



STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
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April 10, 2014

Honorable David Lillard, Jr., Chair  
Tennessee Workers' Compensation Advisory Council  
Treasurer, State of Tennessee  
State Capitol, First Floor  
Nashville, TN 37243-0225

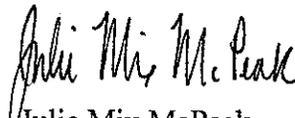
Dear Chairman Lillard:

Tenn. Code Ann. §50-6-402(d) requires that the Commissioner of Commerce and Insurance report to the Workers' Compensation Advisory Council regarding all workers' compensation filings made by the designated rate service organization and received by this Department.

Attached to this letter, please find a summary of all NCCI filings made in Tennessee for the period January 1, 2014 through March 31, 2014. This Department appreciates the role that the Workers' Compensation Advisory Council provides in the area of workers' compensation regulation.

Should you or any member have questions or comments concerning this report, please do not hesitate in contacting me or a member of my staff.

Sincerely,

  
Julie Mix McPeak  
Commissioner

JMM/ms

**NCCI Filing Activity Report:**  
**Summary as of March 31, 2014**  
**(includes filings received January 1, 2014 and later)**

**1. 01-TN-2014 —Revisions to Basic Manual Rule 2-E Executive Officers, Members of Limited Liability Companies, Partners and Sole Proprietors**

**Filed: February 21, 2014**

**Proposed Effective Date: July 1, 2014**

**Status: Pending**

**Summary of Filing (see copy of Filing Memorandum and endorsement for more details)**

This filing proposed the following:

1. In compliance with Senate Bill 200 of the previous session, members of LLCs will be treated as executive officers, subject to the maximum and minimum payroll amounts found on the Tennessee Miscellaneous Values pages in the Basic Manual.
2. Adopts national Rule 2-E-2-B of the Basic Manual in Tennessee. This rule provides rule references based upon the state treatment of LLC members.
3. Revises Tennessee state rule exception to Rule 2-E-3 of the Basic Manual to clarify that exclusion of payroll is to be realized when the partner does not perform or ceases to perform any duties and does not visit the premises, except for attending directors' meetings. This applies to both construction partnerships as well as non-construction partnerships.

**2. U-1399(A) – Revisions to Statistical Plan for Workers Compensation and Employers Liability Insurance – Amended Pension Table Values**

**Filed: March 19, 2014**

**Proposed Effective Date: October 1, 2014**

**Status: Approved March 19, 2014**

**Summary of Filing (see copy of Filing Memorandum for more details)**

This filing proposed to amend six values each, in Pension Tables IV-A and IV-B – Present Value of Survivorship Benefits, as approved in Item U-1399 – Revisions to Statistical Plan for Workers' Compensation and Employers Liability Insurance. That filing included 19 updated tables, representing approximately 5,000 values. In October 2013, NCCI filing U-1399 was made and subsequently approved in all states. Updated Pension Tables have not been published yet in the Statistical Plan for Workers' Compensation and Employers Liability and are not in effect until claims are values as of October 2014, and subsequent. Recently, NCCI identified six values each on the aforementioned Pension Tables that were understated by 1% or less. This filing corrects those understated values.

## FILING MEMORANDUM

### ITEM 01-TN-2014—REVISIONS TO BASIC MANUAL RULE 2-E—EXECUTIVE OFFICERS, MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS, AND SOLE PROPRIETORS

#### PURPOSE

This item revises Tennessee state rule exceptions for Members of Limited Liability Companies (LLCs) and Partners or Sole Proprietors in NCCI's *Basic Manual for Workers Compensation and Employers Liability Insurance (Basic Manual)*.

#### BACKGROUND

Currently, Tennessee's state rule exception to Rule 2-E-2-b in the *Basic Manual* addresses premium determination for LLCs. The rule states that LLCs in Tennessee are recognized by the Department of Labor and Workforce Development (DOLWD) as partnerships for workers compensation coverage purposes.

Tennessee Senate Bill 200 (SB 200—2013 Regular Session), effective July 1, 2014, revises Tennessee Code Annotated §50-6-104, Election of Corporate Officer to be Exempt From Chapter, to include LLC members under this section. This revision allows for LLC members to have the ability to elect to be exempt from coverage in the same manner as executive officers. Therefore, the premium determination must be based on the maximum and minimum payroll amounts for executive officers shown on the Tennessee Advisory Miscellaneous Values pages of the *Basic Manual*.

Additionally, Tennessee's state rule exception to Rule 2-E-3 in the *Basic Manual* includes the following note applicable to partnerships in the construction industry:

**Note:** Payroll is excluded when the partner does not perform or ceases to perform any duties and does not visit the premises, except perhaps to attend directors' meetings.

Tennessee's state rule exception to Rule 2-E-3 must be revised to clarify that the note referenced above applies to all partnerships, in both the construction industry and the nonconstruction industry.

#### PROPOSAL

This item proposes to:

1. Eliminate Tennessee's state rule exception to Rule 2-E-2-b of the *Basic Manual*. Members of LLCs will be treated as executive officers and will be subject to the maximum and minimum payroll amounts in the Tennessee Advisory Miscellaneous Values pages in the *Basic Manual*.
2. Establish national Rule 2-E-2-b of the *Basic Manual* in Tennessee.
3. Revise Tennessee's state rule exception to Rule 2-E-3 of the *Basic Manual* to clarify that the exclusion of payroll when the partner does not perform or ceases to perform any duties and does not visit the premises, except perhaps to attend directors' meetings, applies to both construction partnerships and nonconstruction partnerships.

#### IMPACT

Due to the elimination of Tennessee's state rule exception to Rule 2-E-2-b, an LLC member will likely see an increase in premium unless they elect to be exempt from coverage. The amount of the increase will vary

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FILING MEMORANDUM

**ITEM 01-TN-2014—REVISIONS TO BASIC MANUAL RULE 2-E—EXECUTIVE OFFICERS,  
MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS, AND SOLE PROPRIETORS**

depending on actual payroll, but could be up to four times the current premium. This potential variance is reflected by the difference between the current payroll determination and the executive officer maximum (\$3,300), effective July 1, 2014. An LLC member who elects to be exempt from coverage will no longer pay any premium. However, that risk will then be assuming all financial responsibility in the event of an accident or workplace injury. It is not possible to determine the amount of premium from individual risks that will be affected because this will vary by risk. However, the amount of statewide premium affected by this change is expected to be negligible.

The revision to Tennessee's state rule exception to Rule 2-E-3 of the *Basic Manual* is not expected to have a significant premium reduction impact.

**EXHIBIT COMMENTS AND IMPLEMENTATION SUMMARY**

Exhibit	Exhibit Comments	Implementation Summary
1	Details the elimination of Tennessee's state rule exception to Rule 2-E-2-b in the <i>Basic Manual</i> .	To become effective for new, renewal, and outstanding policies effective on and after 12:01 a.m. on July 1, 2014.
2	Details the establishment of national Rule 2-E-2-b in the <i>Basic Manual</i> for use in Tennessee.	
3	Details the revision to Tennessee's state rule exception to Rule 2-E-3 in the <i>Basic Manual</i> .	

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**ITEM 01-TN-2014—REVISIONS TO BASIC MANUAL RULE 2-E—EXECUTIVE OFFICERS,  
MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS, AND SOLE PROPRIETORS**

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**EXHIBIT 1  
BASIC MANUAL—2001 EDITION  
TENNESSEE STATE RULE EXCEPTIONS  
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION  
E. EXECUTIVE OFFICERS, MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS,  
AND SOLE PROPRIETORS  
2. Members of Limited Liability Companies**

**b. Premium Determination**

Change Rule 2-E-2-b as follows:

- ~~If the member does not perform or ceases to perform any duties and does not visit the premises, except perhaps to attend directors' meetings, payroll is excluded.~~
- ~~In Tennessee, Limited Liability Companies (LLCs) are recognized by the Department of Labor and Workforce Development (DOLWD) as partnerships for workers compensation coverage purposes. Refer to Rule 2-E-3 for further information on the treatment of partners executive officers. On the rare occasion where LLCs file corporate tax returns, premium determination for each member of the LLC treated as an employee is based on the actual payroll amount, subject to the payroll amounts for partners and sole proprietors shown under the Miscellaneous Values in the state rate pages.~~

**ITEM 01-TN-2014—REVISIONS TO BASIC MANUAL RULE 2-E—EXECUTIVE OFFICERS,  
MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS, AND SOLE PROPRIETORS**

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**EXHIBIT 2**

**BASIC MANUAL—2001 EDITION**

**RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION**

**E. EXECUTIVE OFFICERS, MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS,  
AND SOLE PROPRIETORS**

**2. MEMBERS OF LIMITED LIABILITY COMPANIES  
(National Rules to be Applicable in Tennessee)**

**b. Premium Determination**

- If the member is to be treated as an executive officer, *refer to Rule 2-E-1-b.*
- If the member is to be treated as a partner or sole proprietor, *refer to Rule 2-E-3.*

**ITEM 01-TN-2014—REVISIONS TO BASIC MANUAL RULE 2-E—EXECUTIVE OFFICERS, MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS, AND SOLE PROPRIETORS**

**EXHIBIT 3  
BASIC MANUAL—2001 EDITION  
TENNESSEE STATE RULE EXCEPTIONS  
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION  
E. EXECUTIVE OFFICERS, MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS,  
AND SOLE PROPRIETORS**

**3. Partners or Sole Proprietors**

Add the following to Rule 2-E-3:

Payroll is excluded when the partner does not perform, or ceases to perform, any duties and does not visit the premises, except perhaps to attend directors' meetings. This treatment applies to construction partnerships and nonconstruction partnerships.

For the construction industry only, premium determination for each partner and sole proprietor treated as an employee is based on actual payroll amount, subject to the minimum and maximum payroll amounts for partners and sole proprietors in the construction industry shown under the Miscellaneous Values in the state rate pages. For purposes of this rule and as defined in the Tennessee Code, partners and sole proprietors "engaged in the construction industry" means any person or entity assigned to the contracting industry group, as those classifications are designated by the National Council on Compensation Insurance, Inc. Where more than one classification applies, the governing code, as defined by the *Basic Manual*, will be used to determine whether the person or entity is engaged in the construction industry. Refer to Rule 1-B-5 for additional information.

These minimum and maximum payroll amounts include annual amounts of wages, salary, emoluments, or profits for each such partner or sole proprietors. IRS tax forms for sole proprietorships and partnerships may be used to determine the actual payroll amount as follows.

For sole proprietorships in the construction industry that otherwise verify net profit or loss by submitting IRS Schedule C for the coverage period:

<b>If Schedule C shows a . . .</b>	<b>Then the payroll amount used to calculate premium will be the . . .</b>
Net loss or a net profit amount that is less than the minimum payroll amount shown on the Miscellaneous Values in the state rate pages	Minimum payroll amount shown on the Miscellaneous Values in the state rate pages
Net profit amount that falls between the minimum and maximum payroll amounts shown on the Miscellaneous Values in the state rate pages	Net profit amount
Net profit amount that is greater than the maximum payroll amount shown on the Miscellaneous Values in the state rate pages	Maximum payroll amount shown in the Miscellaneous Values in the state rate pages

For partnerships in the construction industry that otherwise verify partners' net earnings or loss by submitting IRS Form 1065 (U.S. Return of Partnership Income) with Schedule K-1 for each partner for the coverage period:

<b>If Schedule K-1 shows a . . .</b>	<b>Then the payroll amount used to calculate premium will be the . . .</b>
Net earnings (loss) from self-employment <sup>1</sup> amount that is less than the minimum payroll amount shown on the Miscellaneous Values in the state rate pages	Minimum payroll amount shown on the Miscellaneous Values in the state rate pages

**ITEM 01-TN-2014—REVISIONS TO BASIC MANUAL RULE 2-E—EXECUTIVE OFFICERS,  
MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS, AND SOLE PROPRIETORS**

**EXHIBIT 3 (CONT'D)  
BASIC MANUAL—2001 EDITION  
TENNESSEE STATE RULE EXCEPTIONS  
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION  
E. EXECUTIVE OFFICERS, MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS,  
AND SOLE PROPRIETORS  
(Cont'd)**

Net earnings from self-employment amount that falls between the minimum and maximum payroll amounts shown on the Miscellaneous Values in the state rate pages	Net earnings from self-employment amount
Net earnings from self-employment amount that is greater than the maximum payroll amount shown on the Miscellaneous Values in the state rate pages	Maximum payroll amount shown on the Miscellaneous Values in the state rate pages

<sup>1</sup> Net earnings (loss) from self-employment is taken from Part III of Schedule K-1 (e.g., Line 14— Schedule K-1 [IRS Form 1065]).

In the case of a nonformalized partnership, tax returns for each alleged partner should be submitted for review (for example, IRS Schedule C for each alleged partner). If Schedule C is submitted for each said partner, the rule for sole proprietorships will apply.

The IRS tax forms reviewed for premium determination for partners and sole proprietors will be the most current available. Tax forms more than two years from the effective date will not be accepted for premium determination. If IRS tax forms within two years of the effective date are not provided, premium determination for each partner and sole proprietor will be based on the maximum payroll amount as shown on the Miscellaneous Values in the state rate pages used for partners and sole proprietors in the construction industry.

~~**Note:** Payroll is excluded when the partner does not perform or ceases to perform any duties and does not visit the premises, except perhaps to attend directors' meetings.~~

Net profits/earnings will be adjusted based on the proportion of the gross receipts attributable to nonexempt commercial construction projects as defined in the Tennessee Code. The allocation of chargeable payroll between nonexempt commercial construction projects and all other construction projects will be determined by the following formula ("Formula"):

$$\frac{\text{Gross receipts}^2 \text{ for all nonexempt commercial construction projects}}{\text{Total gross receipts}^2 \text{ for all projects}} \times \text{Schedule C or K-1} = \text{Chargeable payroll}$$

<sup>2</sup> The gross amounts received by the policyholder during the policy period in connection with the construction industry.

Minimum payroll for partners and sole proprietors in the construction industry as shown on the Miscellaneous Values in the state rate pages is to be modified by the gross receipts for all nonexempt commercial construction projects to total gross receipts for all projects ratio.

Construction Services Providers (CSPs) who wish to be exempt from carrying workers compensation insurance on themselves must have a valid exemption by being listed on the Workers' Compensation Exemption Registry with the Office of the Secretary of State, or be exempt pursuant to TCA §50-6-902(b)(4) and (5).

**ITEM 01-TN-2014—REVISIONS TO BASIC MANUAL RULE 2-E—EXECUTIVE OFFICERS,  
MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS, AND SOLE PROPRIETORS**

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**EXHIBIT 3 (CONT'D)  
BASIC MANUAL—2001 EDITION  
TENNESSEE STATE RULE EXCEPTIONS  
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION  
E. EXECUTIVE OFFICERS, MEMBERS OF LIMITED LIABILITY COMPANIES, PARTNERS,  
AND SOLE PROPRIETORS**

Any CSP who is not required to purchase a workers compensation insurance policy on themselves pursuant to TCA §50-6-902(b)(4) and (5) may elect to purchase a workers compensation insurance policy. In this case, the premium calculation for the policy must include the full amount of payroll for the CSP insured on the policy. If said CSP obtains and maintains a valid exemption and is listed on the Workers' Compensation Exemption Registry with the Office of the Secretary of State, then payroll will be accordingly adjusted by the Formula.

## FILING MEMORANDUM

### ITEM U-1399A—REVISIONS TO STATISTICAL PLAN FOR WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE—AMENDED PENSION TABLE VALUES

To become effective October 1, 2014, for claims valued as of October 2014, and subsequent.

#### PURPOSE

The purpose of this item is to amend six values each, in Pension Tables IV-A and IV-B—Present Value of Survivorship Benefits, as approved in Item U-1399—Revisions to Statistical Plan for Workers Compensation and Employers Liability Insurance.

#### BACKGROUND

In October 2013, NCCI filed Item U-1399, which included several reporting clarifications and updated Pension Table values. This filing has been approved in all NCCI states. The updated Pension Tables have not yet been published in the *Statistical Plan for Workers Compensation and Employers Liability Insurance (Statistical Plan)* and are not in effect until claims are valued as of October 2014, and subsequent.

Item U-1399 included 19 updated Pension Tables representing approximately 5,000 values. Recently, NCCI identified six values each, in Pension Tables IV-A and IV-B, that were understated by approximately 0.5% for Table IV-A and approximately 1% for Table IV-B. All other Pension Table values were confirmed to be accurate.

#### PROPOSAL

NCCI proposes to amend six values each, in Tables IV-A and IV-B, that were approved in Item U-1399. Exhibits 1 and 2 display excerpts of Pension Tables IV-A and IV-B respectively, with the corrected values underlined.

#### IMPACT

Since the updated Pension Tables have not yet been published in the *Statistical Plan*, and are not in effect until claims are valued as of October 2014, and subsequent, there is no impact of this amended item filing. The minimal extent of the corrected values, as compared to the originally approved values, is displayed in Exhibit 3.

Also, this item does not impact the reporting clarifications and all other Pension Table values approved in Item U-1399.

#### EXHIBIT COMMENTS AND IMPLEMENTATION SUMMARY

In order to implement this item, the attached exhibits detail the changes required in NCCI's *Statistical Plan*.

In all states, except Hawaii, this item is to be effective for claims valued as of October 2014, and subsequent.

In Hawaii, the effective date is determined upon regulatory approval of the individual carrier's election to adopt this change.

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FILING MEMORANDUM

**ITEM U-1399A—REVISIONS TO STATISTICAL PLAN FOR WORKERS COMPENSATION AND  
EMPLOYERS LIABILITY INSURANCE—AMENDED PENSION TABLE VALUES**

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Exhibit	Exhibit Comments
1	Displays an excerpt of Pension Table IV-A with the corrected values underlined
2	Displays an excerpt of Pension Table IV-B with the corrected values underlined
3	Displays a chart summarizing the originally approved values and corrected values for Pension Tables IV-A and IV-B

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**ITEM U-1399A—REVISIONS TO STATISTICAL PLAN FOR WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE—AMENDED PENSION TABLE VALUES**

**EXHIBIT 3**

<b>Present Value of Survivorship Benefits Tables IV-A and IV-B Originally Approved and Corrected Values</b>				
<b>Table</b>	<b>Claimant's Age</b>	<b>Age Difference</b>	<b>Originally Approved Value</b>	<b>Corrected Value</b>
IV-A	30	-5	2.086	2.095
IV-A	29	-4	1.962	1.971
IV-A	28	-3	1.845	1.854
IV-A	27	-2	1.734	1.743
IV-A	26	-1	1.630	1.639
IV-A	25	0	1.532	1.541
IV-B	30	-5	13.651	13.774
IV-B	29	-4	12.939	13.061
IV-B	28	-3	12.248	12.369
IV-B	27	-2	11.580	11.699
IV-B	26	-1	10.937	11.053
IV-B	25	0	10.320	10.432

**ITEM U-1399A—REVISIONS TO STATISTICAL PLAN FOR WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE—AMENDED PENSION TABLE VALUES**

**EXHIBIT 1  
STATISTICAL PLAN—2008 EDITION  
PART 7—PENSION TABLES**

**16. Present Value of Survivorship Benefits Table—Table IV-A**

**Table IV-A  
Present Value of Survivorship Benefits Table  
Based on an Annual Rate of Interest of 3.5% and an Annual Rate of Escalation of 0.0%\*  
Age Difference (Spouse's Age Minus Claimant's Age)\*\***

<b>Claimant's Age</b>	<b>-5</b>	<b>-4</b>	<b>-3</b>	<b>-2</b>	<b>-1</b>	<b>0</b>
16						1.210
17					1.286	1.246
18				1.366	1.324	1.282
19			1.449	1.405	1.362	1.318
20		1.536	1.491	1.445	1.400	1.355
21	1.628	1.580	1.533	1.485	1.438	1.391
22	1.673	1.624	1.575	1.526	1.477	1.428
23	1.720	1.669	1.618	1.567	1.516	1.465
24	1.769	1.716	1.662	1.609	1.555	1.502
25	1.819	1.763	1.708	1.652	1.596	<u>1.541</u>
26	1.871	1.813	1.755	1.697	<u>1.639</u>	1.581
27	1.924	1.864	1.804	<u>1.743</u>	1.683	1.623
28	1.980	1.917	<u>1.854</u>	1.791	1.728	1.666
29	2.037	<u>1.971</u>	1.906	1.840	1.775	1.710
30	<u>2.095</u>	2.027	1.959	1.891	1.823	1.755
31	2.155	2.085	2.014	1.943	1.872	1.801
32	2.217	2.143	2.070	1.996	1.922	1.849
33	2.280	2.203	2.127	2.050	1.974	1.897
34	2.344	2.265	2.185	2.105	2.026	1.947
35	2.410	2.327	2.244	2.162	2.079	1.997
36	2.477	2.391	2.305	2.219	2.133	2.048
37	2.545	2.456	2.366	2.277	2.188	2.100
38	2.614	2.521	2.428	2.336	2.244	2.152
39	2.684	2.587	2.491	2.395	2.299	2.204
40	2.754	2.654	2.554	2.454	2.355	2.256

**ITEM U-1399A—REVISIONS TO STATISTICAL PLAN FOR WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE—AMENDED PENSION TABLE VALUES**

**EXHIBIT 2  
STATISTICAL PLAN—2008 EDITION  
PART 7—PENSION TABLES**

**17. Present Value of Survivorship Benefits Table—Table IV-B**

**Table IV-B  
Present Value of Survivorship Benefits Table  
Based on an Annual Rate of Interest of 3.5% and an Annual Rate of Escalation of 4.0%\*  
Age Difference (Spouse's Age Minus Claimant's Age)\*\***

Claimant's Age	-5	-4	-3	-2	-1	0
16						11.033
17					11.684	10.973
18				12.358	11.619	10.911
19			13.054	12.289	11.553	10.848
20		13.771	12.981	12.219	11.486	10.783
21	14.509	13.694	12.907	12.147	11.417	10.716
22	14.427	13.616	12.831	12.074	11.346	10.646
23	14.346	13.537	12.754	12.000	11.273	10.576
24	14.264	13.457	12.677	11.924	11.200	10.504
25	14.182	13.378	12.600	11.849	11.126	<u>10.432</u>
26	14.101	13.299	12.523	11.774	<u>11.053</u>	10.361
27	14.020	13.220	12.446	<u>11.699</u>	10.980	10.289
28	13.938	13.141	<u>12.369</u>	11.624	10.906	10.218
29	13.856	<u>13.061</u>	12.291	11.548	10.833	10.146
30	<u>13.774</u>	12.981	12.213	11.472	10.759	10.075
31	13.691	12.900	12.134	11.395	10.685	10.002
32	13.607	12.818	12.055	11.318	10.610	9.929
33	13.522	12.735	11.974	11.240	10.534	9.856
34	13.436	12.652	11.893	11.161	10.457	9.782
35	13.349	12.566	11.810	11.081	10.379	9.706
36	13.260	12.480	11.726	10.999	10.300	9.630
37	13.169	12.392	11.641	10.917	10.220	9.552
38	13.077	12.303	11.554	10.832	10.138	9.473
39	12.983	12.211	11.465	10.746	10.054	9.392
40	12.885	12.116	11.373	10.656	9.968	9.308