

## Draft Pending Adoption

Date: 4/21/21

Life Insurance and Annuities (A) Committee  
Virtual 2021 Spring National Meeting  
April 12, 2020

The Life Insurance and Annuities (A) Committee met April 12, 2021. The following Committee members participated: Marlene Caride, Chair, represented by Dave Wolf (NJ); Glen Mulready, Vice Chair (OK); Jim L. Ridling (AL); Trinidad Navarro (DE); Doug Ommen (IA); Dean L. Cameron (ID); Vicki Schmidt (KS); James J. Donelon (LA); Barbara D. Richardson represented by David Cassetty (NV); Linda A. Lacewell represented by Mona Bhalla (NY); Judith L. French (OH); Elizabeth Kelleher Dwyer and Sarah Neil (RI); Carter Lawrence represented by Brian Hoffmeister (TN); and Mark Afable and Richard Wicka (WI). Also participating was: Jodi Lerner (CA);

### 1. Adopted its 2020 Fall National Meeting Minutes

Commissioner Schmidt made a motion, seconded by Director Cameron, to adopt the Committee's Dec. 7, 2020, minutes (*see NAIC Proceedings – Fall 2020, Life Insurance and Annuities (A) Committee*). The motion passed unanimously.

### 2. Adopted the Reports of its Working Groups and Task Force

Commissioner Donelon made a motion, seconded by Commissioner Schmidt, to adopt the following reports: the Accelerated Underwriting (A) Working Group, including its March 19 minutes (Attachment One); the Annuity Suitability (A) Working Group, including its March 9 and March 25 (Attachment Two), Feb. 22 (Attachment Two-A), and Dec. 14, 2020, (Attachment Two-B) minutes; the Life Insurance Illustration Issues (A) Working Group, including its March 10 (Attachment Three) and Feb. 23 (Attachment Four) minutes and an extension of the Request for NAIC Model Law Development; and the Life Actuarial (A) Task Force. The motion passed unanimously.

### 3. Received an Update on the Special (EX) Committee on Race and Insurance Workstream Four's Work

Commissioner Afable, co-chair of the Special (EX) Committee on Race and Insurance (Special Committee) Workstream Four, provided an update to the Committee. He explained that the Special Committee met earlier in the day and received oral reports and recommendations from all its workstreams, including the Life Insurance and Annuities Workstream, Workstream Four. He said based on the recommendations of the workstreams, draft proposed charges from the Special Committee were distributed. He said the primary conclusion of Workstream Four, which was reflected in the proposed Special Committee charges, was that it had only just started to delve into the practices and barriers that potentially disadvantage minority and underserved populations in the life insurance and annuity lines of business. He said Workstream Four recommended that research and discussions continue to: 1) better determine the practices or barriers that disadvantage people of color and/or historically underrepresented groups; and 2) identify steps that can be taken to eliminate those barriers and disadvantages.

Commissioner Afable explained that the Special Committee proposed charges have Workstream Four continuing to research and formulate specific recommendations, as necessary, to address issues involving race and life insurance, such as: 1) the marketing, distribution and access to life insurance products in minority communities, including the role that financial literacy plays; 2) the impact of traditional life insurance underwriting on minority populations, considering the relationship between mortality risk and disparate impact; 3) disparities in the number of cancellations/rescissions among minority policyholders; and 4) whether there are other unresolved issues surrounding race and insurance in the life insurance industry that the Workstream should consider addressing. He said the Special Committee charges also recommend that the Accelerated Underwriting (A) Working Group, as part of its ongoing work to consider the use of external data and data analytics in accelerated life underwriting, include an assessment of and recommendations, as necessary, regarding the impact of accelerated underwriting on minority populations.

### 4. Discussed and Adopted Modifications to its 2021 Charges

Birny Birnbaum (Center for Economic Justice—CEJ) said he wrote a comment letter to the Committee recommending revisions to its 2021 charges. He said his suggested revisions: 1) offer revisions to make the charges better reflect the work actually being done by those groups; and 2) suggest the creation of a new working group, the Illustration Reengineering (A) Working Group, to take a fresh look at life insurance and annuity illustrations and advertising. He said this new working group would encompass the work of the current Annuity Disclosure (A) Working Group, but it would also conduct a thorough review, from a consumer perspective, of the entire life insurance annuity illustration regime. He said there are many problems with illustrations, not the

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least of which is that illustrations are massive documents that mislead consumers as to product performance, while failing to adequately explain how products work. He said the regulatory guidance has been designed by actuaries, not by experts in consumer disclosures, with the result that product designs are developed to game the system. He also said guidance for annuities is very different from life insurance, even for products that are functionally similar, like indexed life and indexed annuities, which use the same accumulation approach, indexes and crediting features; but they have vastly different illustrations, even though they should perform similarly during the accumulation phase.

Mr. Birnbaum said the new *Actuarial Guideline XLIX-A—The Application of the Life Illustrations Model Regulation to Policies with Index-Based Interest to Policies Sold On or After December 14, 2020* (AG 49-A) is already being gamed by a company that is providing “showcase examples” of product accumulations, along with the required illustrations, in order to show an example based on assumptions prohibited in the actual illustration. He said life illustrations fail to show “sequence of returns risk” and show returns as if they are going to be the same every year, which is misleading. He said adding additional disclosures to what is already a 50-page to 80-page document is not a solution. He said illustrations are the key sales tool for investment-type life insurance and annuities, yet the current illustrations do not serve the intended purpose. He said there needs to be a coordinated review of life and annuity illustrations, including whether data-mined custom indices with little or no historical record should be permitted.

Mr. Birnbaum also suggested changing the name of the Life Insurance Illustration Issues (A) Working Group to the Life Insurance Policy Overview (A) Working Group to more accurately describe the limited scope of its work. He also suggested revising the Annuity Suitability (A) Working Group’s charge to reflect the fact that it completed revisions to the *Suitability in Annuity Transactions Model Regulation* (#275), and it is now working on a frequently asked questions (FAQ) document.

Commissioner Ommen said the Annuity Suitability (A) Working Group is currently working on a FAQ document, the purpose of which, in part, is to answer questions that have come up in the states and is part of the larger effort to promote uniformity. He said he does not feel strongly about making revisions to the charge, but he observed that Mr. Birnbaum’s suggested edits reference completing the charge by the Summer National Meeting, which is not an unreasonable timeline, but it is not usually included within a charge itself.

Commissioner Ommen explained that the Annuity Disclosure (A) Working Group is charged to “review and revise, as necessary, Section 6-Standards for Annuity Illustrations in the Annuity Disclosure Model Regulation (#245) to take into account the disclosures necessary to inform consumers in light of the product innovations currently in the marketplace.” He said the Working Group is chaired by Mike Yanacheak (IA), chief actuary with the Iowa Department of Insurance (DOI). Commissioner Ommen said the Working Group has been in existence for more than four years. He explained that it revised the *Annuity Disclosure Model Regulation* (#245) to allow for participating income annuities, but it has been struggling to draft language to allow the illustration of indices that have been in existence for less than 10 years, under certain circumstances. He said the prohibition in Model #245 was intended to prevent gaming the creation of a combination of indices for the purposes of creating favorable illustrations. He said only five states have adopted the version of Model #245 prohibiting such illustrations. He said because the majority of states do not restrict these illustrations, there has not been the push and commissioner support necessary to achieve consensus on the revisions to Model #245. He said Iowa has adopted the most recent version of Model #245 and is moving forward with a rule to allow the illustrations. He said at this point, he would leave it to the states to draft their own language or do what they are doing in Iowa and promulgate a regulation on the matter.

Commissioner Ommen said Mr. Birnbaum’s suggested Illustration Reengineering (A) Working Group appears to be a broader endeavor apart from the Annuity Disclosure (A) Working Group, which he agrees should be entertained by the Committee once it receives additional information and considers how such an endeavor might fit in to the larger work commitments and responsibilities of the Committee this year. He explained that before the Committee undertakes a new working group and charge, there should be discussion to ensure that there is sufficient state insurance regulator and commissioner support to avoid repeating the situation at hand with the Annuity Disclosure (A) Working Group. He reiterated that the revisions to Model #245 for participating income annuities that were adopted by the Committee in 2018 and held should be forwarded to the Executive (EX) Committee and Plenary for consideration during the Summer National Meeting.

Ms. Lerner asked whether Commissioner Ommen would share the regulation in Iowa. Commissioner Ommen said it is still a work in progress, but he said he would share it as soon as it is available. Jason Berkowitz (Insured Retirement Institute—IRI) said the IRI did not have a position with respect to Mr. Birnbaum’s suggested new Illustration Reengineering (A) Working Group, but he asked that the Committee not presuppose any conclusions within any new charge, such as that life insurance and annuity products are identical, when they are in fact different products.

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Commissioner Ommen made a motion, seconded by Commissioner Afable, to disband the Annuity Disclosure (A) Working Group once the Executive (EX) Committee and Plenary consider adoption of the participating income annuity revisions to Model #245 adopted and then held by the Life Insurance and Annuities (A) Committee at the 2018 Summer National Meeting. The motion passed unanimously.

Mr. Wicka spoke to Mr. Birnbaum's suggested revisions to the Life Insurance Illustration Issues (A) Working Group. He explained that the Working Group has met twice over the past couple of months—March 10 and Feb. 23. He said the Working Group made a lot of progress, and it is very close to completing alternative draft versions of a sample policy overview document for term life policies. He said one version shows the sample pre-underwriting, the other post-underwriting. He said the Working Group has been developing these alternative versions to aid the Committee in providing guidance to the Working Group with respect to the timing of the delivery of this policy overview document the Committee has been working on. Although the Working Group agreed to revisions on the Committee's last call, the Committee wants to have completed, revised versions of the policy overview and corresponding revised versions of the *Life Insurance Disclosure Model Regulation (#580)* for the Working Group to look at and vote to bring to the Committee to provide guidance to the Working Group on next steps. He suggested holding off on making revisions to the Working Group charges at this time and revisiting the issue when the Committee has the drafts before it to review. He pointed out that the Working Group has been working under this charge for a while, and he said he does not believe any changes are necessary for the Working Group to complete its charge.

Commissioner Ommen said the Retirement Security (A) Working Group has a charge to “explore ways to promote retirement security consistent with the NAIC's continuing ‘Retirement Security Initiative.’” He said this has been a charge of the Committee for a number of years and an NAIC priority for years before that. He explained that Commissioner Stephen C. Taylor (DC) chaired the Working Group a couple of years ago; held a number of conference calls; heard presentations from groups who work on this issue, like the Children's Financial Network (CFN) and the National Financial Educators Council (NFEC); and reached out to groups like the American Association of Retired Persons (AARP). The Working Group also heard from Funded Consumer Representative Brenda Cude (University of Georgia) and Karrol Kitt (University of Texas at Austin). Commissioner Ommen said the issue of retirement security permeates all that the NAIC does, including the most recent focus of the NAIC and the Special Committee. He said new charges coming to the Committee from the Special Committee encompass the spirit of this charge in an ongoing way. He said given the work undertaken by Commissioner Taylor and the new charges coming to the Committee under the race and diversity strategic priorities of the NAIC, it may be reasonable to conclude that the Working Group's charge has been fulfilled.

Mr. Berkowitz commended the efforts of the Working Group over the years, and he said he does not want the NAIC to lose sight of this critical issue. He said there is a lot of good that can be done through the insurance regulatory community to help people prepare for their retirement. He said the IRI stands ready to support the NAIC in its efforts, whether it is through this Working Group or another mechanism.

Commissioner Ommen made a motion, seconded by Superintendent Dwyer, to disband the Retirement Security (A) Working Group, as having fulfilled its charge. The motion passed unanimously.

### 5. Discussed Life Insurer Practices Related to COVID-19

Commissioner Mulready said there are three issues he wants to raise with respect to insurer practices and COVID-19. The first is a letter from the Consumer Federation of America (CFA). This letter asks the NAIC to develop a model rule for life insurance underwriters who might delay or deny coverage for people who have or had COVID-19, and it also asks the industry to make COVID-19 underwriting rules public and reasonable. He said the second is an issue the Interstate Insurance Product Regulation Commission (Compact) has encountered; i.e., life insurance underwriting questions related to COVID-19 vaccinations. He said the third issue involves a rumor that has been brought to the attention of a few states that the Committee knows of, as well as the Compact, that life insurance claims have not been paid because the cause of death was the COVID-19 vaccination. The assertion is that the life insurance company claims the vaccine was not U.S. Food and Drug Administration (FDA)-approved, and the deceased signed a release before receiving the shot.

Commissioner Mulready said with respect to the third issue, the Oklahoma DOI heard about this rumor on social media and immediately issued a press release confirming that COVID-19 vaccinations will not affect life insurance benefits.

Bob Hunter (CFA) said the New York Times reported that over 31 million Americans have had or currently have COVID-19, and millions more than that probably have had it with mild or no symptoms. He said in short, this as an issue that touches many, many people. He said the CFA is simply asking for more transparency. He said the CFA is not asking for life insurers to stop reasonable underwriting practices, but consumers should be able to find out what those practices are. He said the pandemic is

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causing an increasing number of people to realize their need for life insurance, and there should be some guidelines for consumers to understand what insurers are going to be looking for and whether they will need to have a COVID-19 vaccination or a negative COVID-19 test, instead of having to go blindly from company to company. He said the CFA has asked major insurance companies to be more transparent, but they have not responded, so that is why the CFA is asking the Committee to consider developing a model rule requiring transparency and reasonable standards for processing life insurance applications in the COVID-19 and post-COVID-19 era.

Superintendent Dwyer said when COVID-19 first emerged, there were several states that did not allow life insurance applications to ask questions about COVID-19. She said a significant percentage of life insurance is written through the Compact, and NAIC members should be aware of the position the Compact has taken with respect to COVID-19 related questions on life insurance applications.

Karen Schutter (Compact) explained that the Compact established a multi-state public entity, the Interstate Insurance Product Regulation Commission, which serves as an instrumentality of the 46 compacting states who come together to develop and adopt Uniform Standards to allow companies to submit forms to the Compact for review and approval under those Uniform Standards. She said it is front-end regulation promoting efficiency and uniform requirements for life insurance, annuities, long-term care insurance (LTCI), and disability income insurance. She said in March 2020, the Compact Office started to see life application forms that had questions related to COVID-19 testing and diagnosis. She explained that the Compact Office, through its monthly communication with its members, reported on the type of questions it was seeing, and more importantly the requirements for such questions under the Uniform Standards. She said the Compact also developed a COVID-19 resource page in its website *insurancecompact.org* with a detailed list of FAQ.

Ms. Schutter said at the start of the pandemic, there were questions about travel, and the ability to exclude certain travel was an emerging concern. She said the Uniform Standards permit questions about foreign travel and residency outside the U.S., provided that the question is limited to a two-year look back and forward. She said the Uniform Standards permit exclusion or limitation of foreign travel or residency only if permitted by state law in the state where the policy is delivered or issued. In other words, exclusions based on information in the underwriting follow state law.

Ms. Schutter said the Compact's COVID-19 FAQ also provide detailed information regarding the types of medical questions that can be asked in application forms. She explained that open-ended questions requiring a self-diagnosis are prohibited. She said questions like whether you think you have COVID-19, whether you have had trouble breathing, and whether you have been exposed to someone with COVID-19 are not allowed. She said medical questions on an application must be in a prescribed format under the Uniform Standards, and most have specified look back periods, such as two, five or 10 years. She said diagnostic questions must be phrased in terms of whether an applicant has been "diagnosed, treated, tested positive for, or been given medical advice for" by a member of the medical profession regarding the specific condition.

Ms. Schutter said the Compact has also reported to its members the filings approved on their behalf, which include applications with COVID-19 questions. She said an approximate total of 60 filings with applications have been approved over the last year. She said under the Uniform Standards, a life insurance policy is prohibited from including an exclusion for death from a specified condition, such as COVID-19. She said the Compact has not seen such an objectionable provision in a form. She said another aspect of COVID-19 filing activity the Compact has seen is companies updating their filings to change the delivery format of their application from paper to electronic.

Ms. Schutter said an important point to remember is that there are many ways an insurer can elicit information about an applicant with respect to the testing or diagnosis of COVID-19 without asking the direct question. For example, the application can ask if the proposed insured received inpatient or outpatient treatment in a hospital, clinic or medical facility, and the insurer can also obtain medical records in addition to the medical questions on an application.

Ms. Schutter explained that concerns with how information is used in the underwriting process are outside the scope of the Compact. She said the Uniform Standards make it very clear that certain exclusions based on the underwriting process follow state law and apply to Compact-approved applications and policies. She said some of the most common exclusions are avocation, aviation, occupation, foreign travel and foreign residency.

Ms. Schutter said the Compact would appreciate guidance from the Committee as the policy experts with respect to the COVID-19 vaccination question. She said about a month ago, the Compact received an application with a question of whether the applicant received a COVID-19 vaccine, including asking for the dates of the first and second shot and the manufacturer.

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Ms. Schutter said at this point, the Compact Office considers this question objectionable under its Fairness standard because this vaccine is not yet widely available and state insurance regulation has not set public policy regarding its use in underwriting. She said the Compact Office stands ready to provide further information.

Commissioner Mulready said in his interactions with media and consumers, he sticks to the fact that life insurance policies are contracts, there are no exclusions for medical conditions, and exclusions cannot be added later. Brendan Bridgeland (Center for Insurance Research—CIR) said he is a member of the advisory board for the Compact, and he has discussed these application questions with Ms. Schutter. He said he initially thought that some of the questions were problematic, but any concerns he had initially have been addressed. He said he agrees with Ms. Schutter with respect to the vaccination questions, and the situation is evolving. He said even if someone got vaccinated initially, there may be booster requirements in the future, and it is unclear how that issue could be handled with life insurance, which raises the question of the relationship between the question and the risk involved.

Having no further business, the Life Insurance and Annuities (A) Committee adjourned.

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