premiums under the then new modified endowment contract rules.

9) The AAA report lists average reductions in guideline single premiums of up to 30 percent and in 7-pay premiums of up to 15 percent. *See* AAA report at pp. 10-11.

10) 1988-2 C.B. 540.

11) *See* Prop. Treas. Reg. § 1.7702-1.

12) In similar fashion, quite apart from a State-by-State adoption rule, the transition to the new standard raises the prospect that different requirements will apply within the same group contract, as new participants are added under the contract after the new standard takes effect. The only way a regulation could preclude this from occurring would be to treat the contract's "issue date" as being that of the entire group contract, without regard to when a participant joined the group (contrary to the section 807(e)(2) rule). A practical approach to avoiding any such disparity would be to close off new entry into a pre-existing group contract, requiring the issuance of a new contract to cover new participants.

13) *See* section 7702(e)(1)(B).

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