Attachment 22

Statutory Accounting Principles (E) Working Group
March 15 Interim Meeting
Comment Letters Received

TABLE OF CONTENTS

COMMISSIONER OF SECURITIES & INSURANCE

MATTHEW M. ROSENDALE, SR.
COMMISSIONER

OFFICE OF THE
MONTANA STATE AUDITOR

Scott,

December 4, 2020

cc: Statutory Accounting Principles Working Group

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.

Sincerely,

Matt M. R, Jr.

Matt Rosendale

Phone: 1-800-332-6148 / (406) 444-2040 / Main Fax: (406) 444-3497
Securities Fax: (406) 444-5558 / PHS Fax: (406) 444-1980 / Legal Fax: (406) 444-3499
840 Helena Ave., Helena, MT 59601 Website: www.csimt.gov E-Mail: csi@mt.gov

D. Keith Bell, CPA
Senior Vice President
Accounting Policy
Corporate Finance
The Travelers Companies, Inc.
Phone : 860-277-0537
Email: d.keith.bell@travelers.com

Rose Albrizio, CPA
Vice President
Accounting Practices
Equitable
Phone: 201-743-7221
Email: rosemarie.albrizio@equitable.com

January 22, 2021

Mr. Dale Bruggeman, Chairman
Statutory Accounting Principles Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

RE: Items Exposed for Comment by the Statutory Accounting Principles Working Group on November 12, 2020 with Comments due January 22, 2021

Dear Mr. Bruggeman:

Interested parties appreciate the opportunity to comment on the exposure drafts released for comment by the NAIC Statutory Accounting Principles (E) Working Group (the Working Group). We offer the following comments:

INT 20-03: Troubled Debt Restructuring Due to COVID-19

This interpretation was effective for the specific purpose to address loan modifications in response to COVID-19. Consistent with the CARES act, this interpretation was only applicable for the term of the loan modification, but solely with respect to any modification, including a forbearance arrangement, interest rate modification, a repayment plan and other similar arrangement that defer or delays the payment of principal or interest for a loan that was not more than 30 days past due as of December 31, 2019. As determined in the CARES Act, this interpretation was originally only applicable for the period beginning on March 1, 2020 and ending on the earlier of December 31, 2020, or the date that was 60 days after the date on which the national emergency concerning the novel coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates.

On December 27, 2020, President Trump signed into law the *Consolidated Appropriations Act, 2021,* which slightly modified and extended the original CARES Act. These modifications included extending the provisions for temporary relief from troubled debt restructurings. Accordingly, on January 6, 2021, the provisions in this INT were tentatively extended to be applicable through the earlier of January 1, 2022 or the date that is 60 days after the date on which the national emergency concerning the novel coronavirus disease (COVID–19), outbreak declared by the President on March 13, 2020 under the National Emergencies Act terminates. With this extension, this INT's effective date corresponds with the current effective dates of the CARES Act. Unless the outbreak under the National Emergencies Act terminates, this INT will automatically expire on January 2, 2022 (to include year-end 2021 financial statements reporting).

Interested parties support the continued consistency with the Cares Act.

INT 20-07: Troubled Debt Restructuring of Certain Debt Investments Due to COVID-19

This interpretation was originally effective for the specific purpose to provide practical expedients in assessing whether modifications in response to COVID-19 are insignificant under SSAP No. 36 and in assessing whether a change is substantive under SSAP No. 103R. This interpretation will only be applicable for the period beginning on March 1, 2020 and ending on the earlier of December 31, 2020, or the date that is 60 days after the date on which the national emergency concerning the novel coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates. For clarity, this effective timeframe specifies when modifications in response to COVID-19 can be incorporated using the provisions of this interpretation. Once incorporated, the provisions of this interpretation will continue for the duration of the modification.

On December 27, 2020, President Trump signed into law the *Consolidated Appropriations Act, 2021,* which slightly modified and extended the original CARES Act. These modifications included extending the provisions for temporary relief from troubled debt restructurings. Accordingly, on January 6, 2021, the provisions in this INT were tentatively extended to be applicable through the earlier of January 1, 2022 or the date that is 60 days after the date on which the national emergency concerning the novel coronavirus disease (COVID–19), outbreak declared by the President on March 13, 2020 under the National Emergencies Act terminates. With this extension, this INT's effective date corresponds with the current effective dates of the CARES Act. Unless the outbreak under the National Emergencies Act terminates, this INT will automatically expire on January 2, 2022 (to include year-end 2021 financial statements reporting).

Interested parties support the continued consistency with the Cares Act.

Ref #2019-24: Levelized and Persistency Commission

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 <u>effective upon adoption</u>, 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.

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.

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.

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.

Ref #2019-34: Related Parties, Disclaimers of Affiliation and Variable Interest Entities

The Working Group exposed this agenda item, with detailed revisions to SSAP No. 25, as detailed in a draft labeled with the date of November 12, 2020.

That draft contained proposed revisions intended 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.

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.

Ref #2020-22: Accounting for Perpetual Bonds

The Working Group exposed revisions to *SSAP No. 26R—Bonds* to clarify that perpetual bonds are within scope as a "bond," and shall apply the yield-to-worst concept. Additionally, perpetual bonds that do not possess or no longer possess a call feature shall follow fair value reporting.

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."

Ref #2020-32: SSAP No. 26R - Disclosure Update

The Working Group moved this item to the active listing, categorized as nonsubstantive, and exposed revisions to *SSAP No. 26R—Bonds* to expand the called bond disclosures to also include bonds terminated early through a tender offer.

Interested parties have no comments on this item.

Ref #2020-33: SSAP No. 32R – Publicly Traded Preferred Stock Warrants

The Working Group moved this item to the active listing, categorized as nonsubstantive, and exposed revisions to *SSAP No. 32R—Preferred Stock* and *SSAP No. 86—Derivatives* to scope publicly traded preferred stock warrants into SSAP No. 32R with accounting at fair value.

Interested parties have no comments on this item.

Ref #2020-34: SSAP No. 43R – Government-Sponsored Enterprises – Credit Risk Transfer Transactions

The Working Group moved this item to the active listing, categorized as nonsubstantive, and exposed revisions to *SSAP No. 43R—Loan-Backed and Structures Securities* to 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.

Interested parties have no comments on this item.

Ref #2020-35: SSAP No. 97 – Audit Opinions

The Working Group moved this item to the active listing, categorized as nonsubstantive, and exposed this agenda item with a request for comments on the extent in which situations exist that hinder admittance of 8.b.iii. entities due to the inability to quantify a departure from U.S. GAAP.

Interested parties is 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.

Ref #2020-37: Separate Account – Product Identifiers

The Working Group moved this item to the active listing, categorized as nonsubstantive, and exposed the agenda item to solicit comments from state insurance regulators and industry regarding the degree of product identifying details needed to adequately assess the product features and reserve liabilities in the separate account. Particularly, this is requesting feedback on how to obtain increased product identifier reporting granularity in question 1.01 (product mix) of the separate account general interrogatories (GI 1.01). Additionally, feedback is requested regarding if a threshold should be established for when aggregate reporting would be permitted.

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.

Ref #2020-38: Pension Risk Transfer – Separate Account Disclosure

The Working Group moved this item to the active listing, categorized as nonsubstantive, and exposed the agenda item to solicit comments from state insurance regulators and industry regarding possible modifications to *SSAP No. 56—Separate Accounts* specific to pension risk transfer (PRT) products. Depending upon the feedback received, the Working Group would have several options available including, but not limited to, requiring the separate identification of pension risk transfer products (including transactions, guarantees, reserve assumptions, etc.) within existing disclosure requirements or the addition of a new general interrogatory (and perhaps new separate accounting reporting schedules / exhibits) to separate specific product detail that was previously reported in an aggregated format.

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.

Ref #2020-39: Interpretation Policy Statement Updates

The Working Group moved this item to the active listing, categorized as nonsubstantive, and exposed revisions to *NAIC Policy Statement on Maintenance of Statutory Accounting Principles* in *Appendix F—Policy Statements* regarding the issuance and adoption of accounting interpretations.

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.

Ref #2020-40: Clarification of Prescribed Practices

The Working Group moved this item to the active listing, categorized as nonsubstantive, and exposed proposed revisions to the Preamble Implementation Questions and Answers to clarify prescribed practices. These revisions 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 the financial statements subject to the independent audit requirements.

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).

Ref #2020-41: ASU 2020-06 - Convertible Instruments

The Working Group moved this item to the active listing, categorized as nonsubstantive, and 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, 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.

Interested parties have no comment on this item.

Ref #2020-42: *ASU 2020-07 - Presentation and Disclosures by Not-for-Profit Entities*

The Working Group moved this item to the active listing, categorized as nonsubstantive, and exposed revisions to *Appendix D—Nonapplicable GAAP Pronouncements* to reject *ASU 2020-07, Not-for-Profit Entities (Topic 958), Presentation and Disclosures by Not-for-Profit Entities for Contributed Nonfinancial Assets* as not applicable to statutory accounting.

Interested parties have no comment on this item.

*   *   *

Thank you for considering interested parties' comments. If you have any questions in the interim, please do not hesitate to contact us.

Sincerely,

D. Keith Bell   Rose Albrizio

cc: NAIC staff
Interested parties

Statutory Accounting Principles (E) Working Group
Maintenance Agenda Submission Form
Form A

Issue: Interpretation Policy Statement Updates

Check (applicable entity):

	P/C	Life	Health
Modification of Existing SSAP	☒	☒	☒
New Issue or SSAP	☐	☐	☐
Interpretation	☐	☐	☐

Description of Issue: This agenda item proposes edits to Appendix F of the *NAIC Policy Statement on Maintenance of Statutory Accounting Principles*, clarifying the requirements regarding the issuance and adoption of accounting interpretations.

Existing Authoritative Literature:

NAIC Policy Statement on Maintenance of Statutory Accounting Principles (Appendix F) documents the requirements of interpretation issuances and adoptions.

Development of Interpretations to SSAPs and Referencing Interpretations Within SSAPs

9. Interpretations will 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 interpretations do not amend, supersede or conflict with existing SSAP guidance, the interpretation is effective upon Working Group adoption unless specifically stated otherwise. The Working Group shall report the adopted interpretation to the 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.

11. In rare circumstances, the Working Group may adopt an interpretation which creates 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). 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. These interpretations can be adopted, overturned, amended or deferred only by a two-thirds majority of the Task Force membership.

12. As new SSAPs are developed, it is essential to review and, if necessary, update the status of interpretations related to SSAPs that are being replaced and/or new SSAPs being developed. The following options are available to the Working Group when a SSAP with existing interpretations is replaced:

a. **Interpretation of the new SSAP -** If the Working Group would like to maintain the interpretation, the new SSAP can be added to the list of statements interpreted by the interpretation. In addition, the status section of the new SSAP will list the interpretation number next to the heading "Interpreted by."

b. **Nullification** - When an interpretation is nullified by a subsequent SSAP or superseded by another interpretation, the interpretation is deemed no longer technically helpful, is shaded and moved to Appendix H (Superseded SSAPs and Nullified Interpretations), and the reason for the change is noted beneath the interpretation title. The status section of the SSAP describes the impact of the new guidance and the effect on the interpretation (for example, nullifies, incorporated in the new SSAP with paragraph reference, etc.).

c. **Incorporation** - When an interpretation is incorporated into a new SSAP, the Working Group can choose from the following two options:

i. If the interpretation only interprets one SSAP, then the interpretation is listed as being nullified under the "affects" section of the SSAP and is not referenced under the "interpreted by" section of the status page of the SSAP.

ii. If the interpretation references additional SSAPs, and the Working Group intends to maintain the guidance, the interpretation is unchanged (no nullification). The new SSAP (Summary of Issue section) reflects that the interpretation issue has been incorporated into the new statement.

Activity to Date (issues previously addressed by the Working Group, Emerging Accounting Issues (E) Working Group, SEC, FASB, other State Departments of Insurance or other NAIC groups): None

Information or issues (included in *Description of Issue*) not previously contemplated by the Working Group: None

Convergence with International Financial Reporting Standards (IFRS): N/A

Staff Recommendation: NAIC staff recommends that the Working Group move this item to the active listing, categorized as nonsubstantive and expose clarifying revisions to *NAIC Policy Statement on Maintenance of Statutory Accounting Principles* in Appendix F regarding the issuance and adoption of accounting interpretations.

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 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.

Staff Review Completed by: Jim Pinegar, NAIC Staff – August 2020

Status:
On November 12, 2020, the Statutory Accounting Principles (E) Working Group moved this item to the active listing, categorized as nonsubstantive, and exposed revisions to *NAIC Policy Statement on Maintenance of Statutory Accounting Principles* in *Appendix F—Policy Statements* regarding the issuance and adoption of accounting interpretations, as illustrated above.

G:\FRS\DATA\Stat Acctg\3. National Meetings\A. National Meeting Materials\2020\11-12-20 (Fall)\Exposures\20-39 - Interpretation Policy Statement.docx

**Statutory Accounting Principles (E) Working Group
Maintenance Agenda Submission Form
Form A**

Issue: Clarification of Prescribed Practices

Check (applicable entity):

	P/C	Life	Health
Modification of Existing SSAP	☒	☒	☒
New Issue or SSAP	☐	☐	☐
Interpretation	☐	☐	☐

Description of Issue:
This agenda item intends to clarify the definition and application of prescribed practices. This issue has been presented in response to questions received on existing references in the NAIC *Accounting Practices & Procedures Manual* (AP&P). In summary:

- Each state insurance department has the authority to regulate any insurance company that is licensed in their state. The AP&P Manual is not intended to preempt states' legislative and regulatory authority.

- 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, 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. ~~Ideally, t~~To prevent reporting entities from having to file ~~different~~ financial statements or reports prepared on different basis of accounting with differen~~ting~~ states, the practices permitted or prescribed by a domiciliary state will be accepted in all states in which a company is licensed. However, as noted above, the provisions of the AP&P Manual are not intended to preempt states' legislative or regulatory authority. Accordingly, each state in which a 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) in such supplemental financial information that is different from NAIC SAP, that practice(s) is also 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.

Examples of two possible situations:

Scenario 1: Non-domiciliary State A issues a state statute / bulletin that requires the filing of supplemental financial information and which requires the use of a prescribed accounting practice for all companies that are licensed and doing business within State A. Domiciliary State B does not issue a comparable state statute / bulletin.

Scenario 1 Conclusion: The reporting entity shall file statutory financial statements with their domiciliary state and the NAIC in accordance with the statutory accounting practices permitted or prescribed by the domiciliary state (State B). (These financial statements would be subject to the independent audit requirements per Model 205.) The reporting entity also shall file separate supplemental financial information with State A in accordance with the accounting practice mandated by that non-domiciliary state but shall include the prescribed practice disclosure of Note 1 in the supplemental financial information.

Scenario 2: Non-domiciliary State A issues a state statute / bulletin that allows an accounting practice for all companies that are licensed and doing business within State A. Domiciliary State B does not issue a comparable state statute / bulletin.

Scenario 2 Conclusion: The reporting entity shall file statutory financial statements with their domiciliary state and the NAIC in accordance with the statutory accounting practices permitted or prescribed by the domiciliary state (State B). (These financial statements would be subject to the independent audit requirements per Model 205.) The reporting entity then has the ability, but is not required, to file supplemental financial information in State A that reflects the accounting practice prescribed by that non-domiciliary state and shall include the prescribed practice disclosure of Note 1 in the supplemental financial information.

Existing Authoritative Literature:

Preamble

12. Codification is not intended to preempt state legislative and regulatory authority. While Codification is expected to be the foundation of a state's statutory accounting practices, it may be subject to modification by practices prescribed or permitted by a state's insurance commissioner. Statutory financial statements will continue to be prepared on the basis of accounting practices prescribed or permitted by the states. As a result, in 1998 the AICPA's Insurance Companies Committee determined that it will not be necessary for the Auditing Standards Board to grant the Codification status as an OCBOA since it will not be the sole basis for preparing statutory financial statements. Further, auditors will be permitted to continue to provide audit opinions on practices prescribed or permitted by the insurance department of the state of domicile.

Preamble Questions and Answers
Permitted Practices Advance Notification Requirement – Implementation 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 in a particular state. The NAIC AP&P Manual is not intended to preempt states' legislative and regulatory authority.

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.

The NAIC Model laws do not contain a definition of "prescribed practice," but references to prescribed practices are noted in the Model laws below. These are provided as reference. There are no revisions proposed to the Model Laws:

Model 205 – Annual Financial Reporting Model Regulation

Section 6 - Designation of Independent Certified Public Accountant

B. The insurer shall obtain a letter from the accountant, and file a copy with the commissioner stating that the accountant is aware of the provisions of the insurance code and the regulations of the Insurance Department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that Insurance Department, specifying such exceptions as he or she may believe appropriate.

Model 450 – Insurance Holding Company System Model Regulation with Reporting Forms and Instructions

Item 12. Financial Statements and Exhibits

The annual financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of the person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the state.

Model 785 – Credit for Reinsurance Model Law

Section 4. Qualified U.S. Financial Institutions

4.c. Maintains at least $250 million in capital and surplus when determined in accordance with the NAIC Accounting Practices and Procedures Manual, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices; and is

Model 787 – Term and Universal Life Insurance Reserve Financing Model Regulation

Section 6. The Actuarial Method

B. Valuation used for Purposes of Calculations

For the purposes of both calculating the Required Level of Primary Security pursuant to the Actuarial Method and determining the amount of Primary Security and Other Security, as applicable, held by or on behalf of the ceding insurer, the following shall apply: (1) For assets, including any such assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and

Activity to Date (issues previously addressed by the Working Group, Emerging Accounting Issues (E) Working Group, SEC, FASB, other State Departments of Insurance or other NAIC groups): None

Information or issues (included in *Description of Issue*) not previously contemplated by the Working Group: None

Convergence with International Financial Reporting Standards (IFRS): Not Applicable

Staff Recommendation:
NAIC staff recommends that the Working Group move this item to the active listing, categorized as nonsubstantive, and expose proposed revisions to the Preamble Implementation Questions and Answers to clarify prescribed practices. These revisions 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 the financial statements subject to the independent auditor

requirements. (NAIC staff do not believe revisions are necessary to paragraph 12 of the Preamble as that guidance does not limit practices to the domiciliary state and already confirms that the domiciliary state practices shall be reflected in the financial statements subject to audit. For reference paragraph 12 is below.)

12. Codification is not intended to preempt state legislative and regulatory authority. While Codification is expected to be the foundation of a state's statutory accounting practices, it may be subject to modification by practices prescribed or permitted by a state's insurance commissioner. Statutory financial statements will continue to be prepared on the basis of accounting practices prescribed or permitted by the states. As a result, in 1998 the AICPA's Insurance Companies Committee determined that it will not be necessary for the Auditing Standards Board to grant the Codification status as an OCBOA since it will not be the sole basis for preparing statutory financial statements. **Further, auditors will be permitted to continue to provide audit opinions on practices prescribed or permitted by the insurance department of the state of domicile**.

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 allows **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.

Staff Review Completed by:
Julie Gann - NAIC Staff
July 2020

Status:
On November 12, 2020, the Statutory Accounting Principles (E) Working Group moved this item to the active listing, categorized as nonsubstantive, and exposed proposed revisions to the Preamble Implementation Questions and Answers to clarify prescribed practices, as illustrated above. These revisions 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 the financial statements subject to the independent audit requirements.

G:\FRS\DATA\Stat Acctg\3. National Meetings\A. National Meeting Materials\2020\11-12-20 (Fall)\Exposures\20-40 - Prescribed Practice.docx

Statutory Accounting Principles (E) Working Group

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.

Acadia Capital Solutions, Inc.
9811 W. Charleston Blvd., Suite 2-520
Las Vegas, NV 89117
Email: jthomure@acadiacs.com

ACADIA | Capital Solutions

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.

cc: Julie Gann (jgann@naic.org), Robin Marcotte (rmarcotte@naic.org), Jim Pinegar (jpinegar@naic.org), Fatima Sediqzad (fsediqzad@naic.org), Jake Stultz (jstultz@naic.org)

Wayne Goodwin
former NC Insurance Commissioner (2009-2016)
8306 Wycombe Lane, Raleigh NC 27615
Email gwaynegoodwin@gmail.com

To: **Dale Bruggeman, Chair**
Statutory Accounting Principles (E) Working Group
National Association of Insurance Commissioners (NAIC)

From: **Hon. Wayne Goodwin, former NC Insurance Commissioner**

Date: **January 19, 2021**

Re: **Comment Period / Revised Proposed Changes to SSAP No. 71 – Policy Acquisition Costs and Commissions**

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.

# # #

cc: Julie Gann (jgann@naic.org), Robin Marcotte (rmarcotte@naic.org), Jim Pinegar (jpinegar@naic.org), Fatima Sediqzad (fsediqzad@naic.org), Jake Stultz (jstultz@naic.org)

GUGGENHEIM

GUGGENHEIM LIFE AND ANNUITY COMPANY
401 PENNSYLVANIA PARKWAY
SUITE 300
INDIANAPOLIS, IN 46280

January 22, 2021

Mr. Dale Bruggeman, Chairman
Statutory Accounting Principles Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

RE: Ref #2019-24 Levelized and Persistency Commission

Dear Mr. Bruggeman,

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 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.

Sincerely,

Ellyn M. Nettleton

Ellyn M. Nettleton
Chief Accounting Officer

cc: NAIC Staff

[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.

Atlantic Corporate Center
2317 Route 34, Suite 2B
Manasquan, NJ 08726
732-201-4133
CHIEF EXECUTIVE OFFICER: Thomas B. Considine

PRESIDENT: Rep. Matt Lehman, IN
VICE PRESIDENT: Asm. Ken Cooley, CA
TREASURER: Asm. Kevin Cahill, NY
SECRETARY: Rep. Joe Fischer, KY

IMMEDIATE PAST PRESIDENTS:
Sen. Jason Rapert, AR
Sen. Travis Holdman, IN

December 7, 2020

Dale Bruggeman
Chair
NAIC Statutory Accounting Principles (E) Working Group

Re: SSAP No. 71 - Policy Acquisition Costs and Commissions

Dear Chair Bruggeman & Members of the Working Group:

I write to you today on behalf and at the request of the elected leadership of the National Council of Insurance Legislators ("NCOIL")[1] regarding the NAIC's Statutory Accounting Principles Working Group's (WG) efforts to update SSAP No. 71 titled "Policy Acquisition Costs and Commissions." 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

[1] *NCOIL is a national legislative organization with the nation's 50 states as members, represented principally by legislators serving on their states' insurance and financial institutions committees. NCOIL writes Model Laws in insurance and financial services, works to preserve the State jurisdiction over insurance as established by the McCarran-Ferguson Act seventy-five years ago, and to serve as an educational forum for public policymakers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making State policy when it comes to insurance and educate State legislators on current and longstanding insurance issues.*

if 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.

Very truly yours,

Thomas B. Considine
Chief Executive Officer
NCOIL

cc:

The Honorable Matt Lehman
Indiana Representative
NCOIL President

The Honorable Ken Cooley
California Assemblyman
NCOIL Vice President

The Honorable Kevin Cahill
New York Assemblyman
NCOIL Treasurer

The Honorable Joe Fischer
Kentucky Representative
NCOIL Secretary

The Honorable Jason Rapert
Arkansas Senator
NCOIL Immediate Past President

The Honorable Travis Holdman
Indiana Senator
NCOIL Immediate Past President

The Honorable Ray Farmer
NAIC President
Director
South Carolina Department of Insurance

The Honorable David Altmaier
NAIC President-Elect
Commissioner
Florida Office of Insurance Regulation

The Honorable Dean Cameron
NAIC Vice President
Director
Idaho Department of Insurance

The Honorable Chlora Lindley-Myers
NAIC Secretary-Treasurer
Director
Missouri Department of Commerce and Insurance

The Honorable Mike Consedine
Chief Executive Officer
NAIC

D. Keith Bell, CPA
Senior Vice President
Accounting Policy
Corporate Finance
The Travelers Companies, Inc.
860-277-0537; FAX 860-954-3708
Email: d.keith.bell@travelers.com

Rose Albrizio, CPA
Vice President
Accounting Practices
AXA Equitable.
201-743-7221
Email: rosemarie.albrizio@equitable.com

February 24, 2021

Mr. Dale Bruggeman, Chairman
Statutory Accounting Principles Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

RE: Ref #2020-36, Derivatives Hedging Fixed Indexed Products

Dear Mr. Bruggeman:

Interested parties would like to thank the Statutory Accounting Principles Working Group (SAPWG) for the opportunity to comment on the exposed 2020-36, Derivatives Hedging Fixed Indexed Products

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.

* * * * *

If you have any questions in the interim, please do not hesitate to contact us

Sincerely,

D. Keith Bell   Rose Albrizio

cc: Interested parties