

NAIC PROCEDURE FOR PERMITTING SAME MINIMUM NONFORFEITURE STANDARDS FOR MEN AND WOMEN INSURED UNDER 1980 CSO AND 1980 CET MORTALITY TABLES

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Preamble

The U.S. Supreme Court in its decision in *Arizona Governing Committee v. Norris* makes it illegal for an employer to make contributions after August 1, 1983 to a defined contribution pension plan if the benefits derived from those contributions differ by sex. Although there is some uncertainty as to the breadth of the Supreme Court's decision, it would seem to require that after August 1, 1983 employer pension plans may need to be funded by life insurance products that have identical nonforfeiture values for men and women. Since the 1980 CSO and 1980 CET Mortality Tables contain mortality rates that vary by both age and sex, it is very difficult if not impossible for companies to determine actual nonforfeiture values that are identical for men and women and also satisfy a sex-differentiated minimum standard. For this reason, this regulation permits the same minimum nonforfeiture standard for men and women insureds under the 1980 CSO and 1980 CET Mortality Tables.

A few background comments may be helpful in understanding the intent of this regulation.

- (1) No attempt was made to define which policies and situations are covered by the *Norris* decision and which are not. The breadth of the *Norris* decision is unclear and may ultimately have to be resolved by further court decisions or federal legislation.
- (2) Insurers are given flexibility to use either:
 - (a) The existing tables with mortality rates that vary by age and sex; or
 - (b) Tables of mortality rates which are a blend of the male and female mortality rates.
- (3) No change is made in minimum valuation standards, since these do not involve a contractual relationship between the insurer and its policyholder clients and the Supreme Court did not address state statutory valuation standards.
- (4) Section 5 is included to make it clear that an insurer that issues the same kind of policy on a sex-distinct basis in some circumstances and on a sex-neutral basis in others shall not be deemed to be in violation of the state unfair discrimination laws.
- (5) The effective date is August 1, 1983, the date the judgment in the *Norris* decision became effective.

Section 1. Authority

This regulation is promulgated by the commissioner of insurance pursuant to Section [insert reference to the Standard Nonforfeiture Law for Life Insurance] of the [insert state] Insurance Laws.

Section 2. Purpose

The purpose of the regulation is to permit individual life insurance policies to provide the same cash values and paid-up nonforfeiture benefits to both men and women. No change in minimum valuation standards is implied by this regulation.

Section 3. Definition

- A. As used in this regulation, “1980 CSO Table, with or without Ten-Year Select Mortality Factor” means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 National Association of Insurance Commissioners (NAIC) amendments to the model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Standard Ordinary Mortality Table, With or Without Ten-Year Mortality Factors.
- B. As used in this regulation, “1980 CSO Table (M), With or Without Ten-Year Select Mortality Factors” means that mortality table consisting of the rates of mortality for male lives from the 1980 CSO Table, With or Without Ten-Year Select Mortality Factors.
- C. As used in this regulation, “1980 CSO Table (F), With or Without Ten-Year Select Mortality Factors” means that mortality table consisting of the rates of mortality for female lives from the 1980 CSO Table, With or Without Ten-Year Select Mortality Factors.
- D. As used in this regulation, “1980 CET Table” means that mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC amendments to the model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Extended Term Insurance Table.
- E. As used in this regulation, “1980 CET Table (M)” means that mortality table consisting of the rates of mortality for male lives from the 1980 CET Table.
- F. As used in this regulation, “1980 CET Table (F)” means that mortality table consisting of the rates of mortality for female lives from the 1980 CET Table.
- G. As used in this regulation, “1980 CSO and 1980 CET Smoker and Nonsmoker Mortality Tables” mean the mortality tables with separate rates of mortality for smokers and nonsmokers derived from the 1980 CSO and 1980 CET Mortality Tables by the Society of Actuaries Task Force on Smoker/Nonsmoker Mortality and adopted by the NAIC in December 1983.

Section 4. Rule

- A. For a policy of insurance on the life of either a male or female insured delivered or issued for delivery in this state after the operative date of Section [insert applicable reference corresponding to Section 5cK of the NAIC model Standard Nonforfeiture Law for Life Insurance] for that policy form, for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits:
 - (1) A mortality table that is a blend of the 1980 CSO Table (M) and the 1980 CSO Table (F) With or Without Ten-Year Select Mortality Factors may, at the option of the company, be substituted for the 1980 CSO Table, With or Without Ten-Year Select Mortality Factors; and
 - (2) A mortality table that is of the same blend as used in Paragraph (1) but applied to form a blend of the 1980 CET Table (M) and the 1980 CET Table (F) may at the option of the company be substituted for the 1980 CET Table.
- B. The following tables will be considered as the basis for acceptable tables:
 - (1) 100% Male 0% Female for tables to be designated as the “1980 CSO-A” and “1980 CET-A” tables.
 - (2) 80% Male 20% Female for tables to be designated as the “1980 CSO-B” and “1980 CET-B” tables.

- (3) 60% Male 40% Female for tables to be designated as the “1980 CSO-C” and “1980 CET-C” tables.
- (4) 50% Male 50% Female for tables to be designated as the “1980 CSO-D” and “1980 CET-D” tables.
- (5) 40% Male 60% Female for tables to be designated as the “1980 CSO-E” and “1980 CET-E” tables.
- (6) 20% Male 80% Female for tables to be designated as the “1980 CSO-F” and “1980 CET-F” tables.
- (7) 0% Male 100% Female for tables to be designated as the “1980 CSO-G” and “1980 CET-G” tables.

Drafting Note: For blended tables, see *1984 Proceedings of the NAIC*, Vol. I, pages 396 to 400.

- C. Tables (1) and (7) are not to be used with respect to policies issued on or after January 1, 1985 except where the proportion of persons insured is anticipated to be ninety-percent (90%) or more of one sex or the other or except for certain policies converted from group insurance. Group conversions issued on or after January 1, 1986 must use mortality tables based on the blend of lives by sex expected for the policies if the group conversions are considered as extensions of the *Norris* decision. This consideration has not been clearly defined by court or legislative action in all jurisdictions.

Section 4A. Alternate Rule

- A. In determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits for a policy of insurance on the life of either a male or female insured on a form of insurance with separate rates for smokers and nonsmokers delivered or issued for delivery in this state after the operative date of Section [insert applicable reference corresponding to Section 5cK of the NAIC model Standard Nonforfeiture Law for Life Insurance] for that policy form, in addition to the mortality tables that may be used according to Section 4, the following may, at the option of the company, be substituted for the 1980 CET Table:

- (1) A mortality table that is a blend of the male and female rates of mortality according to the 1980 CSO Smoker Mortality Table, in the case of lives classified as smokers, or the 1980 CSO Nonsmoker Mortality Table, in the case of lives classified as nonsmokers, With or Without ten-year Select Mortality Factors, may at the option of the company be substituted for the 1980 CSO Table, With or Without Ten-Year Select Mortality Factors; and
- (2) A mortality table that is of the same blend as used in Paragraph (1) but applied to form a blend of the male and female rates of mortality according to the corresponding 1980 CET Smoker Mortality Table or 1980 CET Nonsmoker Mortality Table.

- B. The following blended mortality tables will be considered acceptable:

- SA: 100% Male 0% Female smoker tables designated as “1980 CSO-SA” and “1980 CET-SA” Tables.
- SB: 80% Male 20% Female smoker tables designated as “1980 CSO-SB” and “1980 CET-SB” Tables.
- SC: 60% Male 40% Female smoker tables designated as “1980 CSO-SC” and “1980 CET-SC” Tables.
- SD: 50% Male 50% Female smoker tables designated as “1980 CSO-SD” and “1980 CET-SD” Tables.
- SE: 40% Male 60% Female smoker tables designated as “1980 CSO-SE” and “1980 CET-SE” Tables.
- SF: 20% Male 80% Female smoker tables designated as “1980 CSO-SF” and “1980 CET-SF” Tables.
- SG: 0% Male 100% Female smoker tables designated as “1980 CSO-SG” and “1980 CET-SG” Tables.

- NA: 100% Male 0% Female nonsmoker tables designated as “1980 CSO-NA” and “1980 CET-NA” Tables.
- NB: 80% Male 20% Female nonsmoker tables designated as “1980 CSO-NB” and “1980 CET-NB” Tables.
- NC: 60% Male 40% Female nonsmoker tables designated as “1980 CSO-NC” and “1980 CET-NC” Tables.
- ND: 50% Male 50% Female nonsmoker tables designated as “1980 CSO-ND” and “1980 CET-ND” Tables.
- NE: 40% Male 60% Female nonsmoker tables designated as “1980 CSO-NE” and “1980 CET-NE” Tables.
- NF: 20% Male 80% Female nonsmoker tables designated as “1980 CSO-NF” and “1980 CET-NF” Tables.
- NG: 0% Male 100% Female nonsmoker tables designated as “1980 CSO-NG” and “1980 CET-NG” Tables.
- C. Tables SA, SG, NA and NG are not acceptable as blended tables unless the proportion of persons insured is anticipated to be ninety-percent (90%) or more of one sex or the other.

Section 5. Unfair Discrimination

It shall not be a violation of [insert applicable reference to unfair trade practices statute] for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

Section 6. Separability

If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected.

Section 7. Effective Date

The effective date of this regulation is August 1, 1983 to comply with the *Norris* decision.

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1984 Proc. I 6, 31, 376, 395, 416-418 (adopted).

1986 Proc. II 12, 18, 538, 568-570, 646 (amended and reprinted).

1987 Proc. I 11, 19, 531-534, 610 (amended).

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This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.

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KEY:

MODEL ADOPTION: States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

RELATED STATE ACTIVITY: Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

NO CURRENT ACTIVITY: No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama	ALA. ADMIN. CODE r. 482-1-073 (1984/2003).	
Alaska	NO CURRENT ACTIVITY	
American Samoa	NO CURRENT ACTIVITY	
Arizona	ARIZ. ADMIN. CODE 5876 (1985).	
Arkansas	ARK. CODE R. § 40 (1986/1988).	
California	BULLETIN 85-14 (1985) (adopted by reference).	BULLETIN 88-4 (1988).
Colorado	4 COLO. CODE REGS. § 1-5 (1985/2010).	
Connecticut	CONN. AGENCIES REGS. §§ 38a-439-5 to 38a-439-9 (1985/1988).	
Delaware	18 DEL. CODE REGS. § 1206 (1984/2003).	
District of Columbia	NO CURRENT ACTIVITY	
Florida		FLA. STAT. § 627.476 (1959/1997).

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Georgia	GA. COMP. R. & REGS. 120-2-39-.02 (1987).	
Guam	NO CURRENT ACTIVITY	
Hawaii	NO CURRENT ACTIVITY	
Idaho	IDAHO ADMIN. CODE 58.18.01.58 (1989/1993).	
Illinois	NO CURRENT ACTIVITY	
Indiana	760 IND. ADMIN. CODE 1-32 (1985/2013)	BULLETIN 47 (1984).
Iowa	IOWA ADMIN. CODE r. 191.42.1 to 191-42.6 (1984/2004) (Use 2001 CSO Table).	
Kansas	KAN. STAT. ANN. § 40-2-16 (1984/1988) (Adopted by reference).	
Kentucky	806 KY. ADMIN. REGS. 12:110 (1984/1987).	
Louisiana	NO CURRENT ACTIVITY	
Maine	340 ME. CODE R. (1984/2004).	
Maryland		MD. CODE REGS. 31.05.03.14 (2004).
Massachusetts	211 MASS. CODE REGS. §§ 32.01 to 32.08 (1985/1996).	
Michigan	MICH. ADMIN. CODE r. 500.1221 to 500.1225 (1985).	
Minnesota	NO CURRENT ACTIVITY	
Mississippi	84 MISS. CODE R. § 103 (1984/1988).	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Missouri	MO. CODE REGS. ANN. tit. 20, § 400-1.110 (1985/1988).	
Montana	MONT. ADMIN. R. 6.6.1801 to 6.6.1805 (1983).	
Nebraska	NO CURRENT ACTIVITY	
Nevada	NO CURRENT ACTIVITY	
New Hampshire	NO CURRENT ACTIVITY	
New Jersey	N.J. ADMIN. CODE §§ 11:4-22.1 to 11:4-22.5 (1984/1996).	
New Mexico	13 N.M. ADMIN. CODE §§ 9.9.1 to 9.9.10 (1985/1997).	
New York	N.Y. COMP. CODES R. & REGS. tit. 11, §§ 47.0 to 47.4 & Appendix 20 (Regulation 112) (1984/1986).	
North Carolina	NO CURRENT ACTIVITY	
North Dakota	N.D. ADMIN. CODE 45-04-07 (1985/1989).	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	OHIO ADMIN. CODE 3901:6-10.2 (2008).	
Oklahoma	OKLA. ADMIN. CODE §§ 365:10-7-10 to 365:10-7-14 (1985/2002).	
Oregon	OR. ADMIN. R. 836-51-110 (1985) (Adopted by reference).	
Pennsylvania	31 PA. CODE § 84.5 (1985/1988).	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Puerto Rico	P.R. RULE XLVIII § 9 (1985).	
Rhode Island	NO CURRENT ACTIVITY	
South Carolina	S.C. CODE ANN. REGS. 69-36 (1983/1988).	
South Dakota	NO CURRENT ACTIVITY	
Tennessee	TENN. COMP. R. & REGS. 0780-1-52-.03 (1985/2004).	
Texas	3 TEX. ADMIN. CODE §§ 3.1301 to 3.1307 (1984/2003).	
Utah	UTAH ADMIN. CODE r. 590-95 (1985/2012).	
Vermont	VT. CODE R. I-88-4 (Part C) (1989/1999).	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	NO CURRENT ACTIVITY	
Washington	WASH. ADMIN. CODE 284-74-200 (1988/1989).	
West Virginia		W. VA. INFORMATIONAL LETTER No. 20 (1983).
Wisconsin	WIS. ADMIN. CODE INS. § 2.20 (1984/1989).	
Wyoming	NO CURRENT ACTIVITY	