NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

NAIC 2021 SPRING NATIONAL MEETING VIRTUAL

Virtual Meeting
(in lieu of meeting at the 2021 Spring National Meeting)

Statutory Accounting Principles (E) Working Group
Monday, March 15, 2021
3:00 – 5:00 p.m. ET / 2:00 – 4:00 p.m. CT / 1:00 – 3:00 p.m. MT / 12:00 – 2:00 p.m. PT

OVERVIEW AGENDA

HEARING AGENDA

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2. SAPWG Hearing – Review and Adoption of Non-Contested Positions —*Dale Bruggeman (OH)*		
• Ref #2020-32: SSAP No. 26R – Disclosure Update	2	7
• Ref #2020-33: SSAP No. 32R – Publicly Traded Preferred Stock Warrants	2	8
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• Ref #2020-35: SSAP No. 97 – Audit Opinions	3	10
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• Ref #2020-42: *ASU 2020-07, Presentation and Disclosures by Not-for-Profit Entities*	5	12
3. SAPWG Hearing –Review of Comments on Exposed Items – Expecting Minimal Discussion—*Dale Bruggeman (OH)*		
• Ref #2020-22: Accounting for Perpetual Bonds	5	13
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4. SAPWG Hearing – Review of Comments on Exposed Items—*Dale Bruggeman (OH)*		
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OVERVIEW AGENDA

MEETING AGENDA

	Meeting Page Number	Attachment
5. SAPWG Meeting – Maintenance Agenda – Pending List—*Dale Bruggeman (OH)*		
• Ref #2021-01: *ASU 2021-01, Reference Rate Reform*	1	A-B
• Ref #2021-02: ASU 2020-08 – Premium Amortization on Callable Debt Securities	2	C
• Ref #2021-03: SSAP No. 103R – Disclosures	2	D
• Ref #2021-04: SSAP No. 97 – Valuation of Foreign Insurance SCAs	3	E
• Ref #2021-05: Cryptocurrencies	4	F-G
• Ref #2021-06EP: Editorial Updates	5	H
• Ref #2021-07: *ASU 2020-11 – Financial Services—Insurance: Effective Date*	5	I
• Ref #2021-08: *ASU 2021-02 – Franchisors Revenue from Contracts with Customers*	5	J
• Ref #2021-09: State ACA Reinsurance Programs	6	K
6. SAPWG Meeting – Any Other Matters Brought Before the Working Group —*Dale Bruggeman (OH)*		
• Ref #2019-21: SSAP No. 43R - Update	7	-
• INT 19-02: Freddie Mac Single Security Initiative	8	-
• Ref #2019-49: Retroactive Reinsurance Exception - Update	8	-
• Paycheck Protection Program (PPP) – SAP Guidance	8	-
• VOSTF Referral – WCFI – Pending	9	-
• Review of GAAP Exposures	9	L

Comment Deadline for all exposed items is Friday, April 30, 2021.

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Statutory Accounting Principles (E) Working Group
Hearing Agenda
March 15, 2021
2:00 p.m. – 4:00 p.m. CT

ROLL CALL

Dale Bruggeman, Chair	Ohio	Judy Weaver	Michigan
Carrie Mears/Kevin Clark, Co-Vice Chairs	Iowa	Doug Bartlett	New Hampshire
Richard Ford	Alabama	Bob Kasinow	New York
Kim Hudson	California	Kimberly Rankin/Melissa Greiner	Pennsylvania
Kathy Belfi/William Arfanis	Connecticut	Jamie Walker	Texas
Rylynn Brown	Delaware	Doug Stolte/David Smith	Virginia
Eric Moser	Illinois	Amy Malm	Wisconsin
Stewart Guerin/Melissa Gibson	Louisiana		

NAIC Support Staff: Julie Gann, Robin Marcotte, Jim Pinegar, Fatima Sediqzad, Jake Stultz

Note: This meeting may be recorded for subsequent use.

REVIEW AND ADOPTION OF MINUTES

1. November 12, 2020 Minutes **(Attachment 1)**
2. December 8, 2020 E-Vote **(Attachment 2)**
3. December 18, 2020 Minutes **(Attachment 3)**
4. December 28, 2020 E-Vote **(Attachment 4)**
5. January 6, 2021 E-Vote **(Attachment 5)**
6. January 25, 2021 E-Vote **(Attachment 6)**

The Statutory Accounting Principles (E) Working Group met in regulator-to-regulator session on March 9. This regulator session was pursuant to the NAIC Open Meetings Policy paragraph 3 (discussion of specific companies, entities or individuals) and paragraph 6 (consultations with NAIC staff related to NAIC technical guidance of the *Accounting Practices and Procedures Manual*). No actions were taken during this meeting and the discussion was limited to the Spring National Meeting agenda.

REVIEW AND ADOPTION of NON-CONTESTED POSITIONS

The Working Group may individually discuss the following items, or may consider adoption in a single motion:

1. Ref #2020-32: SSAP No. 26R – Disclosure Update
2. Ref #2020-33: SSAP No. 32R – Publicly Traded Preferred Stock Warrants
3. Ref #2020-34: SSAP No. 43R – GSE CRT Program
4. Ref #2020-35: SSAP No. 97 – Audit Opinions
5. Ref #2020-41: *ASU 2020-06, Convertible Instruments*
6. Ref #2020-42: *ASU 2020-07, Presentation and Disclosures by Not-for-Profit Entities*

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2020-32 SSAP No. 26R (Jim)	**SSAP No. 26R – Disclosure Update**	**7 – Agenda Item**	**No Comment**	**IP - 9**

Summary:
On Nov. 12, the Working Group exposed this agenda item, expanding existing disclosures for called bond to also include bonds terminated through a tender offer. This agenda item was in response to the Working Group's previous adoption of 2020-02, which clarified that the accounting and reporting of bond investment income and capital gains/losses, due to early liquidation either through a call or a tender offer shall be similarly applied.

Interested Parties' Comments:
Interested parties have no comments on this item.

Recommended Action:
NAIC staff recommends that the Working Group adopt the exposed nonsubstantive revisions to *SSAP No. 26R—Bonds.* The revisions expand the current called bond disclosures to include bonds terminated through a tender offer.

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2020-33 SSAP No. 32R (Jim)	**SSAP No. 32R – Publicly Traded Preferred Stock Warrants**	**8 – Agenda Item**	**No Comment**	**IP - 9**

Summary:
On Nov. 12, the Working Group exposed this agenda item proposing to 1) expand the scope of *SSAP No. 32R—Preferred Stock* to include publicly traded preferred stock warrants, and 2) require publicly traded preferred stock warrants to be reported at fair value. Stock warrants currently generally fall into scope of *SSAP No. 86—Derivatives*, however publicly traded common stock warrants are scoped into *SSAP No. 30R—Unaffiliated Common Stock.* Due to the only difference between publicly traded common and preferred stock warrants is the type of stock an entity would receive (i.e., common or preferred stock), this agenda item proposed a similar carveout and accounting/reporting treatment for publicly traded preferred stock warrants.

Interested Parties' Comments:
Interested parties have no comments on this item.

Recommended Action:
NAIC staff recommends that the Working Group adopt the exposed nonsubstantive revisions to *SSAP No. 32R—Preferred Stock* and *SSAP No. 86—Derivatives*, which will place publicly traded preferred stock warrants in scope of SSAP No. 32R. In addition, the revisions clarify that publicly traded preferred stock warrants shall be reported at fair value.

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2020-34 SSAP No. 43R (Jim)	**SSAP No. 43R – GSE CRT Program**	**9 – Agenda Item**	**No Comment**	**IP - 9**

Summary:
On Nov. 12, the Working Group exposed revisions to *SSAP No. 43R—Loan-Backed and Structures Securities* to reflect recent changes to the Freddie Mac Structured Agency Credit Risk (STACR) and Fannie Mae Connecticut Avenue Securities (CAS) program. It is anticipated that future Freddie Mac STACR and Fannie Mae CAS issuances will be solely conducted through a Real Estate Mortgage Investment Conduit (REMIC) trust. As the REMIC trust remains functionally equivalent and retains that same material risk structure of the original STACR and CAS program, the proposed revisions would 1) include STACR and CAS REMIC's into the scope of SSAP No. 43R and, 2) align SSAP No. 43R guidance regarding the financial modeling of mortgage referenced securities to the requirements as directed in the P&P Manual.

Interested Parties' Comments:
Interested parties have no comments on this item.

Recommended Action:
NAIC staff recommends that the Working Group adopt the exposed nonsubstantive revisions to *SSAP No. 43R—Loan-Backed and Structures Securities,* which will incorporate minor scope modifications to reflect recent changes to the STACR and CAS programs. The proposed edits would allow credit risk transfer securities from Freddie Mac and Fannie Mae to remain in scope of SSAP No. 43R when a REMIC structure is used in the STACR program or CAS program.

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2020-35 SSAP No. 97 (Jim)	**SSAP No. 97 – Audit Opinions**	**10 – Agenda Item**	**Minor Comments Received**	**IP - 10**

Summary:
SSAP No. 97—Investments in Subsidiary, Controlled and Affiliated Entities provides guidance for admissibility in circumstances where an SCA investment does not receive an unqualified audit opinion. In short, if the U.S. GAAP audit opinion is qualified or adverse, the SCA investment can only be admitted if the departure is quantified (then the departure is nonadmitted), or if the departure is the result of utilizing statutory accounting principles for U.S. insurance entities in lieu of following U.S. GAAP (in such cases, a quantification of the departure is not required).

On Nov. 12, the Working Group exposed this agenda item, seeking comments regarding the extent situations exist that have hindered admittance of any 8.b.iii entity (non-insurance SCA) due to the inability to quantify a departure from U.S. GAAP. The results of the inquiry would determine the need to review expanding the qualified or adverse audit opinion exception guidance allowance allowed for 8.b.i entities (U.S. Insurance SCAs) to 8.b.iii entities.

Interested Parties' Comments:
Interested parties [are] not aware of any situations that hinder admittance of 8.b.iii entities due to the departure of U.S. GAAP as a result of the inability to quantify the departure.

Recommended Action:
NAIC staff recommends that the Working Group dispose of this agenda item, noting no changes to statutory accounting. Based on the feedback received from Interested Parties as well as other informal comments received, NAIC staff believes the nonadmittance due to the inability to quantify a departure from U.S. GAAP, which was an issue raised to NAIC staff, is not prevalent, therefore, changes to SSAP No. 97 are not needed.

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2020-41 SSAP No. 5R, 72, & 86 (Jake)	***ASU 2020-06: Convertible Instruments***	**11 – Agenda Item**	**No Comments**	**IP - 12**

Summary:
On Nov. 12, the Working Group exposed revisions to *SSAP No. 5R—Liabilities, Contingencies and Impairments of Assets*, *SSAP No. 72—Surplus and Quasi-Reorganizations*, and *SSAP No. 86—Derivatives* to reject ASU 2020-06 for statutory accounting. ASU 2020-06 address the five accounting models for convertible debt instruments. Except for the traditional convertible debt model that recognizes a convertible debt instrument as a single debt instrument, the other four models, with their different measurement guidance, require that a convertible debt instrument be separated (using different separation approaches) into a debt component and an equity or a derivative component. The use of such models is not a practice recognized by statutory accounting.

Amendments to the derivatives scope exception for contracts in an entity's own equity change the population of contracts that are recognized as assets or liabilities. For a freestanding instrument, if the instrument qualifies for the derivatives scope exception under the amendment, an entity should record the instrument as equity. For an embedded feature, if the feature qualifies for the derivatives scope exception under the amendment, an entity should no longer bifurcate the feature and account for it separately. The Working Group has previously addressed liability vs. equity issues and the bifurcating of derivatives is not permitted under *SSAP No. 86—Derivatives*.

Interested Parties' Comments:
Interested parties have no comments on this item.

Recommended Action:
NAIC staff recommends the Working Group adopt the exposed nonsubstantive revisions to SSAP No. 5R, SSAP No. 72 and SSAP No. 86 to reject *ASU 2020-06, Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40), Accounting for Convertible Instruments and Contracts in an Entity's Own Equity* for statutory accounting.

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2020-42 Appendix D (Jake)	***ASU 2020-07: Presentation and Disclosures by Not-for-Profit Entities***	**12 – Agenda Item**	**No Comments**	**IP - 12**

Summary:
On Nov. 12, the Working Group exposed revisions to reject ASU 2020-07 as not applicable for statutory accounting. FASB issued ASU 2020-07 to increase the transparency of contributed nonfinancial assets for not-for-profit (NFP) entities through enhancements to an NFP's financial statement presentation and related disclosures. The updates require that contributed nonfinancial assets be reported on a separate line item in the statement of activities, apart from contributions of cash and other financial assets.

Interested Parties' Comments:
Interested parties have no comments on this item.

Recommended Action:
NAIC staff recommends adopting the exposed revisions to *Appendix D—Nonapplicable GAAP Pronouncements* to reject *ASU 2020-07: Presentation of Disclosures by Not-for-Profit Entities* as not applicable to statutory accounting.

REVIEW of COMMENTS on EXPOSED ITEMS – EXPECTING MINIMAL DISCUSSION

After review of the proposed edits, the Working Group may individually discuss the following items, or may consider adoption in a single motion:

1. Ref #2020-22: Accounting for Perpetual Bonds
2. Ref #2020-37: Separate Account Product Mix
3. Ref #2020-38: Pension Risk Transfer Disclosure
4. Ref #2020-39: Interpretation Policy Statement
5. Ref #2020-40: Prescribed Practices
6. Ref #2020-36: Derivatives Hedging Fixed Indexed Products

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2020-22 SSAP No. 26R (Jim)	**Accounting for Perpetual Bonds**	**13 – Agenda Item**	**No Comments**	**IP - 9**

Summary:
On Nov. 12, the Working Group exposed this agenda item to address the accounting treatment for perpetual bonds held as investments within scope of *SSAP No. 26R—Bonds.* A perpetual bond is a fixed income security, representing a creditor relationship, with a fixed schedule of future payments, however it does not contain a maturity date - thus yielding the definitional term "perpetual." These bonds are typically not redeemable at the option of the holder but likely possess call options for the benefit of the issuer.

Interested Parties' Comments:
Interested parties appreciated the opportunity to work directly with NAIC staff on this topic. After reviewing the modified proposal, we have one remaining comment, which has already been discussed with NAIC Staff. In paragraph 9, the proposal reads as follows:

> "New Footnote: For perpetual bonds with an effective call option, any applicable premium shall be amortized to the next effective call date. For perpetual bonds purchased at a discount, any applicable discount shall be accreted utilizing the yield-to-worst concept."

We recommend the language be "fine-tuned" as it implies those with a remaining premium would be amortized to the next effective call date. The language regarding amortization should be aligned with other bonds and reference the use of the yield to worst method, not the next effective call date. We suggest the following wording:

> "New footnote: For perpetual bonds with an effective call option, any applicable premium shall be amortized utilizing the yield-to-worst method."

Recommended Action:
NAIC staff recommends adopting the exposed revisions to *SSAP No. 26R—Bonds*, incorporating the edits as proposed by interested parties. NAIC staff believe the proposed edits remove any ambiguity in application and remain consistent with the long-standing application of the yield-to-worst concept required in SSAP No. 26R. With adoption, perpetual bonds that possess a future call date will retain bond accounting (i.e., accounted for at amortized cost); however, in the event that a perpetual bond does not possess a future call date, fair value accounting is required.

SSAP No. 26R – Proposed Updates for the March Interim Meeting:
Note – edits from the prior exposure are highlighted in grey below.

Amortized Cost

10. Amortization of bond premium or discount shall be calculated using the scientific (constant yield) interest method taking into consideration specified interest and principal provisions over the life of the bond FN. Bonds containing call provisions (where the issue can be called away from the reporting entity at the issuer's discretion), except "make-whole" call provisions, shall be amortized to the call or maturity value/date which produces the lowest asset value (yield-to-worst). Although the concept for yield-to-worst shall be followed for all callable bonds, make-whole call provisions, which allow the bond to be callable at any time, shall not be considered in determining the timeframe for amortizing bond premium or discount unless information is known by the reporting entity indicating that the issuer is expected to invoke the make-whole call provision.

New Footnote: For perpetual bonds with an effective call option, any applicable premium shall be amortized utilizing the yield-to-worst method. ~~to the next effective call date. For perpetual bonds purchased at a discount, any applicable discount shall be accreted utilizing the yield-to-worst concept.~~

Balance Sheet Amount

11. Bonds, as defined in paragraph 3, shall be valued and reported in accordance with this statement, the *Purposes and Procedures Manual of the NAIC Investment Analysis Office*, and the designation assigned in the NAIC *Valuations of Securities* product prepared by the NAIC Securities Valuation Office (SVO).

a. Bonds, except for mandatory convertible bonds: For reporting entities that maintain an asset valuation reserve (AVR), the bonds shall be reported at amortized cost, except for those with an NAIC designation of 6, which shall be reported at the lower of amortized cost or fair value. For reporting entities that do not maintain an AVR, bonds that are designated highest-quality and high-quality (NAIC designations 1 and 2, respectively) shall be reported at amortized cost; all other

bonds (NAIC designations 3 to 6) shall be reported at the lower of amortized cost or fair value. For perpetual bonds in which do not possess or no longer possess an effective call option, the bond shall be reported at fair value regardless of NAIC designation.

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2020-37 SSAP No. 56 (Jim)	**Separate Account Product Mix**	**14 – Agenda Item**	**In Agreement (minor edits)**	**IP – 10**

Summary:
At the request of regulators, primarily in response to the recent growth of pension risk transfer (PRT) transactions and registered indexed linked annuity (RILA) products that are generally held in insulated separate accounts, improved reporting was requested so financial statement users could more readily identify and review the products captured in separate accounts. Upon review of separate account general interrogatories in the 2019 financial statements, it was found that most entities grouped their separate account products in 3-4 broad categories. Due to this aggregate grouping, regulators have expressed difficulty in assessing risk with each associated product.

Accordingly, on Nov. 12, the Working Group exposed this agenda item, primarily to solicit comments regarding the degree of product identifying details needed to adequately assess the PRT and RILA product features and reserve liabilities. While this agenda item did not anticipate modifications to *SSAP No. 56—Separate Accounts,* depending on the nature of the comments received, it would likely result in a proposal to the Blanks (E) Working Group with annual statement instruction modifications regarding the separate account general interrogatories.

Interested Parties' Comments:
In response to the solicitation of feedback on additional product identifiers specifically for PRT and RILA transactions in the Separate Account General Interrogatories, the ACLI suggests adding a PRT and RILA product identifier. See example identifiers in bold:

1 Product Identifier	Not Registered with SEC		
	2 Private Placement Variable Annuity	3 Private Placement Life Insurance	4 Other (Not PPVA or PPLI)
Pension Risk Transfer Group Annuities			
All Other Group Annuities			
Registered Index Linked Annuities **Individual Annuities**			
All Other Individual Annuities			
Life Insurance			
Totals			

The addition of these identifiers would bifurcate out PRT and RILA transactions. Further, the use of these additional identifiers would show in General Interrogatory 1.01 if there were guarantees associated with these different products.

Recommended Action:

It is recommended that the Working Group expose this agenda item to allow for a concurrent exposure with the Blanks (E) Working Group. Consideration of this item will occur during an interim call to allow for adoption consideration to allow for blanks changes to be reflected in the statutory financials for year-end 2021. Pursuant to this agenda item and regulator comments received, the Working Group is sponsoring Blanks agenda item (2021-03BWG, see attachment 14.1) to modify the current General Interrogatory instructions and require that a distinct disaggregated product identifier be used for each product represented. The disaggregation will require that each separate account product filing or policy form be separately identified. For example, if a company has 5 different separate account group annuities, each annuity shall be separately reported. Additionally, the instructions will indicate that companies may eliminate proprietary information (e.g., such as XYZ company Pension Plan), however such elimination will still require the use of a unique reporting identifiers (such as PRT #1). This disaggregation of reporting will be utilized for all applicable General Interrogatories (e.g., 1.01, 2.4, 4.1) and was at the direct request of regulators and will assist in regulator review so that each product, primarily those in which may potentially expose the general account to funding risk, may be independently examined.

NAIC staff also notes that there is inconsistency in the current reporting of the separate account general interrogatories, as some companies aggregate based on overall product type and other companies already include a disaggregation of all separate account products. With the clarification that "each product" shall be captured, the regulators will have the information necessary to complete assessments and improve consistency in reporting. With the blanks proposal, there are no proposed revisions to statutory accounting principles.

An excerpt from the Blanks proposal is shown below:

A distinct disaggregated product identifier shall be used for each product and shall be used consistently throughout the interrogatory. Disaggregation of reporting shall be such that each product filing or policy form is separately identified. For example, if a company has 5 different separate group annuities, each annuity shall be separately reported. (Companies may eliminate proprietary information however such elimination will require the use of unique reporting identifiers).

1	Separate Account Assets		4	5	6	7
	2	3				
Product Identifier	Registered with SEC	Not Registered with SEC	Guarantees Associated with the Product Yes/No	Seed Money	Fees and Expenses Due to the General Account	Additional Required Surplus Amounts
1.01A Pension Risk Transfer Group Annuities						
	$	$		$	$	$
Total Pension Risk Transfer Group Annuities	$	$		$	$	$
1.01B All Other Group Annuities						
	$	$		$	$	$
Total All Other Group Annuities	$	$		$	$	$
1.01C Registered Index Linked Annuities Individual Annuities						

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2020-38 SSAP No. 56 (Jim)	**Pension Risk Transfer Disclosure**	**15– Agenda Item**	**Comments Received**	**IP - 11**

Summary:
On Nov. 12, the Working Group exposed this agenda item to solicit comments from state insurance regulators and industry regarding possible modifications to *SSAP No. 56—Separate Accounts*, specifically in terms of increased product identification and disclosure of pension risk transfer (PRT) transactions in the separate account financial statements. In response to the recent growth of PRT transactions, regulators expressed a desire for improved reporting so such items could be more readily identified and analyzed. While the information request was broad, regulators discussed several possible enhancements, including separated PRT reporting and improved PRT disclosure regarding reserves, associated assets, and general account exposure.

Currently, the most specific details concerning PRT transactions are generally captured/disclosed in question 1.01 (product mix) of the separate account general interrogatories (GI 1.01). While other details of the broadly categorized products are captured in various other general interrogatories this agenda item, at the request of regulators, proposes enhanced detailed reporting requirements for pension risk transfer products and transactions in the scope of *SSAP No. 56—Separate Accounts.*

Interested Parties' Comments:
NAIC Staff Note: Comments from both agenda item 2020-37 & 2020-38 have been included in this section. As these two agenda items are closely interrelated, concurrent consideration of the comments should be considered.

Comments on 2020-37:
In response to the solicitation of feedback on additional product identifiers specifically for PRT and RILA transactions in the Separate Account General Interrogatories, the ACLI suggests adding a PRT and RILA product identifier. See example identifiers in bold:

1	Not Registered with SEC		
Product Identifier	2 Private Placement Variable Annuity	3 Private Placement Life Insurance	4 Other (Not PPVA or PPLI)
Pension Risk Transfer Group Annuities			
All Other Group Annuities			
Registered Index Linked Annuities Individual Annuities			
All Other Individual Annuities			
Life Insurance			
Totals			

The addition of these identifiers would bifurcate out PRT and RILA transactions. Further, the use of these additional identifiers would show in General Interrogatory 1.01 if there were guarantees associated with these different products.

Comments on 2020-38:
Pension risk transfer transactions differ from other separate account transactions in that PRT products are group products, not individual products. The American Council of Life Insurers believes that these differences are adequately addressed in the current disclosure requirements of SSAP No. 56 – Separate Accounts. Specifically, paragraphs 31c and 33a include disclosure requirements for products with guarantees, which may include PRT transactions. Further, these disclosure requirements extend to the General Account Annual Statement Note 35B. Additionally, the proposal above on Ref# 2020-37 will provide additional detail for PRT products in the General Interrogatories.

We believe that the current disclosures sufficiently capture PRT transactions however, we defer to the Working Group and regulators if these groups voice concern that they are not able to discern something specific.

Recommended Action:
It is recommended that the Working Group expose this agenda item to allow for a concurrent exposure with the Blanks (E) Working Group. Consideration of this item will occur during an interim call to allow for adoption consideration to allow for blanks changes to be reflected in the statutory financials for year-end 2021. Pursuant to this agenda item and regulator comments received, in conjunction with agenda item 2020-38, the Working Group is sponsoring Blanks agenda item (2021-03BWG, see attachment 14.1). This proposal clarifies reporting by each separate product filing or policy form and adds product identifiers specifically for PRT and RILA transactions in the Separate Account General Interrogatories. The grouping of PRT and RILA transactions, combined with the disaggregation by product filing or policy form will sufficiently assist with the regulators detailed review of the applicable transactions, guarantees, and reserve assumptions. With the blanks proposal, there are no proposed revisions to statutory accounting principles.

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2020-39 Appendix F (Jim)	**Interpretation Policy Statement**	**16 – Agenda Item**	**Comments Received**	**IP - 11 & 14**

Summary:
On Nov. 12, the Working Group exposed revisions to Appendix F in the *NAIC Policy Statement on Maintenance of Statutory Accounting Principles* regarding the issuance and adoption of accounting interpretations (INT). The revisions clarified actions available to the Working Group (including but not limited to postponing the effective date until the item has been discussed by the Accounting Practice and Procedures (E) Task Force and the Financial Condition (E) Committee) as well as the voting requirements for when an INT can be overturned, amended, or deferred by the Task Force or E Committee.

Interested Parties' Comments:
Based upon interested parties' discussion with NAIC staff and our understanding of the objective of the changes to *NAIC Policy Statement on Maintenance of Statutory Accounting Principles* in *Appendix F—Policy Statements* (Appendix F), we've marked up Appendix F with edits that clarify the policy for issuing interpretations which amend, supersede, or conflict with existing SSAPs (please see attached). Specifically, the interested parties' proposed revisions clarify that such interpretations are temporary and restricted to circumstances requiring immediate, temporary guidance such as catastrophes or other emergencies. We believe the marked Appendix F is consistent with the intent to use interpretations in limited circumstances. Our proposed revisions explicitly establish

that interpretations are not intended as a shortcut to bypass the deliberative process for amending existing statutory accounting guidance or developing new guidance.

NAIC staff note: The language shaded below in grey was added by interested parties. The items shown as 'tracked changes' were a part of the original exposure.

Interpretations which amend, supersede, or conflict with existing SSAPs

11. In ~~rare~~ certain circumstances such as catastrophes or emergencies requiring immediate, temporary statutory accounting guidance, the Working Group may adopt an interpretation which creates a new SAP or conflicts with existing SSAPs. Historically, these interpretations temporarily modified statutory accounting principles and/or specific disclosures were developed in response to nationally significant events (e.g., Hurricane Sandy, September 11, 2001). Interpretations that conflict with existing SSAPs shall be temporary guidance and restricted to circumstances arising from the need to issue guidance for circumstance requiring immediate, temporary guidance. In order to adopt an interpretation that creates new SAP or conflicts with existing SSAPs, the Working Group must have 67% of its members voting (10 out of 15 members) with a super majority (7 out of 10, 8 out of 11 or 12, 9 out of 13, 10 out of 14, or 11 out of 15) supporting adoption.

a. These interpretations are effective upon Working Group adoption, unless stated otherwise, and shall be reported to the Accounting Practice and Procedures (E) Task Force as part of its public report during the next NAIC national meeting (or earlier if applicable). In circumstance where the Working Group adopts an interpretation (which creates new SAP or conflicts with existing SSAPs) that is controversial in nature (i.e., due to regulator or industry feedback or could have a policy level impact), the Working Group may elect to postpone the effective date until the item has been discussed by the Task Force and the Financial Condition (E) Committee and both have had an opportunity to review the interpretation.

b. These interpretations can be ~~adopted~~ overturned, amended or deferred by a two-thirds majority of the Task Force membership. For clarification, a two-thirds majority of the Task Force requires two-thirds of entire Task Force membership, not just those electing to vote. Additionally, interpretations can be overturned, amended, deferred, or referred to either the Task Force and/or the Working Group by a simple majority of the Financial Condition (E) Committee.

Recommended Action:

NAIC staff recommends that the Working Group adopt the exposed nonsubstantive revisions to the *NAIC Policy Statement on Maintenance of Statutory Accounting Principles*, with proposed additional edits to capture the intent of comments from interested parties. The interested parties' language has been revised to prevent use of INTs that provide temporary exceptions from SAP that may not be considered emergencies. Recent examples include the transition from Libor and the federal TALF program. While the revisions, as a whole, document the adoption and review of accounting interpretations, the proposed edits from the prior exposure, remove any outstanding ambiguity regarding the intent, use and implementation of such interpretations.

Appendix F – Proposed Updates for the March Interim Meeting:

Note – edits from the prior exposure are highlighted in grey below.

Development of Interpretations to SSAPs and Referencing Interpretations Within SSAPs

Interpretations which DO NOT amend, supersede, or conflict with existing SSAPs

9. Interpretations ~~will~~ may be developed to address~~, but will not be limited to~~ issues requiring timely application or clarification of existing SAP, which shall not amend, supersede or conflict with ~~existing,~~ effective SSAPs. Issues being considered as an interpretation must be discussed at no less than two open meetings. (Original introduction of the issue when the Working Group identifies the intent to address the issue as an "interpretation" during a public discussion is considered the first open meeting discussion.) The

process must allow opportunity for interested parties to provide comments, but as interpretations are intended to provide timely responses to questions of application or interpretation and clarification of guidance, no minimum exposure timeframe is required.

10. ~~The voting requirement to adopt an interpretation is a simple majority.~~ As these interpretations do not amend, supersede or conflict with existing SSAP guidance, the interpretation is effective upon Working Group adoption, unless specifically stated otherwise. The voting requirement to adopt an interpretation of this type is a simple majority. The Working Group shall report the adopted interpretation to the Accounting Practice and Procedures (E) Task Force as part of its public report during the next NAIC national meeting (or earlier if applicable). Interpretations can be overturned, amended or deferred ~~only~~ by a two-thirds majority of the Task Force membership. For clarification, a two-thirds majority of the Task Force requires two-thirds of the entire Task Force membership, not just those electing to vote. Additionally, interpretations can be overturned, amended, deferred, or referred to either the Task Force and/or the Working Group by a simple majority of the Financial Condition (E) Committee.

Interpretations which amend, supersede, or conflict with existing SSAPs

11. In ~~rare~~ certain circumstances such as catastrophes and other time-sensitive issues requiring immediate, temporary statutory accounting guidance, the Working Group may adopt an interpretation which creates a new SAP or conflicts with existing SSAPs. Historically, these interpretations temporarily modified statutory accounting principles and/or specific disclosures were developed in response to nationally significant events (e.g., Hurricane Sandy, September 11, 2001). (Examples of time sensitive issues that have been previously provided INT exceptions to SAP include the transition from LIBOR and special situations such at the federal TALF program.) Interpretations that conflict with existing SSAPs shall be temporary and restricted to circumstances arising from the need to issue guidance for circumstance requiring immediate guidance. In order to adopt an interpretation that creates new SAP or conflicts with existing SSAPs, the Working Group must have 67% of its members voting (10 out of 15 members) with a super majority (7 out of 10, 8 out of 11 or 12, 9 out of 13, 10 out of 14, or 11 out of 15) supporting adoption.

a. These interpretations are effective upon Working Group adoption, unless stated otherwise, and shall be reported to the Accounting Practice and Procedures (E) Task Force as part of its public report during the next NAIC national meeting (or earlier if applicable). In circumstance where the Working Group adopts an interpretation (which creates new SAP or conflicts with existing SSAPs) that is controversial in nature (i.e., due to regulator or industry feedback or could have a policy level impact), the Working Group may elect to postpone the effective date until the item has been discussed by the Task Force and the Financial Condition (E) Committee and both have had an opportunity to review the interpretation.

b. These interpretations can be ~~adopted~~ overturned, amended or deferred by a two-thirds majority of the Task Force membership. For clarification, a two-thirds majority of the Task Force requires two-thirds of entire Task Force membership, not just those electing to vote. Additionally, interpretations can be overturned, amended, deferred, or referred to either the Task Force and/or the Working Group by a simple majority of the Financial Condition (E) Committee.

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2020-40 Preamble (Julie)	**Prescribed Practices**	**17 – Agenda Item**	**Comments Received**	**IP – 12 & 17**

Summary:
On Nov. 12, the Working Group exposed this agenda item to clarify the definition and application of prescribed practices as referenced in the NAIC *Accounting Practices & Procedures Manual* (AP&P Manual). As a preface each state insurance department has the authority to regulate any insurance company that is licensed in their state. Accordingly, the financial statements filed with the NAIC and subject to independent audit, pursuant to *Model Law 205: Annual Financial Reporting Model Regulation* shall be in accordance with practices prescribed or permitted by the domiciliary state.

However, a non-domiciliary state, in which the company is licensed, may require an insurer to file supplemental financial information that require or allow the use of different accounting practices in the supplementary filing than what is required in the AP&P manual. As companies generally do not have the ability to file two sets of financial statements (and thus not require two independent audits on differing statutory financial statements), each state in which the company is licensed could require supplemental financial information that requires or allows statutory accounting practices that differ from the AP&P manual. If a non-domiciliary state in which the company is licensed requires or allows a practice by state statute / bulletin (or other state-wide provision) that is different from the AP&P Manual, such provision would be considered a prescribed practice. If the company files supplemental financial information that reflect this practice(s), even if the supplemental financial information is filed only in the non-domiciliary state, then the prescribed practice disclosure of Note 1 shall apply.

Interested Parties' Comments:
Interested parties are concerned that the discussion of prescribed and permitted practices in this proposal are likely to cause confusion. An insurer's annual and quarterly statutory statements that are filed with the state of domicile and all states the insurer is licensed are prepared in accordance with the accounting practices prescribed or permitted by the state of domicile. However, in addition to the financial statements required by the domiciliary state, a non-domiciliary state in which the company is licensed may require an insurer to file supplemental financial information that require or allow the use of different accounting practices in the supplementary filing than provided in the AP&P manual. We believe the proposal should be amended to clarify that if a non-domiciliary state in which the company is licensed requires or allows a practice by state statute / bulletin (or other state-wide provision) in such **supplemental financial information** that is different from NAIC SAP, that practice(s) is also considered a prescribed practice. We recommend changes to the proposed wording to clarify these points (please see attached).

Proposed Revisions to the Preamble Questions and Answers:

2. Q: What is the difference between a permitted accounting practice and a prescribed practice?

A: **Permitted** accounting practices include practices specifically requested by an insurer that depart from NAIC Statutory Accounting Principles (SAP) and state prescribed accounting practices, as described below, and have received approval from the insurer's domiciliary state regulatory authority.

Prescribed accounting practices are those practices that are incorporated directly or by reference by state laws, regulations and general administrative rules applicable to all insurance enterprises domiciled and/or licensed in a particular state. The NAIC AP&P Manual is not intended to preempt states' legislative and regulatory authority. Prescribed accounting practices of the domiciliary state shall be reflected in the statutory financial statements filed with the NAIC. Non-domiciliary states may

additionally require insurance entities licensed in their state to file **supplementary financial information that requires** or allow**s the use of** different accounting practices in the **supplementary filing than provided in the AP&P manual**.

If a reporting entity requests an accounting practice that differs from state prescribed accounting practices, but is in accordance with NAIC SAP, advance notice of approval is not required.

Recommended Action:

NAIC staff recommends that the Working Group adopt the exposed nonsubstantive revisions, with additional minor modifications (shown below) incorporating edits as proposed by interested parties to the Preamble Implementation Questions and Answers. The edits clarify that while any state in which a company is licensed can issue prescribed practices, the prescribed practices directed by the domiciliary state shall be reflected in the financial statements filed with the NAIC and are subject to independent audit requirements. Additionally, the edits clarify that non-domiciliary states may require insurance entities licensed in their state to file supplementary financial information that requires or allows the use of different accounting practices in the supplementary filing than what is required in the AP&P manual.

NAIC staff note: Interested parties also proposed various edits to the body of the agenda item. These additional edits do not further modify the proposed authoritative language and have not been shown in this document. However, as agenda items are typically referenced for historical purposes, NAIC staff is supportive of modifying the original agenda item with the changes noted as tracked in the "description of issue" section of agenda item 2020-40 (attachment 17). These edits clarify the understanding that in addition to the financial statements required by the domiciliary state, a non-domiciliary state in which the company is licensed may require an insurer to file supplemental financial information that require or allow the use of different accounting practices in the supplementary filing than required in the AP&P manual.

Proposed updates for the March Interim Meeting - Preamble Questions and Answers:

Note – edits from the prior exposure are highlighted in grey below.

3. Q: What is the difference between a permitted accounting practice and a prescribed practice?

A: **Permitted** accounting practices include practices specifically requested by an insurer that depart from NAIC Statutory Accounting Principles (SAP) and state prescribed accounting practices, as described below, and have received approval from the insurer's domiciliary state regulatory authority.

Prescribed accounting practices are those practices that are incorporated directly or by reference by state laws, regulations and general administrative rules applicable to all insurance enterprises domiciled and/or licensed in a particular state. The NAIC AP&P Manual is not intended to preempt states' legislative and regulatory authority. Prescribed accounting practices of the domiciliary state shall be reflected in the statutory financial statements filed with the NAIC. Non-domiciliary states may additionally require insurance entities licensed in their state to file ~~financial statements in accordance with the prescribed accounting practices of that particular non-domiciliary state.~~ supplementary financial information that details the use of different accounting practices required or allowed by the non-domiciliary state that differs from the AP&P Manual.

If a reporting entity requests an accounting practice that differs from state prescribed accounting practices, but is in accordance with NAIC SAP, advance notice of approval is not required.

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2020-36 SSAP No. 108 (Julie)	**Derivatives Hedging Fixed Indexed Products**	**18 – Agenda Item**	**Comments Received**	**IP - 29**

Summary:
This agenda item proposes the development of new guidance for the accounting and reporting of derivatives that effectively hedge the growth in interest credited for fixed indexed products (for example, fixed indexed annuity (FIA) and indexed universal life (IUL) reported in the general account. (NAIC staff is also investigating the classification of structured / registered indexed linked annuities (RILA) in the separate account, and the use of derivatives in the separate account to hedge risk related to these products. This assessment will be completed within a separate agenda item.) This agenda item is proposed to be substantive, with potential development of a new SSAP.

On Nov. 12, 2020, the Working Group moved this item to the active listing, categorized as substantive, and exposed the agenda item to solicit comment from state insurance regulators and industry on establishing accounting and reporting guidance for derivatives hedging the growth in interest for fixed indexed products. In addition to the two general options presented in the agenda item, the Working Group is open for additional commentary and suggestions, and directs NAIC staff to work with industry throughout the process similar to the collaborative efforts that occurred when developing the guidance in *SSAP No. 108—Derivatives Hedging Variable Annuity Guarantees*. With this exposure, notification to the Life Actuarial (E) Task Force will occur.

Interested Parties' Comments:
The comment deadline for this item was extended to Feb. 26, 2021.

The interested parties' response will be brief at this time as we continue our work reviewing the exposure, assessing the proposal and working on potential variances to the exposure. Interested parties are committed to working with NAIC staff and SAPWG on this very complicated and important topic.

Recommended Action:
NAIC staff recommends the Working Group re-expose this item to provide additional time for interested parties to develop a proposal. It is recommended that NAIC staff work with interested parties in the interim to discuss this agenda item and potential options.

REVIEW of COMMENTS on EXPOSED ITEMS

The following items received comments during the exposure period that are open for discussion.

1. Ref #2019-34: Related Parties, Disclaimer of Affiliation and Variable Interest Entities
2. Ref #2019-24: Levelized and Persistency Commission

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2019-34 SSAP No. 25 (Jake)	**Related Parties, Disclaimer of Affiliation and Variable Interest Entities**	**19 – Agenda Item**	**Comments Received**	**IP - 8**

Summary:

This agenda item is the result of questions and discussions between the Statutory Accounting Principles (E) Working Group and the Group Solvency Issues (E) Working Group and intends to clarify the identification of related parties and affiliates in *SSAP No. 25—Affiliates and Other Related Parties* and to incorporate new disclosures to ensure regulators have the full picture of complicated business structures. After the 2019 Fall National Meeting, the Working Group sent a referral to the Group Solvency Issues (E) Working Group that outlines agenda item 2019-34 and asked for any further guidance or clarification. The Group Solvency Issues (E) Working Group recommended consideration of a new statutory disclosure that would provide information on minority ownership interests, as well as significant relationships between minority owners and other U.S. domestic insurers/groups. This agenda item was exposed on March 18, 2020 and on Nov. 12, 2020.

NAIC staff has worked with interested parties to draft proposed revisions to capture this information.

The proposed SSAP revisions intend to address the following key aspects:

- Clarify the identification of related parties and ensure that any related party identified under U.S. GAAP or SEC reporting requirements would be considered a related party under statutory accounting principles.

- Clarify that non-controlling ownership over 10% results in a related party classification regardless of any disclaimer of control or disclaimer of affiliation.

- Clarify the impact of a disclaimer of control or disclaimer of affiliate under SAP. As detailed, such disclaimers impact holding company group allocation and reporting as an SCA under SSAP No. 97, but do not eliminate the classification as a "related party" and the disclosure of material transactions as required under SSAP No. 25.

- Proposes rejection of several U.S. GAAP standards addressing variable interest entities.

Interested Parties' Comments:

On December 10, 2020, some members of interested parties and NAIC staff had a conference call to discuss the November 12th draft and possible edits to address concerns that the draft unintentionally impacted passive investments held by insurers in addition to investment in insurers. Staff amended the draft to address these concerns and is taking the updated draft back to the Working Group for its consideration.

Interested parties thank the staff for meeting with industry and in working to address our concerns.

Recommended Action:

NAIC staff recommends that the Working Group adopt the exposed nonsubstantive revisions, with additional minor modifications from the exposure (shown below) proposed by Interested Parties, in *SSAP No. 25—Affiliates and Other Related Parties*. (The agenda item details the full tracked revisions.) The details of the revisions are included in the agenda item, and the additional changes that were agreed upon by the Interested Parties are highlighted within the updated SSAP No. 25. The edits made to the Nov. 12 exposure draft further clarify the scope of guidance for related parties but are not significant enough to require an additional exposure period. The final revisions made after the Nov. 12 exposure are listed below, highlighted in gray:

Paragraph 4f:

> f. Any direct or indirect ownership greater than 10% of the reporting entity results in a related party classification regardless of any disclaimer of control or disclaimer of affiliation.

Paragraph 7d:

> d. Agreements where direct or indirect non-controlling ownership interest is less than 10% where the parties have structured the arrangement in this structure to avoid the 10% threshold in paragraph 4.f. and paragraph 8.

Paragraph 8:

> 8. Any direct or indirect ownership interest of the reporting entity greater than 10% results in a related party classification regardless of any disclaimer of control or disclaimer of affiliation. The *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation* (#450) include a provision that allows for the disclaimer of affiliation and/or the disclaimer of control for members of an insurance holding company system. The disclaimer must be filed with the state insurance commissioner. Entities whose relationship is subject to a disclaimer of affiliation or a disclaimer of control are related parties and are subject to the related party disclosures within this statement. Such a disclaimer does not eliminate a "related party" distinction or disclosure requirements for material transactions pursuant to SSAP No. 25.

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2019-24 SSAP No. 71 (Robin)	**Levelized and Persistency Commission**	**20 - Agenda Item 20.1 - Blanks proposal 21- Issue Paper**	**Comments Received**	**MT - 1 Former NC - 23 NCOIL - 26 IP – 3 Arcadia Capital - 21 Guggenheim - 25**

Summary:

Background:

The Working Group has been discussing this topic since August 2019. It has had several exposures. The initial issue presented to the Working Group was raised by a state which identified an issue during a financial examination. The larger issue is that insurers that are utilizing the practice under dispute, are using third parties to pay acquisition costs and are not recognizing the full liability to repay those third parties. Not recognizing the full liability to repay

the parties who are paying acquisition costs on an insurer's behalf is inconsistent with the guidance on SSAP No. 71 which has provided statutory accounting guidance identifying such agreements as funding agreements which require full liability recognition since prior to 1998.

Actions

On November 12, 2020, the Working Group held a hearing to receive comments and based on those comments, took the following actions:

- Re-exposed the prior version of SSAP #71 with certain edits: – (1) the proposed effective date of Jan.1, 2021 was changed to be effective upon adoption, and (2) the revised text made explicit that the proposed revisions will apply to contracts in effect as of the date of adoption.

- Determined that the revisions to SSAP #71 met the due process for either a substantive or a non-substantive revision but concluded to keep the revision classified as nonsubstantive. The Working Group reiterated that it is not the impact of a change on an individual entity that determines whether a change is substantive or non-substantive, but whether the revision is in line with the original intent of the SSAP. The Working group noted that this is a clarification of existing guidance consistent with original intent. (Commissioner Donelon noted an objection to the classification as non-substantive.)

- Directed NAIC Staff to draft an Issue Paper to document the discussion on this topic for historical purposes.

Prior actions

- August 2019 - Exposed initial revisions to paragraphs 2, 3, 4 and 5 intended to clarify both levelized and persistency commission because it was identified that some entities were trying to characterize their funding agreements as persistency commission.
- December 2019 -
  - Exposed revisions which remove some of the language regarding overall recognition of commission expense, added clarifying phrases regarding persistency commission accrual, added phrased regarding levelized commission/ funding agreements, minor rewording of the footnote.
  - Directed notification of the exposure to the Life Actuarial (A) Task Force
- March 18, 2020 - Deferred discussion of this item for a subsequent call or meeting.
- July 2020 - Exposed revisions consistent with the 2019 Fall National Meeting exposure, with the inclusion of guidance to clarify that reporting entities that have not complied with the original intent shall reflect the change as a correction of an error, in accordance with *SSAP No. 3—Accounting Changes and Corrections of Errors*, in the year-end 2020 financial statements. With a proposed effective date of Dec. 31, 2020.
- October 2020 -
  - Improved description of the funding agreements.
  - Deleted the previously proposed revisions regarding other types of commission to address the comments received regarding unintended impacts on traditional renewal commission.
  - Removed the language on correction of an error.
  - Proposed the nonsubstantive revisions apply to contracts in effect on Jan. 1, 2021.

Current Comment Letters

The Working Group received comments from six parties and their comments are presented in the following order 1) MT Commissioner (now U.S. Representative) Matthew M. Rosendale, Sr, 2) Former NC Commissioner – Wayne Goodwin, 3) National Council of Insurance Legislators (NCOIL), 4) Interested parties of the SAPWG, 5) Acadia Capital Management, and 6) Guggenheim.

1) *MT Commissioner (now U.S. Representative) Matthew M. Rosendale, Sr*

This is one of my final letters as the Montana Insurance Commissioner as my fellow Montanans have honored me with the privilege of representing them in the United States House of Representatives. I will continue to champion our state-based system of insurance regulation while I am a member of Congress.

With that noted, I do have a concern as I close out my term as Insurance Commissioner: the proposed changes to the SSAP 71. There is no reason to change the current SSAP 71 accounting principle. There has been no policyholder peril, fraud, or company financial impairment by using SSAP 71 as currently allowed since 1998.

I believe the changes being proposed constitute a significant change in application of this statutory accounting principle and therefore should be deemed a substantive change under the SSAP guidelines. The Statutory Accounting Principles Working Group (SAPWG) continues to conclude that the proposed changes simply clarify the intent of the working group, but the proposed changes would significantly change the way some companies report certain commission arrangements. These companies have been reporting these arrangements the same way for decades without, as far as I have been informed, any harm to policyholders.

Efforts to fix something that isn't broken often have negative consequences, whether intentional or not. As a former state legislator and as an incoming federal legislator, I have always been a strong proponent for closely following appropriate processes and not taking shortcuts.

I encourage the SAPWG to take the necessary steps to study this issue further and give proposed substantive changes the appropriate attention they deserve.

2) *Former NC Commissioner – Wayne Goodwin*

It has come to my attention that the Statutory Accounting Principles (E) Working Group is accepting comments pertaining to the Revised Proposed Changes to SSAP No. 71 – Policy Acquisition Costs and Commissions.

Although I concluded my service as NC Insurance Commissioner four years ago, I served eight (8) years in that office and an additional four (4) years as Assistant Commissioner, for a total of 12 years as a state insurance regulator. During that time, I also served on the NAIC Executive Committee and as Vice Chair of the Southeast Zone. Further, I have experience both as a state legislator (8 years) and licensed attorney (28 years). To the best of my ability, I have remained aware of many contemporary issues, proposals, and agenda items before the NAIC and its various committees and working groups.

Before the comment period closes, I want to restate the compass points of my tenure as well as that of my predecessor, the late great Jim Long: (1) Consumer protection and (2) fair, stable, reasonable regulation of the insurance market. Paramount, first and foremost of course, is consumer protection.

Today I submit my comment *in opposition* to the revised proposed changes to SSAP No. 71 based on the following:

SSAP 71 has been in place approximately 30 years and, by most accounts of which I am familiar, it has worked well.

It is my understanding that during those three decades such levelized commission programs have gone through multiple official examinations by insurance regulators with few to no material issues having been noted.

To the best of my knowledge presently, there has been no policyholder peril, fraud, or company financial impairment by using the current version of SSAP 71. Accordingly, existing rules have apparently worked as intended.

The revised changes have been described as non-substantive but upon analysis by other current and past state insurance regulators whom I respect and trust, whose comments in opposition or expressing concern are incorporated by reference, and upon my own review, it is more evident that the proposal is, in fact, *substantive* – in part because the current proposal will apparently cause unnecessary financial damage to some carriers and their policyholders because rating agencies would consequently and unnecessarily downgrade any impacted company due to a retroactive drop in surplus/RBC numbers.

Among other consumer concerns is this: This proposed new reserving practice could cause further, unnecessary rate increases for guaranteed renewable products like Long Term Care insurance.

Respectfully, acknowledging the above and consumer protection most of all, it appears that a more detailed, comprehensive study is necessary before further consideration of the revised proposal. More feedback will be particularly enlightening and will provide the best counsel on what direction – if any -- to take on the proposal.

3) *National Council of Insurance Legislators (NCOIL) Comments:*

Without delving deeply into the specifics of the principle itself, with which you are well-versed, NCOIL has significant concerns about it. We note that SSAP No. 71 has been in effect since 1998, and inquire why, after 22 years, there needs to be a rush to implementation of this proposal for year-end?

Additionally, our members have heard differing opinions as to whether the proposed changes are substantive or non-substantive. Candidly, when NCOIL's legislators start to hear of substantive changes being made via a handbook or manual, it creates tension because it brings to mind the debate surrounding incorporation by reference (IBR) for substantive matters. Beyond this impairment of the legislative prerogative, I must note that there is a constitutional provision in California stating that no law shall be enacted except by statute and no statute except by bill.

Regardless of the determination on substantive vs non-substantive here though, there seems to be little debate that these changes could have a material and perhaps significant impact on insurers of adopted. If the impact is as large as some have told us, and we have heard of impacts as high as 30% of risk-based capital (RBC), it strikes NCOIL as quite bad timing to implement such changes as the entire global economy is suffering during this global pandemic. A number of companies from several states have advised us that the impact on their capital will be so great that these now-healthy companies would fall below the RBC regulatory action level if this change were to be implemented.

One of our most senior leaders has asked us, and we in turn ask you, if a solvent & healthy insurance carrier has been accounting for commissions in error due to a misunderstanding of SSAP No. 71, and the proposed change to SSAP No. 71 threatens to render that insurer insolvent, then is the proposed change really meeting its intent? It certainly would seem to fly in the face of the number one priority of the state regulatory system.

Accordingly, NCOIL requests and recommends that the WG delay implementation of the proposal until such time that staff completes the issue paper it is charged with drafting on the classification of the proposal. Moreover, NCOIL requests and recommends that in any case or at any point if the WG determines to move forward with the proposal, it be subject to a five year phase-in period in order to allow companies to maintain their health, soundness and solvency as the capital impact of the "clarification" to SSAP No. 71 takes effect.

On behalf of our member legislators, I thank you for your consideration of this matter.

4) *Interested Parties' Comments:*

Interested parties would like to again thank the Working Group for the opportunity to continue to comment on the most recent revisions to exposure Ref #2019-24 – Levelized and Persistency Commission (SSAP No. 71, Policy Acquisition Costs and Commissions) discussed on November 12, 2020 (the "Exposure").

These comments begin with industry comments regarding the Working Group's most recent revisions to the Exposure:

Paragraph #5 new comments pertain to the sentence below:
Having a third party pay commission costs to the selling agent is strong evidence of a potential funding arrangement which shall be recognized as a liability because the substance of the arrangement indicates that repayment is reasonable and probable, even if a contingency has been incorporated into the funding arrangement, until ~~unless~~ the underlying policy has been cancelled.

The Working Group has made a change to the last phrase of this sentence that still does not provide clarity as to its meaning and to the sentence as a whole. Assuming that the phrase refers to the contingency noted in the previous phrase within the sentence, industry disagrees with wording that creates a blanket statement across all third-party agreements with regard to recognizing a liability similar to a funding agreement. During the entire exposure/revision process, interested parties has consistently stated that agreements which include traditional elements such as persistency as part of a legally binding commission contract should be excluded from the funding agreement treatment as was provided in the original (current) SSAP No. 71 wording. If the last phrase "until the underlying policy has been cancelled" pertains to the recognition of the liability, it seems that the wording does not contemplate even a partial repayment of the liability during the period when the policy is active.

Paragraph #7 new comments pertain to the following:
The nonsubstantive revisions adopted TBD date regarding levelized commission are to clarify the original intent of this statement and apply to existing contracts ~~are effective~~ in effect on the date of adoption of the revisions ~~January 1, 2021~~.

Industry has consistently maintained that there has been a long-standing industry practice to link third party contracts to insurance elements such as persistency, including commission arrangements, reinsurance contracts, etc. Removing this link as has been indicated in the Working Group revisions is a substantive change. As such, we do not agree with the language in paragraph #7 that calls the revisions nonsubstantive and we disagree that such changes should be put in effect immediately upon adoption since they are substantive in nature and require further evaluation.

Certain of the third-party contracts noted above are complex and not quite as simple as the description of levelized commissions in the most recent draft of the Exposure. The Exposure depicts a simple arrangement whereby the insurer repays a third party over time, with interest, for making upfront heaped commissions to agents. This does not consider, for example, certain third-party contracts for which the insurer pays the third-party trail commissions based upon account value in-force in exchange for performing many contractual agency services other than simply funding and making upfront payments to selling agents. Such complex contracts require sufficient time to allow

insurers to work with their state of domicile to determine the correct application of the revised guidance with respect to contracts which the regulator has already approved. Then, if establishment of a liability is indeed required, additional time would be necessary to calculate such an accrual and review with external auditors prior to reporting the change on a quarterly or annual statement. For these reasons, and as you suggested, Chairman Bruggeman, we propose that the revisions within the Exposure be adopted with an effective date no sooner than 12/31/21.

Comments previously made on existing revisions included for purposes of documentation:

Paragraph #4, most recent exposure:

4. Levelized commissions occur in situations where agents receive normal (non-level) commissions with payments made by a third party. It is intended, but not necessarily guaranteed, that the amounts paid to the agents by the third party would ultimately be repaid (with interest explicit or implied) to the third party by levelized payments (which are less than the normal first year commissions but exceed the normal renewal commissions) from the reporting entity. (Note: levelized repayments made by the reporting entity extend the repayment period but might not be a straight-line repayment.) These transactions are, in fact, funding agreements between a reporting entity and a third party, regardless of how the payment to the third party is characterized. The continuance of the stream of payments specified in the levelized commission contract is a mechanism which attempts to bypass recognition of those expenses which are ordinarily charged to expense in the first year of the contract. Consequently, the normal link between the persistency of the policy, the continuance of the premium payment or the maintenance of the agent's license with the reporting entity is not maintained with respect to the payment stream.

Paragraph #4, most recent exposure with highlighted edits:

4. Levelized commissions occur in situations where agents receive normal (non-level) commissions with payments made by a third party. It is intended, but not necessarily guaranteed, that the amounts paid to the agents by the third party would ultimately be repaid (with interest explicit or implied) to the third party by levelized payments (which are less than the normal first year commissions but exceed the normal renewal commissions) from the reporting entity over time. (Note: levelized repayments made by the reporting entity ~~extend the repayment period~~ but might not be a straight-line repayment.) In instances where the levelized commission is not tied to, or contingent upon, traditional elements such as policy persistency or premium payments, these transactions are, in fact, funding agreements between a reporting entity and a third party, ~~regardless of how the payment to the third party is characterized~~ when the contract between the reporting entity and the third party has no substance but to defer commission payments by the reporting entity. The continuance of the stream of payments specified in the levelized commission contract in these situations is a mechanism ~~which attempts~~ to bypass recognition of those expenses which are ordinarily charged to expense in the first year of the contract. Consequently, the normal link between the persistency of the policy, the continuance of the premium payment or the maintenance of the agent's license with the reporting entity is not maintained with respect to the payment stream.

Industry proposes to replace a large section of paragraph #5, including the Working Group recent revisions, with more concise language that expresses the need to establish a liability when an arrangement is in substance a funding agreement. The current revisions are lengthy and somewhat redundant. Industry continues to disagree with the current revisions which too broadly state that all third-party arrangements, even those with traditional insurance elements, are considered funding arrangements. Industry retained the concept of the link between the accrual of commissions and traditional elements such as policy persistency.

Excerpt from paragraph #5, most recent exposure requested to be deleted:

~~Arrangements that use a third party to pay agents who write policies for the reporting entity and the insured can be an attempt to de-link the relationship between the insurer and those agents and defer or levelize the acquisition commissions. The insurance reporting entity is required to recognize the full amount of earned commission costs to the direct policy writing agents even if those costs are paid indirectly to the agents by a third party through the use of levelized commission, or similar arrangement, which is in substance a funding arrangement. Having a third party pay commission costs to the selling agent is strong evidence of a potential funding arrangement which shall be recognized as a liability because the substance of the arrangement indicates that repayment is reasonable and~~

~~probable, even if a contingency has been incorporated into the funding arrangement, until the underlying policy has been cancelled. A third-party structure cannot recharacterize (e.g. by referencing policy persistency) and delay recognition of liabilities for initial sales commission owed from the writing of policies regardless of how a third-party arrangement is structured with regards to the timing of payment from the insurer. The amount owed for full initial sales commission shall be recognized immediately as the writing of an insurance contract is the event that obligates the insurer, and such action shall occur consistently among insurers. As such, this recognition is required regardless if the insurer owes a selling agent directly or if a third-party has been contracted to provide payment to the selling agent.~~

Interested parties highlighted wording to replace the above excerpt from paragraph #5:
The reporting entity is required to recognize the full repayment amount of earned commission costs by the direct policy writing agents even if those costs are paid indirectly by a third party through the use of levelized commission, or similar arrangement, which is in substance a funding arrangement. Recognition of those commission costs and recording a liability is required in such arrangements that are not linked to or contingent upon traditional elements. Such treatment shall occur consistently among insurers.

IP Summary:

Since its initial exposure in August 2019, industry has had concerns with the substantive nature of the proposed revisions and has consistently expressed these concerns.

- The last paragraph of the current SSAP No. 71 states: "The use of an arrangement where commission payments are not linked to traditional elements such as premium payments and policy persistency, but rather are linked to the repayment of an advance amount requires the establishment of a liability for the full amount of the unpaid principal and accrued interest which is payable to a third party related to levelized commissions." This wording was revised to instead explicitly include arrangements linked to traditional elements with those that have no substance other than to link to the repayment of an advance amount. This is clearly a substantive change and not clarifying the original intent. It is a change to the intent.

- The current revisions require the accrual of a liability in situations that are inconsistent with the guidance SSAP No. 5R. Under a levelized commission program a third party has the obligation for the full initial sales commission. The insurer's obligation under a levelized commission program that incorporates persistency should be accrued to the extent of legally contracted amounts owed. We do not believe the original intent of the SSAP required accruing for amounts that are not yet due and that may never be due. We strongly feel that the recognition of an obligation based on persistency is in accordance with the principles of SSAP 5R.

- The interpretation of SSAP No.71 that persistency is the obligating event for accrual of the levelized/persistency commissions is long standing industry practice that has been subject to both independent audits and state insurance department examinations without this interpretation being raised as an issue nor requiring adjustments to the companies' financial statements.

- The current proposed language does not address the many varying product/distribution compensation arrangements in the industry and interested parties continue to believe this will cause unintended consequences.

- The existing SSAP No. 71 guidance is consistent in the application of persistency being part of the transfer of the risk(liability) to another party. If the lapse risk(persistency) is transferred to another party, the liability that the insurance company may have is also transferred to that party and the insurance company has no liability. Removing persistency as a factor in the accrual of commissions is a dangerous precedent. The differentiation between commissions based on real insurance risks versus payments based solely upon the passage of time in SSAP No. 71 goes directly to the risk transfer issue of one type of level commissions

versus another. The proposed additional language eliminates this differentiation.

IP Conclusion:

Industry continues to maintain that the revisions exposed have changed the original intent of SSAP No. 71 and do not believe that they are nonsubstantive. Removing insurance elements from the determination of obligating events of third-party commission contracts may set a precedent that will have significant unintended consequences. As such, interested parties request that the Working Group consider these comments and proposed revisions. In addition, we request that this exposure be categorized as substantive, and given due process and an effective date.

5) Acadia Capital Management Comments:

We have reviewed the revised proposed changes to SSAP No. 71 – Policy Acquisition Costs and Commissions as outlined in Ref. #2019-24. We continue to question several elements of the proposal and strongly object to the revisions for the following reasons:

1. This continues to be a substantive change to existing policy, contrary to the characterization in the published exposure draft.

2. The proposal continues to alter the fundamental premise of statutory accounting by creating a situation in which certain historically period expenses, trail commission payments, are to be treated differently from other period expenses by way of an accrual methodology, which leads to:

    a. A hybrid of statutory, GAAP and tax accounting.

    b. Fundamentally and permanently different economics for products designed with trail commission payments, leading to the need for significant effort at primary writers to redesign and/or reprice such products, presumably at a cost to the consumer.

    c. Guaranteed renewable products, like Long Term Care Insurance, could be exposed to further rate increases if the fundamental profit dynamics of the products change as a result of the new reserving practices.

    d. New uncertainty within the statutory accounting framework as to which other period expenses should also be accrued or might be targeted for similar treatment.

    e. A situation whereby trail commission expenses have a greater impact on statutory capital than other, similar expenses.

    f. A disincentive for primary writers to align the interests of the writer, broker/agent and policyholder through trail commissions because of the unique treatment and resulting capital implications.

3. Should the proposed changes be adopted, primary writers will be exposed to new and substantial accounting and actuarial workload relating to the determination of accrual methodologies for each affected product and the related periodic 'true-up' required to adjust the new statutory reserves for actual performance.

4. There is no apparent benefit for the consumer, primary writer, investment community, or regulatory bodies. The additional costs involved are highly restrictive and will likely cause either a decline in product offering or result in a higher cost to the consumer, which will ultimately curb the ability for the average person to save some of their earnings for retirement, children's schooling or other reason.

5. Moreover, there will be a material adverse impact on the RBC ratios of carriers utilizing legitimate third-party distribution structures, which may in some cases be material enough to affect carrier capital solvency.

We understand some have expressed concerns that related party structures have been put in place to achieve a deferral of commission expense, and understand that in such circumstances existing accounting rules may appropriately require that a liability should be established - but we continue to be of the view that existing accounting standards provide both the necessary guidance and basis for enforcement. In cases – like Acadia's carrier contracts - where a third-party licensed agent is involved and applies a trail commission to in-force policies only, there is no obligation to pay commissions until the anniversary date of the policy and therefore no reason to recognise a liability. The proposed change ignores both of these material elements – the involvement of a third party, and fact that an obligation does not arise until the anniversary date – and sweeps up these materially different arrangements in the same basket as related-party structures.

It is manifestly contrary to the public interest to pursue a change where:

- there is no clear benefit or public interest in favour of it;
- there is ample clarity and scope under existing accounting rules;
- there is material adverse impact on carriers;
- there is resulting adverse impact on the public through higher prices, reduced access, or both.

We urge the NAIC to reject this poorly conceived and clearly material change which is rife with unintended consequences, and instead rely on the proven ample scope under the existing SSAP 71 which has been in effect for decades.

6) <u>Guggenheim</u>

Guggenheim Life and Annuity Company is writing to express our concern with the proposed changes to SSAP No. 71 set forth in agenda item *#2019-24: Levelized and Persistency Commission* ("2019-24"). There have been serious flaws in the exposure process, including the designation of the proposed change as "nonsubstantive," inconsistency regarding how to characterize the proposed changes, and a changing effective date.

Companies potentially impacted by 2019-24, in their attempt to provide input, have been aiming at a constantly moving target. 2019-24 has gone through several rounds of exposure, with significant variations to foundational aspects of the proposal, including how reporting entities should classify the proposed changes and the effective date of the proposed changes. The proposal has varied on the fundamental point of whether the change is a correction of error or change in accounting principle. Similarly, the effective date of the proposal has changed 3 times (from no effective date, to a January 1, 2021 effective date, to an "effective upon adoption" date).

We believe that a change to an accounting principle dating back to 1998 should be deemed a substantive change. The Statutory Accounting Principles Working Group has determined the process around 2019-24 has met the due process requirements of a substantive revision; however, we believe additional scrutiny and process should be given to this issue for several reasons. First, the proposed changes constitute a change to accounting principles that could have a significant impact on certain reporting entities. Second, decades of examinations and audits did not result in any objection to reporting entities' reporting of the commission arrangements at issue.[1] Third, companies have not harmed policyholders nor put themselves in financial impairment by reporting the way they have for decades. To

[1] Note also that a 2010 SEC complaint against a carrier explained that levelized commissions were a common practice in the insurance industry. There is no evidence in the complaint that the statutory accounting treatment was ever determined not to be in accordance with statutory accounting principles.

us, this change in accounting principle seems like a punitive measure against a small number of companies that have been reporting these commissions a certain way for decades.

We appreciate the opportunity to comment on 2019-24 and believe regulators should continue to explore this issue and come to a reasonable solution.

Recommended Action:
NAIC staff recommends that the Working Group take the following actions:

1. **Expose the issue paper to document the historical discussion**.

2. **Adopt the exposed revisions to SSAP No. 71 after discussion regarding whether to incorporate the revisions to paragraph 7 regarding the effective date** which is illustrated as shaded text below. The November 2020 exposure was for the revisions to be effective on adoption. This is because some members noted a preference for an early as possible effective date in 2021. Guggenheim and IPs comments requested an effective date no sooner than December 31, 2021 to allow time to work with regulators, auditors etc.

   In the event that the Working Group wants to consider the industry request, NAIC staff has provided language for a December 31, 2021 effective date as illustrated below. As the issue paper is to document the historical discussion there is not a need to delay the effective date for an issue paper that is not authoritative. A December 31, 2021 effective date would allow the issue paper to be adopted prior to the implementation of the revisions. Note that under SSAP No. 3, the impacts are still calculated using Jan. 1 numbers, but would not be initially reported until the year-end 2021 financial statements.

   Effective Date and Transition (shaded revisions to paragraph 7 are for discussion).

   7. This statement is effective for years beginning January 1, 2001. A change resulting from the adoption of this statement shall be accounted for as a change in accounting principle in accordance with *SSAP No. 3—Accounting Changes and Corrections of Errors*. The nonsubstantive revisions adopted TBD date regarding levelized commission are to clarify the original intent of this statement and apply to existing contracts in effect as of December 31, 2021 and new contracts thereafter ~~on the date of adoption of the~~.

3. **Note – It is recommended that the Working Group expose a blanks proposal (2021-04BWG, see attachment 20.1) to incorporate a new general interrogatory to assist with identifying the use of funding agreements** as a concurrent exposure with the Blanks (E) Working Group. This general interrogatory will require the identification of circumstances of when an insurer utilizes third parties to pay agent commissions in which the advances paid by the 3rd party are not settled in full within 90 days. The 90-day threshold for reporting was selected to not require reporting when an insurer a third-party for traditional payment processing. This proposal is attached at 20.1 and was developed with Working Group member input. (*Staff Note: Input from interested parties is requested to ensure that this GI is written to capture the desired information on companies using financing arrangements to pay commissions.)*

4. NAIC staff does not recommend any additional revisions for reasons noted below each item in the summary of key comments.

NAIC Staff Summary of Key Comments with NAIC staff Responses:

1. **No reason to change/opposed** (MT, Wayne Goodwin, Arcadia, Guggenheim)
    - Current programs have been around for decades, been subject to external audits and insurance examinations and have not previously been noted of concern. (MT, Wayne Goodwin, Arcadia, Guggenheim)

    NAIC Staff notes that identifying levelized commission transactions is difficult, without an in-depth review. When this was identified on a 2017 state examination, the reporting entity refused to recognize the full liability, which is why this issue was brought to the Working Group. The guidance to recognize the full liability amount for a levelized commission transaction has been a SAP requirement since before 1998. This guidance is in place to recognize that the substance of an arrangement that has a third party pay an insurer's sales commission costs, is a loan. This is because a third party would not pay out large amounts of costs on another's behalf without an expectation of repayment.

2. **Substantive change based on impact needs more study and review for unintended consequences** (MT, Wayne Goodwin, NCOIL, IPs, Arcadia, Guggenheim)
    - Incorporation by reference concerns arise when an item is substantive (NCOIL)
    - Trailing commission accounting and reporting concerns (Arcadia)

    Change classification - NAIC staff continues to recommend classifying the revision as nonsubstantive as previously discussed. Under the *NAIC Policy Statement on Maintenance of Statutory Accounting Principles*, it is not the impact of a change on an individual entity that determines whether a change is substantive or nonsubstantive. To the extent this is a clarification of existing guidance, the revisions are consistent with the nonsubstantive classification. It notes that:

    > Nonsubstantive revisions to SAP will be developed to address, but will not be limited to: 1) clarification of the intent or application of existing SSAPs; 2) new disclosures and modification of existing disclosures; 3) revisions that do not change the intent of existing guidance; and 4) revisions to Appendix A—Excerpts of NAIC Model Laws to reflect amendments to NAIC adopted model laws and regulations.

    Amount of Study - NAIC staff notes that this item has been under discussion since August 2019 and as detailed in the summary of issue section, the March meeting will be the sixth public discussion of this item. This item has been discussed: 1) Aug. 2019; 2) Dec. 2019; 3) July 2020; 4) Oct. 2020; 5) Nov. 2020. We note that the underreporting of commission liabilities appears to be a practice employed by only a very small number of reporting entities.

3. **Negative RBC impact** (Wayne Goodwin, NCOIL, Arcadia)
    - NCOIL notes that they have heard of impacts as high as 30% RBC, which could cause rating downgrades. Making a previously solvent healthy company have negative impacts.

    NAIC staff agrees that underreporting the full amount of commission expense may have negative impacts on reporting entities that have been previously underreporting their commission expense liabilities. This is why the adoption of this time was delayed from year-end 2020 to allow the small number of reporting entities which are employing the disputed practice the opportunity to have discussions with their regulators.

4. **Possible consumer rate increases on guaranteed renewable LTC** (Wayne Goodwin, Arcadia)

   NAIC staff notes that the disputed practice is underreporting incurred commission expense and the obligation to repay it to a funding agent. This financing activity is being used to delay / under report incurred commissions. However, the total commission cost is typically slightly higher as the funding agents charge a fee and or interest (implicit or explicit) for their services. So the full financial statement impact is not as clear cut as implied in this comment.

5. **Effective date**

   - Against a 2020 effective date (NCOIL) (appears to be a comment on the Oct. exposure).
   - Effective date no sooner than 12/31/21 to allow time to work with regulators, auditors etc.) (Guggenheim and IPs)
   - Requests delay for issue paper (NCOIL) and
   - Requests a five-year phase-in (NCOIL)

   Effective Date - NAIC staff have proposed language which allows a December 31, 2021 effective date for Working Group review (see recommendation above).

   Phase-in - NCOIL requested that the Working Group consider a 5-year phase-in for any such revisions. NAIC staff continues to believe that this is a practice employed by a small minority of reporting entities, but the potential impact is material. Some Working Group members and some members of industry have noted the unfair competitive advantage that entities which employ this practice are receiving, because it underrepresents the incurred liabilities. NAIC staff notes that prior Working Group discussions have indicated that a phase-in would need to be a permitted practice granted by the domiciliary regulator.

6. **Asserts that lapse risk can be transferred to a noninsurance entity** (IPs).

   - The existing SSAP No. 71 guidance is consistent in the application of persistency being part of the transfer of the risk(liability) to another party. If the lapse risk(persistency) is transferred to another party, the liability that the insurance company may have is also transferred to that party and the insurance company has no liability. Removing persistency as a factor in the accrual of commissions is a dangerous precedent. The differentiation between commissions based on real insurance risks versus payments based solely upon the passage of time in SSAP No. 71 goes directly to the risk transfer issue of one type of level commissions versus another. The proposed additional language eliminates this differentiation.

   NAIC staff notes that statutory accounting in Appendix A-791 on Life and Health Reinsurance identifies that lapse risk can be transferred via reinsurance. NAIC staff disagrees that lapse related liabilities can be extinguished with a commission agreement with a noninsurance entity, which seems to be the position of interested parties. NAIC staff note that the guidance in SSAP No. 71 requires full accrual of the funding agreement liability even if repayment is not guaranteed. We do not believe that the insertion of a contingency into a funding agreement in any way should delay or decrease the recognized liability for an advance that has already been made on behalf of an insurer.

   Because of the persistency feature in the funding agreement, interested parties' commenters are advocating to not recognize ANY commission expense in these arrangements until it is due to the third-party agent.

This is the equivalent of a 100% lapse assumption. This assertion is not consistent with any other assertions reflected in the recognition of these insurance policies in their financial statements.

NAIC staff disagrees with the comment by interested parties that under a levelized commission agreement another party is responsible for an insurer's acquisition costs. This is not appropriate as statutory accounting requires acquisition costs are expensed as incurred, not shifted to a non-insurance entity. IPs are asserting that even though a third party prepaid their acquisition costs that they don't have to recognize an accrual for the levelized commission funding agreement because in some situations such as future policy cancellation, they might not have to pay. They are asserting that including a persistency element in the funding agreement decreases the liability amount and the timing or recognition, to only be the next payment when it is fully earned. They are asserting the right to treat a funding agreement the same as traditional persistency commission even though they are different in substance.

The overall statutory accounting concepts of conservatism and consistency require that financial statements reflect assets available for policyholder claims with comparable financial information. Allowing delayed expense recognition of initial policy commission expenses will contradict both statutory accounting concepts, as assets will be included that are not actually available for policyholder claims (as they are needed for non-recognized commission expenses) and will result with financial statements that are not comparable to other insurance entities.

7. **Paragraph 4 comment** – Resubmitted some of the previously rejected proposed edits which seek to codify the industry position that funding agreements which incorporate contingencies linked to traditional elements should not be treated as a funding agreement (i.e. excluded from liability recognition). (IPs).

   NAIC staff does not recommend incorporating the industry proposed language to paragraph 4. The proposed language seeks to codify the treatment which has previously been rejected as inconsistent with the guidance in SSAP No. 71.

8. **Paragraph 5 comments**: (IPs)

   - Exposed language which describes funding agreements, is too broad. Notes a concern that interim pay downs are not mentioned.
   - Resubmitted previously rejected proposed edits to replace most of the exposed paragraph with language that is less detailed and which seeks to codify the industry position that funding agreements which incorporate contingencies linked to traditional elements should not be treated as a funding agreement (i.e. excluded from liability recognition).

   NAIC staff does recommend adding more guidance regarding interim payments to paragraph 5, because liabilities are always reduced when paid. This is detailed in *SSAP No. 5R—Liabilities, Contingencies and Impairments of Assets* and also discussed in *SSAP No. 103R—Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*.

   NAIC staff does not recommend incorporating the industry proposed language to paragraph 5. The proposed language seeks to codify the treatment which has previously been rejected as inconsistent with the guidance in SSAP No. 71.

9. **Persistency in a funding agreement** (IPs):

   - IP-comment: The current revisions require the accrual of a liability in situations that are inconsistent with the guidance SSAP No. 5R. Under a levelized commission program a third party has the

obligation for the full initial sales commission. The insurer's obligation under a levelized commission program that incorporates persistency should be accrued to the extent of legally contracted amounts owed. We do not believe the original intent of the SSAP required accruing for amounts that are not yet due and that may never be due. We strongly feel that the recognition of an obligation based on persistency is in accordance with the principles of SSAP 5R.

NAIC staff disagrees and notes that SSAP No. 5R incorporates an obligation to recognize even contingent amounts that are probable and can be reasonably estimated. The difference is that a levelized commission arrangement is repaying a loan where in most cases the advance of the loan amount has already been made. The loan has contingency elements that may allow the loan repayment to be reduced in the future. Until the policy is cancelled there is a presumption that the amounts will be repaid. This is different from making a future commission payment on commission that has not yet been earned which occurs under traditional persistency commission.

10. Complex contracts (IPs)

- IP- comment: Certain of the third-party contracts noted above are complex and not quite as simple as the description of levelized commissions in the most recent draft of the Exposure. The Exposure depicts a simple arrangement whereby the insurer repays a third party over time, with interest, for making upfront heaped commissions to agents. This does not consider, for example, certain third-party contracts for which the insurer pays the third-party trail commissions based upon account value in-force in exchange for performing many contractual agency services other than simply funding and making upfront payments to selling agents.

NAIC Staff note that adding additional complexity can create confusion so we have not drafted any additional language. The SSAP guidance reflects the principle that should be followed for all lines of business. The issue is that companies are not identifying funding arrangements and are trying to indicate that a third party is responsible for paying upfront costs on behalf of an insurer.

SSAP No. 71 Nov. 12, 2020 exposure with shaded revisions to paragraph 7 for Spring 2021 discussion

2. Acquisition costs are those costs that are incurred in the acquisition of new and renewal insurance contracts and include those costs that vary with and are primarily related to the acquisition of insurance contracts (e.g., agent and broker commissions, certain underwriting and policy issue costs, and medical and inspection fees). Acquisition costs and commissions shall be expensed as incurred. Determination of when acquisition costs and commissions have been incurred shall be made in accordance with SSAP No. 5R—Liabilities, Contingencies and Impairments of Assets.

3. Contingent commission liabilities shall be determined in accordance with the terms of each individual commission agreement. Commission liabilities determined on the basis of a formula that relates to loss experience shall be established for the earned portion. Assumptions used to calculate the contingent commission liability shall be consistent with the terms of the policy contract and with the assumptions made in recording other assets and liabilities necessary to reflect underwriting results of the reporting entity such as retrospective premium adjustments and loss reserves, including incurred but not reported.

4. Levelized commissions occur in situations where agents receive normal (non-level) commissions with payments made by a third party. It is intended, but not necessarily guaranteed, that the amounts paid to the agents by the third party would ultimately be repaid (with interest explicit or implied) to the third party by levelized payments (which are less than the normal first year commissions but exceed the normal renewal commissions) from the reporting entity. (Note: levelized repayments made by the reporting entity extend the repayment period but might not be a straight-line repayment.) These transactions are, in fact, funding agreements between a reporting entity and a third party, regardless of how the payment to the third party is characterized. The

continuance of the stream of payments specified in the levelized commission contract is a mechanism which attempts to bypass recognition of those expenses which are ordinarily charged to expense in the first year of the contract. Consequently, the normal link between the persistency of the policy, the continuance of the premium payment or the maintenance of the agent's license with the reporting entity is not maintained with respect to the payment stream.

5. The use of an arrangement such as a levelized commission arrangement where commission payments are not linked to traditional elements such as premium payments and policy persistency, but rather are linked to the repayment of an advance amount paid by a third party to the direct selling agents requires the establishment of a liability by the reporting entity for the full amount of the unpaid principal and accrued interest which is payable to a third party related to levelized commissions ~~FN~~. Arrangements that use a third party to pay agents who write policies for the reporting entity and the insured can be an attempt to de-link the relationship between the insurer and those agents and defer or levelize the acquisition commissions. The insurance reporting entity is required to recognize the full amount of earned commission costs to the direct policy writing agents even if those costs are paid indirectly to the agents by a third party through the use of levelized commission, or similar arrangement, which is in substance a funding arrangement. Having a third party pay commission costs to the selling agent is strong evidence of a potential funding arrangement which shall be recognized as a liability because the substance of the arrangement indicates that repayment is reasonable and probable, even if a contingency has been incorporated into the funding arrangement, until the underlying policy has been cancelled. A third-party structure cannot recharacterize (e.g. by referencing policy persistency) and delay recognition of liabilities for initial sales commission owed from the writing of policies regardless of how a third-party arrangement is structured with regards to the timing of payment from the insurer. The amount owed for full initial sales commission shall be recognized immediately as the writing of an insurance contract is the event that obligates the insurer, and such action shall occur consistently among insurers. As such, this recognition is required regardless of if the insurer owes a selling agent directly or if a third-party has been contracted to provide payment to the selling agent.

Effective Date and Transition

7. This statement is effective for years beginning January 1, 2001. A change resulting from the adoption of this statement shall be accounted for as a change in accounting principle in accordance with *SSAP No. 3—Accounting Changes and Corrections of Errors*. The nonsubstantive revisions adopted TBD date regarding levelized commission are to clarify the original intent of this statement and apply to existing contracts in effect as of December 31, 2021 and new contracts thereafter ~~on the date of adoption of the~~.

The comment letters are included in Attachment 22 (29 pages).

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Statutory Accounting Principles (E) Working Group
Meeting Agenda
March 15, 2021

A. Consideration of Maintenance Agenda – Pending List

1. Ref #2021-01: *ASU 2021-01, Reference Rate Reform*
2. Ref #2021-02: ASU 2020-08 – Premium Amortization on Callable Debt Securities
3. Ref #2021-03: SSAP No. 103R – Disclosures
4. Ref #2021-04: SSAP No. 97 – Valuation of Foreign Insurance SCAs
5. Ref #2021-05: Cryptocurrencies
6. Ref #2021-06EP: Editorial Updates
7. Ref #2021-07: ASU 2020-11 – Financial Services
8. Ref #2021-08: ASU 2021-02 – Franchisors Revenue from Contracts
9. Ref #2021-09: State ACA Reinsurance Programs

Ref #	Title	Attachment #
2021-01 **SSAP No. 86** **(Jim)**	***ASU 2021-01, Reference Rate Reform***	**A - Agenda** **B – INT 20-01**

Summary:
In March 2020, the Financial Accounting Standards Board (FASB) issued *ASU 2020-04, Reference Rate Reform (Topic 848) Facilitation of the Effects of Reference Rate Reform on Financial Reporting* to ensure the financial reporting of hedging relationships would reflect a continuation of the original contract and hedging relationship during the period of the market-wide transition to alternative reference rates. ASU 2020-04, which was adopted by the Working Group through interpretation 20-01, provides temporary, optional, and expedient relief in that a qualifying modification (because of reference rate reform) should not be considered an event that requires contract remeasurement at the modification date or reassessment of a previous accounting determination.

However, since the issuance of ASU 2020-04, the derivatives market continues to undergo various other transitions due to reference rate reform initiatives, specifically changing the reference rates used for margining, discounting, or contract price alignment (this change is referred to as a "discounting transition"). While these changes are related to reference rate reform, they are not modifying an interest rate that is expected to be discontinued (e.g., LIBOR).

Accordingly, in January 2021, FASB issued *ASU 2021-01, Reference Rate Reform* to clarify that all derivative instruments affected by changes to the interest rates used for discounting, margining or contract price alignment (regardless of whether they reference LIBOR or another rate that is expected to be discontinued as a result of reference rate reform) are in afforded the contract modification relief provided in ASU 2020-04. In short summary, ASU 2021-01 expands the scope of ASU 2020-04 by allowing an entity to apply the optional expedients, by stating that a change to the interest rate used for margining, discounting or contract price alignment for a derivative is not considered to be a change to the critical terms of the hedging relationship that requires dedesignation.

Recommendation:
NAIC staff recommends that the Working Group move this item to the active listing, categorized as nonsubstantive and expose temporary (optional) expedient and exception interpretative guidance, with an expiration date of December 31, 2022. These optional expedients would expand the current exception guidance provided by *INT 20-01: ASU 2020-04 - Reference Rate Reform*. With this guidance, derivative instruments affected by changes to the interest rates used for discounting, margining or contract price

alignment (regardless of whether they reference LIBOR or another rate that is expected to be discontinued as a result of reference rate reform) would be in scope of INT 20-01. This exception would allow for continuation of the existing hedge relationship and thus not requiring hedge dedesignation.

Ref #	Title	Attachment #
2021-02 SSAP No. 26R (Jim)	**ASU 2020-08 – Premium Amortization on Callable Debt Securities**	**C**

Summary:
In October 2020, the Financial Accounting Standards Board (FASB) issued *ASU 2020-08, Codification Improvements to Subtopic 310-20, Receivables – Nonrefundable Fees and Other Costs* to clarify the amortization of premium associated with callable debt securities. In summary, ASU 2020-08 requires that to the extent the amortized cost basis of a callable debt security exceeds the amount repayable by the issuer, any associated premium (above the call price) is to be amortized to the next effective call price/date. For example, if a reporting entity held a bond at $104 in which could be called at $102 in a year, the $2 excess premium would be amortized over that particular year. Once amortized to $102, the reporting entity would then reassess for any excess premium to the next effective call price/date. If there is no remaining premium or further call dates, the effective yield is reset using the payment terms of the debt security.

Recommendation:
NAIC staff recommends that the Working Group move this item to the active listing, categorized as nonsubstantive and expose revisions to *SSAP No. 26R—Bonds* to reject ASU 2020-08 for statutory accounting. While ASU 2020-08 closely mimics existing guidance in SSAP No. 26R (amortizing applicable debt premium to the next effective call price), it does preclude statutory accounting's yield-to-worst concept, which requires amortizing premiums to the call or the maturity value/date in which produces the lowest asset value. There may be scenarios, for statutory accounting, in which premiums amortized to the maturity value/date will yield a lower asset value than simply amortizing applicable premium to the next effective call date (as is required in ASU 2020-08).

Ref #	Title	Attachment #
Ref #2021-03 SSAP No. 103R (Jim)	**SSAP No. 103R – Disclosures**	**D**

Summary:
This agenda item has been drafted to propose additional disclosures and to data-capture certain existing disclosure elements in *SSAP No. 103R—Transfers and Servicing of Financial Assets and Extinguishments of Liabilities.* The additional disclosures proposed herein are in response to the Working Group's continued deliberation of agenda item 2019-21: SSAP No. 43R – Equity Instruments. Agenda item 2019-21 is a substantive project to consider what investments fall within scope of *SSAP No. 43R—Loan-Backed and Structured Securities* and on Oct. 13, 2020, this project was expanded to include a review of the investments eligible for reporting on Schedule D-1: Long Term Bonds. During the continued work on this project, regulators expressed a desire to identify situations in which a reporting entity has entered into a securitization, asset-backed financing or similar transfer transaction where a significant economic interest in the transferred assets is retained by the reporting entity, its related parties or another member within the holding company group.

Recommendation:
NAIC staff recommends that the Working Group move this item to the active listing, categorized as nonsubstantive to 1) expose new disclosure elements and 2) propose data-capture templates for existing disclosures in *SSAP No. 103R—Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*. A blanks proposal exposure is anticipated to occur concurrently with the Working Group's exposure. With inclusion of the data templates, narrative (pdf) reporting shall still occur to provide additional information regarding transfers accounted for as a sale when the transferor maintains continuing involvement in the transferred financial assets. The purpose of the data-capture templates is so regulators can perform system inquiries to identify which reporting entities have such transactions, at which time further analysis of the narrative disclosures can be performed.

Ref #	Title	Attachment #
Ref #2021-04 SSAP No. 97 (Fatima)	**SSAP No. 97 – Valuation of Foreign Insurance SCAs**	**E**

Summary:
In March 2020, agenda item 2018-26 – SCA Loss Tracking – Accounting Guidance adopted guidance in *SSAP No. 97—Investments in Subsidiary, Controlled and Affiliated Entities* to state that reported equity method losses of an investment in a subsidiary controlled or affiliated entity (SCA) would not create a negative value in a SCA investment, thus equity method losses would stop at zero. However, the agenda item also clarified that to the extent there was a financial guarantee or commitment, it would require appropriate recognition under *SSAP No. 5R—Liabilities, Contingencies and Impairment of Assets.* In November 2020, the Working Group adopted agenda item 2020-18 - SSAP No. 97 Update and removed a lingering, superseded reference regarding negative equity method loss valuations.

However guidance in SSAP No. 97 also requires specific adjustments to 8.b.ii (insurance related SCA) and 8.b.iv (foreign insurance SCA) entities. These long-standing adjustments require the non-admission of certain assets to achieve a limited statutory basis of accounting. The adjustments have typically been viewed as necessary in order to prevent assets being held by SCA receiving more favorable treatment than had the assets been held directly by the insurer. (e.g., requiring the nonadmittance of certain assets per *SSAP No. 20—Nonadmitted Assets*). Per SSAP No. 97, an equity method of accounting for 8.b.ii and 8.b.iv entities would be a beginning point which would then be adjusted by the provisions of SSAP No. 97, paragraph 9 (see "authoritative literature section"). It is important to note the outcome of these adjustments can result in a negative equity valuation of the investment. Again, this is so assets held by an SCA aren't reported at a higher value than had they been held directly by the insurer.

During the discussion of agenda item 2020-18, industry comments requested consideration of whether 8.b.iv entities should be subject to the provisions of SSAP No. 97, specifically that paragraph 9 adjustments may result in a negative equity valuation. While stating many positions, industry's primary response that foreign insurance operations are subject to foreign jurisdiction and should be allowed to stand independently of a domestic insurer – thus in the absence of a guarantee or commitment, equity valuation should not go negative and thus stop at zero. Comments were received from industry noted that the circumstances that would cause a foreign insurance reporting entity to record negative equity is not prevalent, however indicated the potential to arise in the future.

At the direction of the Working Group, NAIC staff have drafted this agenda item to determine if further edits to SSAP No. 97 are required, specifically if the required statutory adjustments to 8.b.iv entities should no longer be able to result in a negative equity valuation. In response to this direction, **NAIC staff reviewed all SCA filings for the last 3 years, noting that less than 7% of all SCA filings were 8.b.iv entities. It was further noted that there was not a single instance of an 8.b.iv in a negative equity situation.**

Recommendation:
Staff recommends that the Working Group move this item to the active listing, categorized as nonsubstantive and expose the intent to move this item to the disposal listing without statutory edits. Per staff's review of SCA Sub 2 filings filed with an 8b(iv) valuation method, there were no noted instances of negative value SCAs, therefore we do not recommend revisions to the existing guidance. This exposure will allow industry to determine if they are aware of any prevalent examples of a negative equity valuation in a foreign insurance SCA (8.b.iv) and provide detailed information to NAIC staff for assessment.

NAIC staff highlights that if such an event (negative equity due to nonadmitted assets) were to actually occur at some point, and the company was to question whether the negative equity in the SCA should be reported, that this should be addressed directly with the state of domicile. With this approach, the domiciliary state would be able to assess the limited statutory edits that were performed, the extent to which assets are held in the SCA that would be nonadmitted if held directly by the insurer, and how the SCA obtained those assets.

Ref #	Title	Attachment #
Ref #2021-05 SSAP No. 2R (Jake)	**Cryptocurrencies**	**F - Agenda G - INT 21-01**

Summary:
NAIC staff have received several inquiries related to the statutory accounting treatment for cryptocurrencies, which are defined as a digital currency in which transactions are verified and records maintained by a decentralized system using cryptography, rather than by a centralized authority, such as the Federal Reserve System. These questions generally inquiry whether Bitcoin is permitted to be admitted, but a recent inquiry asked whether Bitcoin is captured in the cash definition within *SSAP No. 2R—Cash, Cash Equivalents, Drafts, and Short-Term Investments.*

For statutory accounting, cash is defined in SSAP No. 2R as a "medium of exchange that a bank or other similar financial institution will accept for deposit and allow an immediate credit to the depositor's account." **Cryptocurrencies do not meet this definition because these assets are not able to be deposited or exchanged with most U.S. banks and financial institutions**. NAIC staff are aware that this treatment is evolving and that in the future banks may accept cryptocurrencies in the same manner as true government-backed currencies, which could then meet the statutory accounting definition of cash. However, at this time, NAIC staff note that cryptocurrencies currently do not meet the definitions of cash equivalents, drafts, or short-term investments as they are defined in SSAP No. 2R.

Recommendation:
NAIC staff recommends that the Working Group move this item to the active listing, categorized as nonsubstantive and expose the interpretative guidance provided by *INT 21-01T: Statutory Accounting Treatment for Cryptocurrencies*. This guidance clarifies that cryptocurrencies do not meet the definition of cash in *SSAP No. 2R—Cash, Cash Equivalents, Drafts, and Short-Term Investments* and are nonadmitted assets for statutory accounting.

With this exposure, the Working Group requests input from Interested Parties and the insurance company trade groups that follow the Working Group to gather information from their members on current ownership of cryptocurrencies. The Working Group requests information on:

1. Extent to which companies currently hold cryptocurrencies,
2. How the acquisition in cryptocurrency is held (held directly by the insurer or indirectly through an SCA),
3. Which cryptocurrencies they are acquiring in (Bitcoin, Ethereum, Litecoin, etc.), and

4. General level of interest for future acquisition by both companies that currently do and do not own cryptocurrencies.

Ref #	Title	Attachment #
Ref #2021-06EP Multiple (Jake)	**Editorial Updates**	**H**

Summary:
Maintenance updates provide revisions to the NAIC *Accounting Practices and Procedures Manual*, such as editorial corrections, reference changes and formatting as summarized below:

- *SSAP No. 53—Property Casualty Contracts – Premiums* retitle to *SSAP No. 53—Property and Casualty Contracts – Premiums*.
- *SSAP No. 97—Investments in Subsidiary, Controlled and Affiliated Entities* - corrects grammatical errors in paragraph 54.
- SSAP Glossary - Removes the footnote noted in title and replaces it as an opening paragraph with updated verbiage.

Recommendation:
NAIC staff recommends that the Working Group move this agenda item to the active listing, categorized as nonsubstantive, and expose the editorial revisions to SSAP No. 53, SSAP No. 97 and the SSAP Glossary.

Ref #	Title	Attachment #
Ref #2021-07 Appendix D (Jake)	***ASU 2020-11, Financial Services—Insurance: Effective Date and Early Application***	**I**

Summary:
FASB issued *ASU 2020-11, Financial Services—Insurance: Effective Date and Early Application*, which updates guidance on the effective date of the amendments in *ASU 2019-09, Financial Services – Insurance* and *ASU 2018-12, Targeted Improvements to the Accounting for Long-Duration Contracts* because of COVID-19. Both ASU 2019-09 and 2018-12 have previously been rejected for statutory accounting.

Recommendation:
NAIC staff recommends the Working Group move this item to the active listing, categorized as nonsubstantive and expose revisions to *Appendix D—Nonapplicable GAAP Pronouncements* to reject *ASU 2020-11, Financial Services—Insurance: Effective Date and Early Application* as not applicable for statutory accounting. This ASU was issued to only address the effective dates of ASU 2019-09 and ASU 2018-12, which were both previously rejected by the Working Group.

Ref #	Title	Attachment #
Ref #2021-08 SSAP No. 47 (Jake)	***ASU 2021-02, Franchisors—Revenue from Contracts with Customers***	**J**

Summary:
In January 2021, the Financial Accounting Standards Board (FASB) issued *ASU 2021-02, Franchisors—Revenue from Contracts with Customers (Subtopic 952-606)*, slightly amending the guidance which was issued in *ASU 2014-09, Revenue from Contracts with Customers*, as it relates to franchisors.

In 2018, the Working Group rejected the guidance in ASU 2014-09 and several other ASUs related to Revenue Recognition in *SSAP No. 47—Uninsured Plans*. Since 2018, all additional ASUs related to revenue recognition have been reviewed by NAIC staff and have been rejected for statutory accounting.

Recommendation:
NAIC staff recommends the Working Group move this agenda item to the active listing, categorized as nonsubstantive and expose revisions to reject ASU 2021-02 in *SSAP No. 47—Uninsured Plans*. This recommendation is consistent with how the prior ASUs related to Topic 606 have been treated.

Ref #	Title	Attachment #
Ref #2021-09 SSAP No. 107 (Robin)	**State ACA Reinsurance Programs**	**K**

Summary:
SSAP No. 107—Risk-Sharing Provisions of the Affordable Care Act provides guidance regarding the three Affordable Care Act (ACA) risk sharing programs known as risk adjustment, the transitional reinsurance program and risk corridors. All three programs were to assist with rate stabilization in the individual market. Risk adjustment was originally the only permanent program and the other two were temporary. Although the 2014-2016 transitional reinsurance program has ended, several states have received approval from the Department of Health and Human Services (HHS) to run similar state ACA reinsurance programs under what are known as Section 1332 waivers.

This agenda item is to provide accounting and reporting guidance regarding State ACA reinsurance programs being run under Section 1332 waivers. Note that states can seek Section 1332 waivers to address a variety of issues such as:

- Individual and employer mandates;
- Essential health benefits (EHBs);
- Limits on cost sharing for covered benefits;
- Metal tiers of coverage;
- Standards for health insurance marketplaces, including requirements to establish a website, a call center, and a navigator program; and
- Premium tax credits and cost-sharing reductions.

To date, most of the states that have sought 1332 waivers did so to implement state ACA reinsurance programs which have the goal of using the reinsurance programs to lower individual health insurance premium in the jurisdiction. As these programs seek to operate to cover higher individual health claims in a manner similar to the

transitional reinsurance program, the initial recommendation is to provide guidance that such state programs should follow the guidance in SSAP No. 107 to the extent the state program has similar terms.

The original transitional reinsurance program and the subsequent state ACA reinsurance programs are not reinsurance in the true sense. They typically rely on group products to help fund the program, but do not typically allow the group products to receive reinsurance distributions. Therefore the group products help fund the program but are not true participants. Because of this, a hybrid approach was incorporated into the SSAP No. 107 accounting guidance. A similar hybrid approach is recommended for state ACA reinsurance programs. At a high level this approach divides products into 3 broad categories. This includes:

1. Subject individual products (typically individual plans) that may pay an insurance contribution and are eligible to receive reinsurance distributions. These programs report like an involuntary reinsurance pool as is described in *SSAP No. 63—Underwriting Pools*.

2. Other insured health products (typically group plans) that are not eligible for reinsurance distributions under the terms of the state ACA reinsurance program. These products treat the amounts as assessments reported in taxes, licenses and fees similar to treatment under *SSAP No. 35R—Guaranty Funds and Other Assessments*.

3. Self-insured plans where the reporting entity is acting as an administrator, and will exclude the payments made on behalf of the self-insured plan from the reporting entity's operations, consistent with the guidance in *SSAP No. 47—Uninsured Plans*.

Recommendation:
NAIC Staff recommends that the Working Group move this item to the active listing, categorized as nonsubstantive and expose revisions to SSAP No. 107 as illustrated below. These revisions would include State ACA reinsurance programs which are using Section 1332 waivers in the scope of *SSAP No. 107—Risk-Sharing Provisions of the Affordable Care Act*. The intent of the proposed accounting revisions is to continue to follow the SSAP No. 107 hybrid accounting approach for the state ACA programs as they operate in a similar manner.

In general, state ACA reinsurance programs provide funding to issuers in the individual market that incur high claims costs for enrollees. The programs often require assessments from issuers typically on behalf of group health plans. At a high level this hybrid accounting approach divides products into 3 broad categories. This includes:

a. Subject individual products (typically individual plans) that may pay a reinsurance funding contribution and are eligible to receive reinsurance distributions shall report similar to an involuntary reinsurance pool as described in *SSAP No. 63—Underwriting Pools*.

b. Other insured Health products (typically group plans) that are not eligible for reinsurance distributions under the terms of the state ACA reinsurance program shall treat the amounts as assessments reported in taxes, licenses and fees similar to treatment under *SSAP No. 35R—Guaranty Funds and Other Assessments*.

c. Self-insured plans where the reporting entity is acting as an administrator, and will exclude the payments made on behalf of the self-insured plan from the reporting entity's operations, shall report consistent with the guidance in *SSAP No. 47—Uninsured Plans*.

ANY OTHER MATTERS

a. Ref #2019-21: SSAP No. 43R – (Julie and Carrie Mears / Kevin Clark (IA))

Since Dec. 1, 2020, a small group of industry reps, Iowa and NAIC staff have been working to develop a definition of what should be captured as a "bond" in Schedule D-1: Long-Term Bonds. This initiative was directed after considering the comments received on the IA proposed definition and the prior discussion of SSAP No. 43R project. (As detailed within the comments received, the investments that cause concern are not necessarily limited to SSAP No. 43R but can be captured in scope of SSAP No. 26R. As such, addressing this issue solely within SSAP No. 43R would not eliminate the potential for such investments to be reported as bonds.) The small group has made significant progress and is nearing the time in which the proposed Schedule D-1 definition will be exposed publicly to allow for broader comments and discussion. As a few items to highlight with regards to the current proposal and next steps:

- The Schedule D-1 definitions focuses on investments that reflects issuer credit obligations and asset backed securities. The current approach is to first identify what should be captured in scope of Schedule D-1. Once that project is concluded, the concepts will then drive revisions to both SSAP No. 26R and SSAP No. 43R.

- If there are investments that no longer qualify for Schedule D-1, at this time, it is anticipated that these investments will likely be captured on Schedule BA. With this project, it is anticipated that NAIC staff and regulators will be working with the Capital Adequacy (E) Task Force to ensure that these investments are assessed for appropriate accounting, reporting and RBC.

Industry is invited to provide additional comments on this project.

b. INT 19-02: Freddie Mac Single Security Initiative – (Julie)

The SAPWG support staff periodically review INTs currently in effect for possible movement to *Appendix H – Superseded SSAPs and Nullified Interpretations.* For public information, the Freddie Mac Single Security Initiative remains an ongoing program and does not appear to be subject to termination in the foreseeable future. Accordingly, INT 19-02 remain in full effect.

c. Update on Ref #2019-49: Retroactive Reinsurance Exception – (Robin)

This issue is to address a referral from the Committee on Property and Liability Financial Reporting (COPLFR) of the American Academy of Actuaries which noted diversity in reporting for companies applying the retroactive reinsurance exception which allows certain contracts to be reported prospectively.

NAIC staff has held some preliminary discussion with members of Casualty Actuarial and Statistical (C) Task Force on this topic. NAIC staff's preliminary recommendation is that the premium and losses transferred under such transactions should be allocated to the prior Schedule P calendar year premiums and the losses allocated to the prior accident year incurred losses. NAIC staff anticipates having a few more discussions with industry and having proposed revisions for Working Group review for exposure either in the interim or at the Summer National Meeting

d. Paycheck Protection Program (PPP) – SAP Guidance - (Robin)

NAIC staff has received inquiries regarding the reporting and extinguishment of loans received from the PPP. While we are aware that the AICPA has issued some technical guidance regarding treatment of the PPP loans, NAIC staff note that for statutory accounting, the authoritative guidance is *SSAP No.15—Debt and Holding Company Obligations.* SSAP No. 15, paragraph 11 provides that debt is recognized until extinguished including formally being forgiven. NAIC staff notes that the SSAP No. 15 guidance is consistent with one of the two options provided in the AICPA issuance. As the other option cites guidance previously rejected for SAP, and as SSAP No. 15 is already adopted for statutory accounting, entities shall follow the guidance in SSAP No. 15. It is also noted that the AICPA guidance provides optionality, which is generally not supported

under the SAP guidance pursuant to the Consistency Concept.

The PPP program requires applying for loan forgiveness after meeting certain criteria. Therefore, PPP loans should be reflected as debt until legally released. Once legally released, the debt forgiveness is reported as a capital gain pursuant to SSAP No 15, paragraph 25.

> 11. A reporting entity shall derecognize a liability if, and only if, it has been extinguished. A liability has been extinguished if either of the following conditions is met:
>
> a. The reporting entity pays the creditor and is relieved of its obligation for the liability. Paying the creditor includes delivery of cash, other financial assets, goods or services, or reacquisition by the debtor of its outstanding debt securities; or
>
> **b. <u>The reporting entity is legally released from being the primary obligor under the liability, either judicially or by the creditor.</u>**
>
> 25. This statement adopts *Accounting Principles Board Opinion No. 26, Early Extinguishment of Debt* with modification to **<u>require that gains and losses from extinguishment of debt be reported as capital gains or losses and charged to operations</u>** unless the extinguishment reflects the forgiveness of a reporting entity's obligation to its parent or other stockholders. Forgiveness of a reporting entity's obligation to its parent or other stockholder shall be accounted for as contributed surplus under SSAP No. 72.

e. VOSTF Referral Regarding WCFI is Pending (Robin)

The Valuation of Securities (E) Task Force is discussing revisions to the *Purposes and Procedures Manual of the Investment Analysis Office* (P&P Manual) as coordination regarding the revisions to *SSAP No. 105R—Working Capital Finance Investment* adopted by the Working Group in May 2020 (agenda item 2019-25). At the November 18, 2020 meeting, the Task Force directed a referral to the Working Group which is still pending. The NAIC staff anticipates addressing this referral when received in the interim.

f. Review of GAAP Exposures – Attachment L - (Fatima)

The attachment details the items currently exposed by FASB. NAIC staff recommends reviewing the issued ASUs under the standard SAP Maintenance process.

Industry is invited to provide additional comments on FASB projects and developments.

<u>Comment Deadline Exposure is Friday, April 30, 2021.</u> This date has been selected so items can be reviewed and considered in advance of the Blanks (E) Working Group public call anticipated in May.

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