D. Companies shall inform their agents of the contents of this regulation. Please acknowledge receipt of this regulation promptly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, April 23, 1969.

Chapter 83. Regulation 35—Variable Life Insurance Model Regulation

§8301. Definitions

A. As used in Regulation 35:

Affiliate of an Insurer any person, directly or indirectly, controlling, controlled by, or under common control with such insurer; any person who regularly furnishes investment advice to such insurer with respect to its separate accounts for which a specific fee or commission is charged; or any director, officer, partner, or employee of any such insurer, controlling or controlled person, or person providing investment advice or any member of the immediate family of such person.

Agent any person, corporation, partnership, or other legal entity which is licensed by this state as a life insurance agent.

Assumed Investment Rate the rate of investment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses, and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.

Benefit Base the amount to which the net investment return is applied.

Commissioner the Insurance Commissioner of this state.

Control (including the terms *controlling, controlled by*, and *under common control with*) the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with power to vote, or holds proxies representing more than 10 percent of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the commissioner that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

Flexible Premium Policy any variable life insurance policy other than a scheduled premium policy as specified in the definition of *scheduled premium policy.*

General Account all assets of the insurer other than assets in separate accounts established pursuant to Section 1500 of the insurance laws of this state, or pursuant to the corresponding Section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

Incidental Insurance Benefit all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including but not limited to, accidental death and dismemberment benefits, disability benefits, guaranteed insurability options, family income, or term, riders.

May is permissive.

Minimum Death Benefit the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy, regardless of the investment performance of the separate account.

Net Investment Return the rate of investment return in a separate account to be applied to the benefit base.

Person an individual, corporation, partnership, association, trust, or fund.

Policy Processing Day the day on which charges authorized in the policy are deducted from the policy's cash value.

Scheduled Premium Policy any variable life insurance policy under which both the amount and timing of premium payments are fixed by the insurer.

Separate Account a separate account established pursuant to Section 1500 of the Insurance Laws of this state or pursuant to the corresponding Section of the Insurance Laws of the state of domicile of a foreign or alien insurer.

Shall is mandatory.

Variable Death Benefit the amount of the death benefit, other than incidental insurance benefits, payable under a variable life insurance policy dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of any minimum death benefit.

Variable Life Insurance Policy any individual policy which provides for life insurance the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such policy, pursuant to Section 1500 of the Insurance Laws of this state or pursuant to the corresponding Section of the Insurance Laws of the state of domicile of a foreign or alien insurer.

AUTHORITY NOTE: Promulgated in accordance with Title 22, Section 2 of the Insurance Laws of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 11:694 (July 1985).

§8303. Qualification of Insurer to Issue Variable Life Insurance

A. The following requirements are applicable to all insurers either seeking authority to issue variable life insurance in this state or having authority to issue variable life insurance in this state.

1. Licensing and Approval to Do Business in This State

a. An insurer shall not deliver or issue for delivery in this state any variable life insurance policy unless:

i. the insurer is licensed or organized to do a life insurance business in this state;

ii. the insurer has obtained the written approval of the commissioner for the issuance of variable life insurance policies in this state. The commissioner shall grant such written approval only after he has found that:

(a). the plan of operation for the issuance of variable life insurance policies is not unsound;

(b). the general character, reputation, and experience of the management and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer are such as to reasonably assure competent operation of the variable life insurance business of the insurer in this state; and

(c). the present and foreseeable future financial condition of the insurer and its method of operation in connection with the issuance of such policies is not likely to render its operation hazardous to the public or its policyholders in this state. The commissioner shall consider, among other things:

(i). the history of operation and financial condition of the insurer;

(ii). the qualifications, fitness, character, responsibility, reputation, and experience of the officers and directors and other management of the insurer and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer;

(iii). the applicable law and regulations under which the insurer is authorized in its state of domicile to issue variable life insurance policies. The state of entry of an alien insurer shall be deemed its state of domicile for this purpose; and

(iv). if the insurer is a subsidiary of, or is affiliated by common management or ownership with another company, its relationship to such other company and the degree to which the requesting insurer, as well as the other company, meet these standards.

2. Filing for Approval to Do Business in This State

a. The commissioner may, at his discretion, require that an insurer, before it delivers or issues for delivery any variable life insurance policy in this state, file with this department the following information for the consideration of the commissioner in making the determination required by §8303.A.1:

i. copies of and a general description of the variable life insurance policies it intends to issue;

ii. a general description of the methods of operation of the variable life insurance business of the insurer, including methods of distribution of policies and the names of those persons or firms proposed to supply consulting, investment, administrative, custodial or distribution services to the insurer;

iii. with respect to any separate account maintained by an insurer for any variable life insurance policy, a statement of the investment policy the issuer intends to follow for the investment of the assets held in such separate account, and a statement of procedures for changing such investment policy. The statement of investment policy shall include a description of the investment objectives intended for the separate account;

iv. a description of any investment advisory services contemplated as required by §8309.A.10;

v. a copy of the statutes and regulations of the state of domicile of the insurer under which it is authorized to issue variable life insurance policies; and

vi. biographical data with respect to officers and directors of the insurer on the National Association of Insurance Commissioners Uniform Biographical Data Form; and

vii. a statement of the insurer's actuary describing the mortality and expense risks which the insurer will bear under the policy.

3. Standards of Suitability

a. Every insurer seeking approval to enter into the variable life insurance business in this state shall establish and maintain a written statement specifying the Standards of Suitability to be used by the insurer. Such Standards of Suitability shall specify that no recommendations shall be made to an applicant to purchase a variable life insurance policy and that no variable life insurance policy shall be issued in the absence of reasonable grounds to believe that the purchase of such policy is not unsuitable for such applicant on the basis of information furnished after reasonable inquiry of such applicant concerning the applicant's insurance and investment objectives, financial situation and needs, and any other information known to the insurer or to the agent making the recommendation.

4. Use of Sales Materials

a. An insurer authorized to transact variable life insurance business in this state shall not use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its variable life insurance business in this state which is false, misleading, deceptive, or inaccurate.

5. Requirements Applicable to Contractual Services

a. Any material contract between an insurer and suppliers of consulting, investment, administrative, sales, marketing, custodial, or other services with respect to

variable life insurance operations shall be in writing and provide that the supplier of such services shall furnish the commissioner with any information or reports in connection with such services which the commissioner may request in order to ascertain whether the variable life insurance operations of the insurer are being conducted in a manner consistent with these regulations and any other applicable law or regulations.

6. Reports to the Commissioner

a. Any insurer authorized to transact the business of variable life insurance in this state shall submit to the commissioner, in addition to any other materials which may be required by this regulation or any other applicable laws or regulations:

i. an Annual Statement of the business of its separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners; and

ii. prior to the use in this state any information furnished to applicants as provided for in §8311; and

iii. prior to the use in this state, the form of any of the Reports to Policyholders, as provided for in §8315; and

iv. such additional information concerning its variable life insurance operations or its separate accounts as the commissioner shall deem necessary.

b. Any material submitted to the commissioner under §8303.A.6 shall be disapproved if it is found to be false, misleading, deceptive, or inaccurate in any material respect and, if previously distributed, the commissioner shall require the distribution of amended material.

7. Authority of Commissioner to Disapprove

a. Any material required to be filed with and approved by the commissioner shall be subject to disapproval if at any time it is found by him not to comply with the standards established by Regulation 35.

AUTHORITY NOTE: Promulgated in accordance with Title 22, Section 2 of the Insurance Laws of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 11:695 (July 1985).

§8305. Insurance Policy Requirements

A. Policy Qualification. The commissioner shall not approve any variable life insurance form filed pursuant to Regulation 35 unless it conforms to the requirements of §8305.

1. Filing of Variable Life Insurance Policies

a. All variable life insurance policies, and all riders, endorsements, applications and other documents which are to be attached to and made a part of the policy and which relate to the variable nature of the policy, shall be filed with the commissioner and approved by him prior to delivery or issuance for delivery in this state.

i. The procedures and requirements for such filing and approval shall be, to the extent appropriate and not inconsistent with Regulation 35, the same as those otherwise applicable to other life insurance policies.

ii. The commissioner may approve variable life insurance policies and related forms with provisions the commissioner deems to be not less favorable to the policyholder and the beneficiary than those required by Regulation 35.

2. Mandatory Policy Benefit and Design Requirements

a. Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements.

i. Mortality and expense risks shall be borne by the insurer. The mortality and expense charges shall be subject to the maximums stated in the contract.

ii. For scheduled premium policies, a minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid (subject to the provisions of §8305.A.4);

iii. The policy shall reflect the investment experience of one or more separate accounts established and maintained by the insurer. The insurer must demonstrate that the variable life insurance policy is actuarially sound.

iv. Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.

v. Any changes in variable death benefits of each variable life insurance policy shall be determined at least annually.

vi. The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other non-forfeiture benefits, as described either in the policy or in a statement filed with the commissioner of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other non-forfeiture benefits must be at least equal to the minimum values required by Section 168 of the Insurance Laws of this state for a general account policy with such premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under the Standard Non-Forfeiture Law of this state. If the policy does not contain an assumed investment rate this demonstration shall be based on the maximum interest rate permitted under the Standard Non-forfeiture Law. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

vii. The computation of values required for each variable life insurance policy may be based upon such reasonable and necessary approximations as are acceptable to the commissioner.

3. Mandatory Policy Provisions

a. Every variable life insurance policy filed for approval in this state shall contain at least the following.

i. The cover page or pages corresponding to the cover pages of each such policy shall contain:

(a). a prominent statement in either contrasting color or in boldface type that the amount or duration of death benefits may be variable or fixed under specified conditions;

(b). a prominent statement in either contrasting color or in boldface type that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;

(c). a statement describing any minimum death benefit required pursuant to §8305.A.2.a.ii;

(d). the method, or a reference to the policy provision which describes the method, for determining the amount of insurance payable at death;

(e). to the extent permitted by state law, a captioned provision that the policyholder may return the variable life insurance policy within 10 days of receipt of the policy by the policyholder, and receive a refund equal to the sum of:

(i). the difference between the premiums paid including any policy fees or other charges and the amounts allocated to any separate accounts under the policy; and

(ii). the value of the amounts allocated to any separate accounts under the policy, on the date the returned policy is received by the insurer or its agent. Until such time as state law authorizes the return of payments as calculated in the preceding sentence, the amount of the refund shall be the total of all premium payments for such policy;

(f). such other items as are currently required for fixed benefit life insurance policies and which are not inconsistent with Regulation 35.;

ii.(a). For scheduled premium policies, a provision for a grace period of not less than 31 days from the premium due date which shall provide that where the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date.

(b). For flexible premium policies, a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amounts available under the policy to pay such charges in accordance with the terms of the policy. Such grace period shall end on a date not less than 61 days after the mailing date of the Report to Policyholders required by §8315.A.3.

(i). The death benefit payable during the grace period will equal the death benefit in effect immediately prior to such period less any overdue charges. If the policy processing days occur monthly, the insurer may require the payment of not more than three times the charges which were due on the policy processing day on which the amounts available under the policy were insufficient to pay all charges authorized by the policy that are necessary to keep such policy in force until the next policy processing day.

iii. For scheduled premium policies, a provision that the policy will be reinstated at any time within two years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

(a). all overdue premiums with interest at a rate not exceeding 6 percent per annum compounded annually and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate as provided in Section 170.1;

(b). 110 percent of the increase in cash value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding 6 percent per annum compounded annually.

iv. A full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy.

v. A provision designating the separate account to be used and stating that:

(a). the assets of such separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account;

(b). the assets of such separate account shall be valued at least as often as any policy benefits vary but at least monthly.

vi. A provision specifying what documents constitute the entire insurance contract under state law.

vii. A designation of the officers who are empowered to make an agreement or representation on behalf of the insurer and an indication that statements by the insured, or on his behalf, shall be considered as representations and not warranties.

viii. An identification of the owner of the insurance contract.

ix. A provision setting forth conditions or requirements as to the designation, or change of designation, of a beneficiary and a provision for disbursement of benefits in the absence of a beneficiary designation.

x. A statement of any conditions or requirements concerning the assignment of the policy.

xi. A description of any adjustments in policy values to be made in the event of misstatement of age or sex of the insured.

xii. A provision that the policy shall be incontestable by the insurer after it has been in force for two years during the lifetime of the insured, provided, however, that any increase in the amount of the policy's death benefits subsequent to the policy issue date, which increase occurred upon a new application or request of the owner and was subject to satisfactory proof of the insured's insurability, shall be incontestable after any such increase has been in force, during the lifetime of the insured, for two years from the date of issue of such increase.

xiii. A provision stating that the investment policy of the separate account shall not be changed without the approval of the Insurance Commissioner of the state of domicile of the insurer, and that the approval process is on file with the commissioner of this state.

xiv. A provision that payment of variable death benefits in excess of any minimum death benefits, cash values, policy loans, or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:

(a). for up to six months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account; or

(b). otherwise, for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical.

xv. If settlement options are provided, at least one such option shall be provided on a fixed basis only.

xvi. A description of the basis for computing the cash value and the surrender value under the policy shall be included.

xvii. Premiums or charges for incidental insurance benefits shall be stated separately.

xviii. Any other policy provision required by this regulation.

xix. Such other items as are currently required for fixed benefit life insurance policies and are not inconsistent with this regulation.

xx. A provision for non-forfeiture insurance benefits. The insurer may establish a reasonable minimum cash value below which any non-forfeiture insurance options will not be available.

4. Policy Loan Provisions

a. Every variable life insurance policy, other than term insurance policies and pure endowment policies, delivered or issued for delivery in this state shall contain provisions which are not less favorable to the policyholder than the following:

i. a provision for policy loans after the policy has been in force for two full years which provides the following:

(a). at least 75 percent of the policy's cash surrender value may be borrowed;

(b). the amount borrowed shall bear interest at a rate not t exceed that permitted by state insurance law;

(c). any indebtedness shall be deducted from the proceeds payable on death;

(d). any indebtedness shall be deducted from the cash surrender value upon surrender or in determining any non-forfeiture benefit;

(e). for scheduled premium policies, whenever the indebtedness exceeds the cash surrender value, the insurer shall give notice of any intent to cancel the policy if the excess indebtedness is not repaid within 31 days after the date of mailing of such notice. For flexible premium policies, whenever the total charges authorized by the policy that are necessary to keep the policy in force until the next following processing day exceed the amounts available under the policy to pay such charges, a report must be sent to the policyholder containing the information specified by §8315.A.3;

(f). the policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount, not exceeding 110 percent of the corresponding increase, in cash value and by furnishing such evidence of insurability as the insurer may request;

(g). the policy may specify a reasonable minimum amount which may be borrowed at any time but such minimum shall not apply to any automatic premium loan provision;

(h). no policy loan provision is required if the policy is under extended insurance non-forfeiture option;

(i). the policy loan provisions shall be constructed so that variable life insurance policyholders who have not exercised such provisions are not disadvantaged by the exercise thereof.

(j). amounts paid to the policyholders upon the exercise of any policy loan provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment except that a stock insurer may provide the amounts for policy loans from the general account.

5. Other Policy Provisions

a. The following provision may in substance be included in a variable life insurance policy or related form delivered or issued for delivery in this state:

i. an exclusion for suicide within two years of the issue date of the policy; provided, however, that to the extent of the increased death benefits only, the policy may provide an exclusion for suicide within two years of any increase in death benefits which results from an application of the owner subsequent to the policy issue date;

ii. incidental insurance benefits may be offered on a fixed or variable basis;

iii. policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, such policies may offer the following dividend options:

(a). the amount of the dividend may be credited against premium payments;

(b). the amount of the dividend may be applied to provide amounts of additional fixed or variable benefit life insurance;

(c). the amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

(d). the amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance;

(e). the amount of the dividend may be deposited as a variable deposit in a separate account;

iv. a provision allowing the policyholder to elect, in writing, in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans under §8305.A.4, except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed;

v. a provision allowing the policyholder to make partial withdrawals;

vi. any other policy provision approved by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with Title 22, Section 2 of the Insurance Laws of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 11:696 (July 1985).

§8307. Reserve Liabilities for Variable Life Insurance

A. Reserve liabilities for variable life insurance policies shall be established under the Standard Valuation Law in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

B. For scheduled premium policies, reserve liabilities for the guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and shall be maintained in the general account of the insurer and shall be not less than the greater of the following minimum reserves:

1. the aggregate total of the term costs, if any, covering a period of one full year from the valuation date, of the guarantee on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the assumed investment rate; or

2. the aggregate total of the attained age level reserves on each variable life insurance contract. The attained age level reserve on each variable life insurance contract shall not be less than zero and shall equal the residue, as described in §8307.B.2.a, of the prior year's attained age level reserve on the contract, with any such residue, increased or decreased by a payment computed on an attained age basis, as described in §8307.B.2.b;

a. the residue of the prior year's attained age level reserve on each variable life insurance contract shall not be less than zero and shall be determined by adding interest at the valuation interest rate to such prior years' reserve, deducting the tabular claims based on the excess, if any, of the guaranteed minimum death benefit over the death benefit that would be payable in the absence of such guarantee, and dividing the net result by the tabular probability of survival. The excess referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year;

b. the payment referred to in §8307.B.2 shall be computed so that the present value of a level payment of that amount each year over the future premium paying period of the contract is equal to (A) minus (B) minus (C), where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future death benefits that would be payable in the absence of such guarantee, and (C) is any residue, as described in §8307.B.2.a, of the prior year's attained age level reserve on such variable life insurance contract. If the contract is paid-up, the payment shall equal (A) minus (B) minus (C). The amounts of future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate and/or the valuation interest rate but in no event may exceed the maximum interest rate permitted for the valuation of life contracts;

3. the valuation interest rate and mortality table used in computing the two minimum reserves described in (a) and (b) above shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

C. For flexible premium policies, reserve liabilities for any guaranteed minimum death benefit shall be maintained in the general account of the insurer and shall be not less than the aggregate total of the term costs, if any, covering the period provided for in the guarantee not otherwise provided for by the reserves held in the separate account assuming an

immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the valuation interest rate.

1. The valuation interest rate and mortality table used in computing this additional reserve, if any, shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates including, but not limited to, groupings and averages.

D. Reserve liabilities for all fixed incidental insurance benefits and any guarantees associated with variable incidental insurance benefits shall be maintained in the general account and reserve liabilities for all variable aspects of the variable incidental insurance benefits shall be maintained in a separate account, in amounts determined in accordance with the actuarial procedures appropriate to such benefit.

AUTHORITY NOTE: Promulgated in accordance with Title 22, Section 2 of the Insurance Laws of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 11:698 (July 1985).

§8309. Separate Accounts

A. The following requirements apply to the establishment and administration of variable life insurance separate accounts by any domestic insurer.

1. Establishment and Administration of Separate Accounts

a. Any domestic insurer issuing variable life insurance shall establish one or more separate accounts pursuant to Section 1500 of the Insurance Laws of this state.

i. If no law or other regulation provides for the custody of separate account assets and if such insurer is not the custodian of such separate account assets, all contracts for custody of such assets shall be in writing and the commissioner shall have authority to review and approve of both the terms of any such contract and the proposed custodian prior to the transfer of custody.

ii. Such insurer shall not, without the prior written approval of the commissioner, employ in any material connection with the handling of separate account asset any person who:

(a). within the last 10 years has been convicted of any felony or a misdemeanor arising out of such person's conduct involving embezzlement, fraudulent conversion, or misappropriation of funds or securities or involving violation of Section 1341, 1342, or 1343 of Title 18, United States Code; or

(b). within the last 10 years has been found by any state regulatory authority to have violated or has acknowledged violation of any provision of any state insurance law involving fraud, deceit, or knowing misrepresentation; or

(c). within the last 10 years has been found by federal or state regulatory authorities to have violated or has acknowledged violation of any provision of federal or state securities laws involving fraud, deceit, or knowing misrepresentation.

iii. All persons with access to the cash, securities, or other assets of the separate account shall be under bond in the amount of not less than a value indexed to the NAIC fidelity bonding recommendations regarding personnel handling general account assets.

iv. The assets of such separate accounts shall be valued at least as often as variable benefits are determined but in any event at least monthly.

2. Amounts in the Separate Account

a. The insurer shall maintain in each separate account assets with a value at least equal to the greater of the valuation reserves for the variable portion of the variable life insurance policies or the benefit base for such policies.

3. Investments by the Separate Account

a. No sale, exchange, or other transfer of assets may be made by an insurer or any of its affiliates between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

i. in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the policies with respect to the separate account to which the transfer is made; and

ii. such transfer, whether into or from a separate account, is made by a transfer of cash; but other assets may be transferred if approved by the commissioner in advance.

b. The separate account shall have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under policies funded by the account.

4. Limitations on Ownership

a. A separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition the value of such investment, together with prior investments of such account in such security valued as required by these regulations, would exceed 10 percent of the value of the assets of the separate account. The commissioner may waive this limitation, in writing, if he believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

b. No separate account shall purchase or otherwise acquire the voting securities of any issuer if, as a result of such acquisition, the insurer and its separate accounts, in the aggregate, will own more than 10 percent of the total issued and outstanding voting securities of such issuer. The commissioner may waive this limitation, in writing, if he believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state or jeopardize the independent operation of the issuer of such securities.

c. The percentage limitation specified in §8309.A.4.a shall not be construed to preclude the investment of the assets of separate accounts in shares of

investment companies registered pursuant to the Investment Company Act of 1940 or other pools of investment assets if the investments and investment policies of such investment companies or asset pools comply substantially with the provisions of §8309.A.3 and other applicable portions of Regulation 35.

5. Valuation of Separate Account Assets

a. Investments of the separate account shall be valued at their market value on the date of valuation, or at amortized cost if it approximates market value.

6. Separate Account Investment Policy

a. The investment policy of a separate account operated by a domestic insurer filed under §8303.A.2.a.iii shall not be changed without first filing such change with the Insurance Commissioner.

i. Any change filed pursuant to §8309 shall be effective 60 days after the date it was filed with the commissioner, unless the commissioner notifies the insurer before the end of such 60-day period of his disapproval of the proposed change. At any time the commissioner may, after notice and public hearing, disapprove any change that has become effective pursuant to §8309.

ii. The commissioner may disapprove the change if he determined that the change would be detrimental to the interests of the policyholders participating in such separate account.

7. Charges against Separate Account

a. The insurer must disclose, in writing, prior to or contemporaneously with delivery of the policy, all charges that may be made against the separate account including, but not limited to, the following:

i. taxes or reserves for taxes attributable to investment gains and income of the separate account;

ii. actual cost of reasonable brokerage fees and similar direct acquisition and sale costs incurred in the purchase or sale of separate account assets;

iii. actuarially determined costs of insurance (tabular costs) and the release of separate account liabilities;

iv. charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account;

v. a charge, at a rate specified in the policy, for mortality and expense guarantees;

vi. any amounts in excess of those required to be held in the separate accounts;

vii. charges for incidental insurance benefits.

8. Standards of Conduct

a. Every insurer seeking approval to enter into the variable life insurance business in this state shall adopt by formal action of its Board of Directors a written statement specifying the Standards of Conduct of the insurer, its officers, directors, employees, and affiliates with respect to the purchase or sale of investments of separate accounts. Such Standards of Conduct shall be binding on the insurer and those to whom it refers. A code or codes of ethics meeting the requirements of Section 17j under the Investment Company Act of 1940 and applicable rules and regulations thereunder shall satisfy the provisions of §8309.

9. Conflicts of Interest

a. Rules under any provision of the Insurance Laws of this state or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee or other similar body.

10. Investment Advisory Services to a Separate Account

a. An insurer shall not enter into a contract under which any person undertakes, for a fee, to regularly furnish investment advice to such insurer with respect to its separate accounts maintained for variable life insurance policies unless:

i. the person providing such advice is registered as an investment adviser under the Investment Advisers Act of 1940; or

ii. the person providing such advice is an investment manager under the Employee Retirement Income Security Act of 1974 with respect to the assets of each employee benefit plan allocated to the separate account; or

iii. the insurer has filed with the commissioner and continues to file annually the following information and statements concerning the proposed adviser:

(a). the name and form of organization, state of organization, and its principal place of business;

(b). the names and addresses of its partners, officers, directors, and persons performing similar functions or, if such an investment advisor be an individual, of such individual;

(c). a written Standard of Conduct complying in substance with the requirements of §8309.A.8. which has been adopted by the investment adviser and is applicable to the investment adviser, his officers, directors, and affiliates;

(d). a statement provided by the proposed adviser as to whether the adviser or any person associated therewith:

(i). has been convicted within 10 years of any felony or misdemeanor arising out of such person's conduct as an employee, salesman, officer or director or an insurance company, a banker, an insurance agent, a securities broker, or an investment adviser involving embezzlement, fraudulent conversion, or misappropriation of funds or securities, or involving the violation of Sections 1341, 1342, or 1343 of Title 18 of United States Code;

(ii). has been permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser,

underwriter, broker, or dealer, or as an affiliated person or as an employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity;

(iii). has been found by federal or state regulatory authorities to have willfully violated or have acknowledged willful violation of any provision of federal or state securities laws or state insurance laws or of any rule or regulation under any such laws; or

(iv). has been censured, denied an investment adviser registration, had a registration as an investment adviser revoked or suspended, or been barred or suspended from being associated with an investment adviser by order of federal or state regulatory authorities; and

iv. such investment advisory contract shall be in writing and provide that it may be terminated by the insurer without penalty to the insurer or the separate account upon no more than 60 days' written notice to the investment adviser.

b. The commissioner may, after notice and opportunity for hearing, by order require such investment advisory contract to be terminated if he deems continued operation thereunder to be hazardous to the public or the insurer's policyholders.

AUTHORITY NOTE: Promulgated in accordance with Title 22, Section 2 of the Insurance Laws of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 11:699 (July 1985).

§8311. Information Furnished to Applicants

A. An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgment of receipt from such applicant coincident with or prior to the execution of the application, the following information. The requirements of §8311 shall be deemed to have been satisfied to the extent that a disclosure containing information required by §8311 is delivered, either in the form of:

1. a prospectus included in the requirements of the Securities Act of 1933 and which was declared effective by the Securities and Exchange Commission; or

2. all information and reports required by the Employee Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to Section 3(a)(2) thereof.

a. A summary explanation, in non-technical terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation. Such explanation must include notices of the provision required by §8305.A.3.a.i.(e) and §8305.A.3.a.vi;

b. a statement of the investment policy of the separate account, including:

i. a description of the investment objectives intended for the separate account and the principal types of investments intended to be made; and

ii. any restriction or limitations on the manner in which the operations of the separate account are intended to be conducted;

c. a statement of the net investment return of the separate account for each of the last ten years or such lesser period as the separate account has been in existence;

d. a statement of the charges levied against the separate account during the previous year;

e. a summary of the method to be used in valuing assets held by the separate account;

f. a summary of the federal income tax aspects of the policy applicable to the insured, the policyholder and the beneficiary;

g. illustrations of benefits payable under the variable life insurance contract. Such illustrations shall be prepared by the insurer and shall not include projections of past investment experience into the future or attempted predictions of future investment experience, provided that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that such assumed rates are hypothetical only.

AUTHORITY NOTE: Promulgated in accordance with Title 22, Section 2 of the Insurance Laws of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 11:701 (July 1985).

§8313. Applications

A. The application for a variable life insurance policy shall contain:

1. a prominent statement that the death benefit may be variable or fixed under specified conditions;

2. a prominent statement that cash values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees);

3. questions designed to elicit information which enables the insurer to determine the suitability of variable life insurance for the applicant.

AUTHORITY NOTE: Promulgated in accordance with Title 22, Section 2 of the Insurance Laws of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 11:701 (July 1985).

§8315. Reports to Policyholders

A. Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at his or her last known address the following reports:

1. Within 30 days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest

charge, any optional payments allowed pursuant to §8305.A.4 under the policy computed as of the policy anniversary date. Provided, however, that such statement may be furnished within 30 days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than 60 days prior to the mailing of such notice. This statement shall state that, in accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by §8315. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in such statement, the statement shall be modified to so indicate. For flexible premium policies, the report must contain a reconciliation of the change since the previous report in cash value and cash surrender value, if different, because of payments made (less deductions for expense charges), withdrawals, investment experience, insurance charges and any other charges made against the cash value. In addition, the report must show the projected cash value and cash surrender value, if different, as of one year from the end of the period covered by the report assuming that:

a. planned periodic premiums, if any, are paid as scheduled;

b. guaranteed costs of insurance are deducted; and

c. the net investment return is equal to the guaranteed rate or, in the absence of a guaranteed rate, is not greater than zero. If the projected value is less than zero, a warning message must be included that states that the policy may be in danger of terminating without value in the next 12 months unless additional premium is paid.

2. Annually, a statement or statements including:

a. a summary of the financial statement of the separate account based on the annual statement last filed with the commissioner;

b. the net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of not less than five years, when available;

c. a list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the commissioner;

d. any charges levied against the separate account during the previous year;

e. a statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account or in the investment adviser of the separate account.

3. For flexible premium policies, a report must be sent to the policyholder if the amounts available under the policy on any policy processing day to pay the charges authorized by the policy are less than the amount necessary to keep the policy in force until the next following policy processing day. The report must indicate the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of such amount.

AUTHORITY NOTE: Promulgated in accordance with Title 22, Section 2 of the Insurance Laws of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 11:701 (July 1985).

§8317. Foreign Companies

A. If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially similar to that provided by these regulations, the commissioner, to the extent deemed appropriate by him in his discretion, may consider compliance with such law or regulation as compliance with these regulations.

AUTHORITY NOTE: Promulgated in accordance with Title 22, Section 2 of the Insurance Laws of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 11:702 (July 1985).

§8319. Life Insurance

A. Qualification to Sell Variable Life Insurance

1. No person may sell or offer for sale in this state any variable life insurance policy unless such person is an agent and has filed with the commissioner, in a form satisfactory to the commissioner, evidence that such person holds any license or authorization which may be required for the solicitation or sale of variable life insurance.

2. Any examination administered by the department for the purpose of determining the eligibility of any person for licensing as an agent shall, after the effective date of this regulation, include such questions concerning the history, purpose, regulation, and sale of variable life insurance as the commissioner deems appropriate.

B. Reports of Disciplinary Actions. Any person qualified in this state under §8319 to sell or offer to sell variable life insurance shall immediately report to the commissioner:

1. any suspension or revocation of his agent's license in any other state or territory of the United States;

2. the imposition of any disciplinary sanction, including suspension or expulsion from membership, suspension, or revocation of or denial of registration, imposed upon him by any national securities exchange, or national securities association, or any federal, state, or territorial agency with jurisdiction over securities or variable life insurance;

3. any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation.

C. Refusal to Qualify Agent to Sell Variable Life Insurance: Suspension, Revocation, or Nonrenewal of Qualification

1. The commissioner may reject any application or suspend or revoke or refuse to renew any agent's qualification under §8319 to sell or offer to sell variable life insurance upon any ground that would bar such applicant or such agent from being licensed to sell other life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of an agent's license shall also govern any proceeding for suspension or revocation of an agent's qualification to sell to offer to sell variable life insurance.

AUTHORITY NOTE: Promulgated in accordance with Title 22, Section 2 of the Insurance Laws of Louisiana.
HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 11:702 (July 1985).

§8321. Severability Article

A. If any provision of Regulation 35 or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of Regulation 35 and the application of such provision to other persons or circumstances shall be not affected thereby.

AUTHORITY NOTE: Promulgated in accordance with Title 22, Section 2 of the Insurance Laws of Louisiana.
HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 11:702 (July 1985).

Chapter 85. Regulation 36CUniversal Life Insurance Model Regulation

§8501. Purpose

A. The purpose of this regulation is to supplement existing regulations on life insurance policies in order to accommodate the development and issuance of universal life insurance plans.

AUTHORITY NOTE: Promulgated in accordance with Title 22, Section 2 and Title 36, Section 682 of the Insurance Laws of the State of Louisiana.
HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 11:690 (July 1985).

§8503. Definitions

A. As used in Regulation 36:

Cash Surrender Value the Net Cash Surrender Value plus any amounts outstanding as policy loans.

Commissioner the Insurance Commissioner of this state.

Fixed Premium Universal Life Insurance Policy a universal life insurance policy other than a flexible premium universal life insurance policy.

Flexible Premium Universal Life Insurance Policy a universal life insurance policy which permits the policyowner to vary, independently of each other, the amount or timing of one or more premium payments or the amount of insurance.

Interest-Indexed Universal Life Insurance Policy any universal life insurance policy where the interest credits are linked to an external referent.

May is permissive.

Net Cash Surrender Value the maximum amount payable to the policyowner upon surrender.

Policy Value the amount to which separately identified interest credits and mortality, expense, or other charges are made under a universal life insurance policy.

Shall is mandatory.

Universal Life Insurance Policy any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality and expense charges are made to the policy. A universal life insurance policy may provide for other credits and charges, such as charges for the cost of benefits provided by rider.

AUTHORITY NOTE: Promulgated in accordance with Title 22, Section 2 and Title 36, Section 682 of the Insurance Laws of the State of Louisiana.
HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 11:690 (July 1985).

§8505. Scope

A. This regulation encompasses all individual universal life insurance policies except those policies defined under Article 11, Section 19 of the NAIC Model Variable Life Insurance Regulation.

AUTHORITY NOTE: Promulgated in accordance with Title 22, Section 2 and Title 36, Section 682 of the Insurance Laws of the State of Louisiana.
HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 11:690 (July 1985).

§8507. Valuation

A. Requirements

1. The minimum valuation standard for universal life insurance policies shall be the Commissioners Reserve Valuation Method, as described below for such policies, and the tables and interest rates specified below. The terminal reserve for the basic policy and any benefits and/or riders for which premiums are not paid separately as of any policy anniversary shall be equal to the net level premium reserves less (C) and (D), where: