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May 29, 2019

Mr. Mike Yanacheak
Chair, Annuity Disclosure (A) Working Group
National Association of Insurance Commissioners

Re: 3/7/19 Draft of Proposed Revisions to the NAIC Annuity Disclosure Model Regulation (#245)

Dear Mr. Yanacheak:

These comments are submitted on behalf of the American Council of Life Insurers (ACLI)[1] in response to the request for comments on the 3/7/19 draft of proposed revisions to the NAIC Annuity Disclosure Model Regulation (Model Regulation), relating to illustrations for fixed indexed annuities, recently exposed for comment by the NAIC Annuity Disclosure Working Group (Working Group).

ACLI has long standing policy in support of the Model Regulation. The 3/7/19 draft would make significant changes to the Model Regulation that merited appropriate consideration and vetting, which our member companies have undertaken.

ACLI appreciates the Working Group's efforts to modify the Model Regulation to allow illustrations for fixed indexed annuities that would reflect innovations in the marketplace and enhance consumers' understanding of annuities they are contemplating purchasing. At the same time, ACLI shares concerns raised by other industry commenters with respect to certain provisions of the 3/7/19 draft that could jeopardize illustration of many indices of fixed indexed annuities currently in the marketplace and consumers' understanding of the benefits and features of these products.

ACLI's key concerns relate to the following: (i) the prohibition of illustration of indices that have not been in existence for at least 20 calendar years unless all the criteria in Sections 6.F.(9)(b) are met; (ii) the use of the term "indices" rather than "components" in Section 6.F.(9)(b)(i); (iii) the criterion that the algorithm or method of combining components be fixed in Section 6.F.(9)(iii); (iv) the criterion that the algorithm or method of supporting an index be available for inspection at the request of the

[1]The American Council of Life Insurers (ACLI) advocates on behalf of 280 member companies dedicated to providing products and services that promote consumers' financial and retirement security. 90 million American families depend on our members for life insurance, annuities, retirement plans, long-term care insurance, disability income insurance reinsurance, dental and vision and other supplemental benefits. ACLI represents member companies in state, federal and international forums for public policy that supports the industry marketplace and the families that rely on life insurers' products for peace of mind. ACLI members represent 95 percent of industry asses in the United States. Learn more at www.acli.com.

commissioner or consumer in Section 6.F.(9)(iv); and (v) the requirements to provide an explanation of the algorithm in Sections 6.G.(4)(i)(IV) and (ii)(II).

Explanations of ACLI's concerns and other comments are provided below. Proposed modifications to the 3/7/19 draft to address ACLI's concerns are provided below and reflected in the attached ACLI mark-up of the 3/7/19 draft, set forth in Attachment 1.

Specific ACLI Concerns and Other Comments regarding the 3/7/19 Draft

Section 6.F.(9)(b)

Many indices that underlie existing fixed annuity products have not been in existence for 20 calendar years. As a result, the proposed increase from 10 to 20 years as the number of years an index would be required to have been in existence to be illustrated, unless all the criteria in Sections 6.F.(9)(b) are met, would jeopardize illustration of many fixed indexed annuities currently in the marketplace and, most importantly, limit consumers' understanding of these products.

ACLI urges modification to Section 6.F.(9)(b) to allow illustration of indices that have been in existence at least 15 years, rather than 20 years, or meet all the criteria in Sections 6.F.(9)(b). A 15-year span would ensure the ability to capture distinct 10 year high and low scenarios and be less likely to jeopardize illustration of existing fixed indexed annuities.

More specifically, ACLI urges modification to Section 6.F.(9)(b) to read as follows:

> (b) If any index utilized in determination of an account value has not been in existence for at least fifteen (15) calendar years, indexed returns for that index shall not be illustrated unless all of the following criteria are met:

Section 6.F.(9)(b)(i)

ACLI is concerned the term "indices" as used in this provision is too narrow, and would not include many components of existing fixed indexed annuities, such as exchange traded funds.

Accordingly, ACLI urges modification to Section 6.F.(9)(b)(i) to substitute the word "indices" with the word "component," to read as follows:

> (i) The index is a combination of components, each of which has been in existence for at least fifteen (15) calendar years. For purposes of this section, a component is, or a component is comprised of other components each of which is, a financial instrument or a published index that has its own verifiable performance history for at least fifteen (15) years prior to issue of the fixed indexed annuity;

Section 6.F.(9)(b)(ii)

Consistent with ACLI's proposed modification to Section 6.F.(9)(b), ACLI urges modification to Section 6.F.(9)(b)(ii) to read as follows:

> (ii) The method of combination is such that a unique fifteen calendar year history of the index can be constructed; and

Section 6.F.(9)(b)(iii)

The criterion that the algorithm or other method of combining components be fixed would not consider common de minimis and other changes to indices, like those necessitated by discontinuance of components (such as LIBOR), made in accordance with index sponsors' governance protocols.

Accordingly, ACLI urges modification to Section 6.F.(9)(b)(iii) to read as follows:

> (iii) Any algorithm or method of combining the components shall be fixed from the published/live date of the index except for de minimis changes and changes necessitated by external circumstances and made pursuant to the index provider's established governance rules;

Section 6.F.(9)(b)(iv)

ACLI agrees that a consumer contemplating the purchase of a fixed indexed annuity should be provided information about the annuity's underlying indices, the components of such indices and the risks associated with such indices and components. However, the requirement for "[a]ny algorithm or other method that is supporting such an index …" to be available for inspection at request of the commissioner or consumer gives rise to concern for a number of reasons.

The intended breadth of the requirement is unclear. Information relating to the algorithm may be proprietary or confidential, or subject to other contractual limitations on its disclosure.

Consumers are likely to obtain more understandable and meaningful information about the annuity's underlying indices, their components, and any associated risks through other disclosures required under the Model Regulation, including those required under Section 6.F.(14) and Section 6.G.(4)(b). Toward that end, ACLI proposes a new required disclosure, to be set forth in Section 6.G.(5)(f), as explained below.

Additionally, the commissioner is likely to have obtained necessary information relating to the algorithm in connection with the filing of the fixed indexed annuity for approval, and the commissioner may obtain any further necessary information upon examination of the insurer.

For these reasons, ACLI recommends deletion of Section 6.F.(9)(b)(iv).

Section 6.F.(9)(b)(v)

This provision is unnecessary since an index cannot be illustrated in the first place unless it has been in existence for the number of years specified in Section 6.F(9)(b) or meets the criteria set forth in Section 6.F.(9)(b).

Accordingly, ACLI recommends deletion of Section 6.F.(9)(b)(v).

Section 6.F.(9)(c)

In view of ACLI's proposed modification to Section 6.F.(9)(b) to allow illustration of an index that has been in existence at least 15 years, rather than 20 years, or meets all the criteria in Section 6.F.(9)(b), ACLI believes Section 6.F.(9)(c) should be not deleted, as proposed in the 3/7/19 draft, but instead should be reinserted, with its existing language modified to take into account the changes proposed to be made to Section 6.F.(9)(b).

Accordingly, ACLI suggests reinsertion of Section 6.F.(9)(c) to read as follows:

> (c) If any index utilized in determination of an account value meets the criteria of Section 6.F.(9)(b), but has less than twenty (20) calendar years of history, the ten (10) calendar year periods that define the low and high scenarios shall be chosen from the exact number of years of unique history constructed pursuant to Section 6.F.(9)(b)(ii);

Section 6.G.(4)(b)(i)

Consistent with ACLI's proposed modifications to Section 6.F.(9)(b) and Section 6.F.(9)(b)(i), ACLI urges modification to Section 6.G.(4)(b)(i) to read as follows:

> (i) For fixed indexed annuities where the index is a combination of components and has not been in existence for fifteen (15) calendar years, but the criteria in Section 6.F.(9)(b) have been met, the following additional statements:

Section 6.G.(4)(b)(i)(I)

Consistent with ACLI's proposed modifications to Section 6.F.(9)(b) and Section 6.F.(9)(b)(i), ACLI urges modification to Section 6.G.(4)(b)(i)(I) to read as follows:

> (I) The index has not been in existence for fifteen (15) calendar years, but it is a weighted average of components that have each been in existence for at least fifteen (15) calendar years;

Section 6.G.(4)(b)(i)(II)

To avoid use of the word "hypothetical" and to make this required statement clearer for consumers, ACLI suggests substitution of the current language of Section 6.G.(4)(b)(i)(II) with the following:

> (II) Some of the illustrated index values for years for which the index was not in existence are calculations of values the index would have had if it was in existence;

Section 6.G.(4)(b)(i)(III)

Consistent with ACLI's proposed modification to Section 6.F.(9)(b)(i) and comments relating Section 6.F.(9)(b)(iii), ACLI urges modification to Section 6.G.(4)(b)(i)(III) to read as follows:

> (III) Except for de minimis changes and changes necessitated by external circumstances, either the weights used in combining the components are constant over time, or the weights are based on an algorithm that is consistently applied over time but may produce different weights in different years;

Section 6.G.(4)(b)(i)(IV)

This provision provides that the consumer may request further explanation of the algorithm used to determine the weights. Consistent with ACLI's comments relating to Section 6.F.(9)(b)(iv), information relating to the algorithm may be proprietary, confidential and otherwise prohibited from disclosure.

Moreover, ACLI believes consumers are likely to obtain more understandable and meaningful information about a fixed indexed annuity's underlying indices, their components, and any associated risks through other disclosures already required under the Model Regulation, including those required under Section 6.F.(14) and Section 6.G.(4)(b) and the proposed new required disclosures described in Sections 6.G(4)(b)(i)(I) – (III).

Accordingly, ACLI recommends deletion of Section 6.G.(4)(b)(i)(IV).

Section 6.G.(4)(b)(ii)

Consistent with ACLI's proposed modifications to Section 6.F.(9)(b) and Section 6.F.(9)(b)(i), ACLI urges modification of Section 6.G.(4)(b)(ii) to read as follows:

> (ii) For fixed indexed annuities where the index is a combination of components and has been in existence for fifteen (15) calendar years, the following additional statements:

Section 6.G.(4)(b)(ii)(I)

Consistent with ACLI's comments relating to Section 6.F.(9)(b)(iii) and Section 6.G.(4)(b)(i)(III), ACLI urges modification to Section 6.G.(4)(b)(ii)(I) to read as follows:

> (I) Except for de minimis changes and changes necessitated by external circumstances, either the weights used in combining the components are constant over time, or the weights are based on an algorithm that is consistently applied over time but may produce different weights in different years;

Section 6.G.(4)(b)(ii)(II)

Consistent with our comments relating to Section 6.F.(9)(b)(iv) and Section 6.G.(4)(b)(i)(IV), ACLI recommends deletion of Section 6.G.(4)(b)(ii)(II).

Section 6.G.(5)(f)

ACLI is supportive of the addition of a new disclosure that would inform the consumer of the number of illustrated years the index has been live and the number of years for which illustrated values are calculations of values the index would have had if it was in existence.

Accordingly, ACLI suggests that the following language be substituted for the current language of Section 6.G.(5)(f) and that the current language of Section 6.G.(5)(f) be moved into a new Section 6.G.(5)(g):

> (f) For fixed indexed annuities where the index is a combination of components and has not been in existence for fifteen (15) years, but the criteria in Section 6F(9)(b) have been met, specify the number of years the index has been live and the number of years for which illustrated values are calculations of values the index would have had if it was in existence.

ACLI thanks the Working Group for its consideration of our views. We would be glad to answer questions relating to any of the above or the attached mark-up of the 3/7/19 draft.

Sincerely,

Roberta B. Meyer

Brian Bayerle

ATTACHMENT 1

ACLI Mark-Up of 3/7/19 NAIC Draft of Proposed Revisions to the Annuity Disclosure Model Regulation

Section 6.F:

F. An illustration shall conform to the following requirements:

(1) The illustration shall be labeled with the date on which it was prepared;

(2) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the disclosure document (e.g., the fourth page of a seven-page disclosure document shall be labeled "page 4 of 7 pages");

(3) The assumed dates of premium receipt and benefit payout within a contract year shall be clearly identified;

(4) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the contract is assumed to have been in force;

(5) The assumed premium on which the illustrated benefits and values are based shall be clearly identified, including rider premium for any benefits being illustrated;

(6) Any charges for riders or other contract features assessed against the account value or the crediting rate shall be recognized in the illustrated values and shall be accompanied by a statement indicating the nature of the rider benefits or the contract features, and whether or not they are included in the illustration;

(7) Guaranteed death benefits and values available upon surrender, if any, for the illustrated contract premium shall be shown and clearly labeled guaranteed;

(8) The non-guaranteed elements underlying the non-guaranteed illustrated values shall be no more favorable than current non-guaranteed elements and shall not include any assumed future improvement of such elements. Additionally, non-guaranteed elements used in calculating non- guaranteed illustrated values at any future duration shall reflect any planned changes, including any planned changes that may occur after expiration of an initial guaranteed or bonus period;

(9) In determining the non-guaranteed illustrated values for a fixed indexed annuity, the index-based interest rate and account value shall be calculated for three different scenarios: one to reflect historical performance of the index for the most recent ten (10) calendar years; one to reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the least index value growth (the "low scenario"); one to reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the most index value growth (the "high scenario"). The following requirements apply:

(a) The most recent ten (10) calendar years and the last twenty (20) calendar years are defined to end on the prior December 31, except for illustrations prepared during the first three (3) months of the year, for which the end date of the calendar year period may be the December 31 prior to the last full calendar year;

(b) If any index utilized in determination of an account value has not been in existence for at least ~~twenty~~ fifteen (~~20~~15) calendar years, indexed returns for that index shall not be illustrated unless all of ~~all of~~ the following criteria are met:

(i) The index is a combination of ~~indices~~ components, each of which has been in existence for at least ~~twenty~~ fifteen (~~20~~15) calendar years. For purposes of this section, a component is, or a component is comprised of other components each of which is, a financial instrument or a published index that has its own verifiable performance history for at least fifteen (15) years prior to issue of the fixed indexed annuity;

(ii) The method of combination is such that a unique ~~twenty~~ fifteen (~~20~~15) calendar year history of the index can be constructed; and

(iii) Any algorithm or method of combining the components shall be fixed from the published/live date of the index except for de minimis changes and changes necessitated by external circumstances and made pursuant to the index provider's established governance rules ~~Any algorithm or other method of combining the indices shall be fixed from the creation of the index~~; ~~and~~

~~(iv) Any algorithm or other method that is supporting such an index and is included in the illustration shall be made available for inspection at the request of the commissioner or the consumer.~~

~~(v) If the fixed indexed annuity provides an option to allocate account value to more than one indexed or fixed declared rate account, and one or more of those indexes has not been in existence for at least twenty (20) years, the allocation to such indexed account(s) shall be assumed to be zero;~~

(c) If any index utilized in determination of an account value meets the criteria of Section 6F(9)(b) but has less than twenty (20) calendar years of history, the ten (10) calendar year periods that define the low and high scenarios shall be chosen from the exact number of years of unique history constructed pursuant to 6F(9)(b)(ii);

[REMAINDER OF THE TEXT IN THIS SECTION IS UNCHANGED SAVE RENUMBERING]

Section 6.G.(4).(b)

(b) For fixed indexed annuities:

This illustration assumes the index will repeat historical performance and that the annuity's current non-guaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, will not change. It is likely that the index **will not** repeat historical performance, the non-guaranteed elements **will** change, and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.
The values in this illustration are **not** guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information; ~~and~~

(i) For fixed indexed annuities where the index is a combination of ~~other indices~~ components and has not been in existence for ~~twenty~~ fifteen (~~20~~15) calendar years, but the criteria in Section 6F(9)(b) have been met, the following additional statements:

(I) The index has not been in existence for ~~twenty~~ fifteen (~~20~~15) calendar years, but it is a weighted average of ~~indices~~ components that have each been in existence for at least ~~twenty~~ fifteen (~~20~~15) calendar years;

(II) Some of the illustrated index values for years for which the index was not in existence are calculations of values the index would have had if it was in existence ~~Because the index has not been in existence for twenty (20) calendar years, some of the values of the index shown are hypothetical~~;

(III) Except for de minimis changes and changes necessitated by external circumstances, ~~E~~either the weights used in combining the ~~indices~~ components are constant over time, or the weights are based on an algorithm that is consistently applied over time but may produce different weights in different years;

~~(IV) The consumer may request further explanation of the algorithm used to determine the weights;~~

(ii) For fixed indexed annuities where the index is a combination of ~~other indices~~ components and has been in existence for ~~twenty~~ fifteen (~~20~~15) calendar years, the following additional statements:

(I) Except for de minimis changes and changes necessitated by external circumstances, ~~E~~either the weights used in combining the ~~indices~~ components are constant over time, or the weights are based on an algorithm that is consistently applied over time but may produce different weights in different years;

~~(II) The consumer may request further explanation of the algorithm used to determine the weights; and~~

Section 6.G.(5)

(5) Additional explanations as follows:

(a) Minimum guarantees shall be clearly explained;

(b) The effect on contract values of contract surrender prior to maturity shall be explained;

(c) Any conditions on the payment of bonuses shall be explained;

(d) For annuities sold as an IRA, qualified plan or in another arrangement subject to the required minimum distribution (RMD) requirements of the Internal Revenue Code, the effect of RMDs on the contract values shall be explained;

(e) For annuities with recurring surrender charge schedules, a clear and concise explanation of what circumstances will cause the surrender charge to recur;

(f) For fixed indexed annuities where the index is a combination of components and has not been in existence for fifteen (15) years, but the criteria in Section 6F(9)(b) have been met, specify the number of years the index has been live and the number of years for which illustrated values are calculations of values the index would have had if it was in existence; and

(~~f~~g) A brief description of the types of annuity income options available shall be explained, including:

(i) The earliest or only maturity date for annuitization (as the term is defined in the contract);

(ii) For contracts with an optional maturity date, the periodic income amount for at least one of the annuity income options available based on the guaranteed rates in the contract, at the later of age seventy (70) or ten (10) years after issue, but in no case later than the maximum annuitization age or date in the contract;

(iii) For contracts with a fixed maturity date, the periodic income amount for at least one of the annuity income options available, based on the guaranteed rates in the contract at the fixed maturity date; and

(iv) The periodic income amount based on the currently available periodic income rates for the annuity income option in item (ii) or item (iii), if desired.