

191—33.6(508A) Separate accounts. The following requirements apply to the establishment and administration of variable life insurance separate accounts by any domestic insurer:

33.6(1) Establishment and administration of separate accounts. Any domestic insurer issuing variable life insurance shall establish one or more separate accounts pursuant to Iowa Code section 508A.1.

a. 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.

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

(1) Within the last ten 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

(2) Within the last ten 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

(3) Within the last ten 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.

c. 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 the greater of the amount required pursuant to Section 17(g) of the Investment Company Act of 1940 or such other amount as the commissioner may deem appropriate.

d. 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.

33.6(2) Amounts in the separate account. 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.

33.6(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:

(1) 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

(2) 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.

33.6(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 the purchase or acquisition the value of such investment, together with prior investments of such account in such security valued as required by this chapter, would exceed 10 percent of the value of the assets of the separate account. The commissioner may waive this limitation in writing if the commissioner 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 the commissioner believes the 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 subrule 33.6(4), paragraph “*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 subrule 33.6(3) and other applicable portions of this chapter.

33.6(5) *Valuation of separate account assets.* 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.

33.6(6) *Separate account investment policy.* The investment policy of a separate account operated by a domestic insurer filed under subrule 33.3(2), paragraph “*c*,” shall not be changed without first filing such change with the commissioner.

a. Any change filed pursuant to this rule 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 the commissioner’s 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 this subrule.

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

33.6(7) *Charges against separate account.* 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:

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

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

c. Actuarially determined costs of insurance (tabular costs) and the release of separate account liabilities;

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

e. A charge, at rate specified in the policy, for mortality and expense guarantees;

f. Any amounts in excess of those required to be held in the separate accounts;

g. Charges for incidental insurance benefits.

33.6(8) *Standards of conduct.* 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 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 17(j) under the Investment Company Act of 1940 and applicable rules and regulations thereunder shall satisfy the provisions of this subrule.

33.6(9) *Conflicts of interest.* 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.

33.6(10) *Investment advisory services to a separate account.* 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:

a. The person providing such advice is registered as an investment advisor under the Investment Advisors Act of 1940; or

b. 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

c. The insurer has filed with the commissioner and continues to file annually the following information and statements concerning the proposed advisor:

(1) The name and form of organization, state of organization, and its principal place of business;

(2) 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;

(3) A written standard of conduct complying in substance with the requirements of subrule 33.6(8) which has been adopted by the investment advisor and is applicable to the investment advisor, its officers, directors, and affiliates;

(4) A statement provided by the proposed advisor as to whether the advisor or any person associated therewith:

Has been convicted within ten years of any felony or misdemeanor arising out of such person's conduct as an employee, salesperson, officer or director of an insurance company, a banker, an insurance producer, a securities broker, or an investment advisor involving embezzlement, fraudulent conversion, or misappropriation of funds or securities, or involving the violation of Section 1341, 1342, or 1343 of Title 18 of United States Code;

Has been permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment advisor, 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;

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

Has been censured, denied an investment advisor registration, had a registration as an investment advisor revoked or suspended, or been barred or suspended from being associated with an investment advisor by order of federal or state regulatory authorities; and

d. 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 advisor.

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

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