LIFE INSURANCE AND ANNUITIES (A) COMMITTEE

Draft Pending Adoption

Date: 4/21/21

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

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

1. Adopted its 2020 Fall National Meeting Minutes

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

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

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

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

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

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

4. Discussed and Adopted Modifications to its 2021 Charges

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Discussed Life Insurer Practices Related to COVID-19

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Draft: 3/24/21

Accelerated Underwriting (A) Working Group
Virtual Meeting (*in lieu of meeting at the 2021 Fall National Meeting*)
March 19, 2021

The Accelerated Underwriting (A) Working Group met March 19, 2021. The following Working Group members participated: Mark Afable, Chair (WI); Grace Arnold, Vice Chair (MN); Jason Lapham (CO); Russ Gibson (IA); Rich Piazza (LA); Rhonda Ahrens and Laura Arp (NE); Chris Aufenthie (ND); Lori Barron (OH); Elizabeth Kellher Dwyer (RI); and Lichou Lee (WA). Also participating were: Jodi Lerner (CA); and Nour Benchaaboun (MD).

1. Received a Report from the Ad Hoc Drafting Group

Commissioner Afable reminded the Working Group that there were two groups of state insurance regulators that had volunteered to participate in two efforts: 1) a drafting group—to collect the information from the Working Group's presentations and develop language for a work product for the larger Working Group and interested parties to react to; and 2) a liaison group—to monitor and apprise the drafting group of the activities of other NAIC groups that are touching on many of the same topics as the Accelerated Underwriting (A) Working Group. He explained that these two groups have combined efforts and now comprise a single drafting group led by Commissioner Arnold. He said the focus is to draft an educational report to explore accelerated underwriting (AU) in life insurance and offer guidance to state insurance regulators, industry, consumer advocates and other stakeholders.

Commissioner Arnold updated the Working Group on the newly merged drafting group's progress. She said the drafting group last met on March 10 and is scheduled to meet every three weeks to continue working on drafting language for an educational report. She said the report will be narrowly focused on life insurance underwriting to avoid conflicting with the work of other NAIC groups, such as the Innovation and Technology (EX) Task Force, the Big Data and Artificial Intelligence (EX) Working Group, the Casualty Actuarial and Statistical (C) Task Force, and the Privacy Protections (D) Working Group.

Commissioner Arnold said the drafting group is working from the Nov. 16, 2020, outline (*see NAIC Proceedings Fall 2020, Life Insurance and Annuities (A) Committee, Attachment Two*) that was distributed to the Working Group during its Nov. 17, 2020, meeting. She said state insurance regulators have volunteered to work on language to fill in the outline. She said the goal is to transform the outline into more of a paper that can be exposed for comment. She said the drafting group hopes to have some sections of the outline ready to expose for comment shortly after its next meeting, scheduled for March 31.

Birny Birnbaum (Center for Economic Justice—CEJ) said he had submitted comments on March 18 suggesting revisions to the Nov. 16, 2020, outline. Ms. Arnold thanked Mr. Birnbaum for his comments and agreed to reach out with any questions once the drafting group has a chance to review his suggestions. Peter Kochenburger (University of Connecticut School of Law) said that the report should incorporate and build upon the NAIC Principles on Artificial Intelligence (AI Principles). He said one of the purposes of the AI Principles is to guide, which would be particularly useful in the context of this report. Commissioner Afable said he agrees that the AI Principles were intended to guide the work undertaken by other NAIC groups, like this Working Group, and that the AI Principles would be taken into account in the Working Group's report.

Having no further business, the Accelerated Underwriting (A) Working Group adjourned.

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Draft: 3/31/21

Annuity Suitability (A) Working Group
Virtual Meeting (*in lieu of meeting at the 2020 Fall National Meeting*)
March 25 and March 9, 2021

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met March 25 and March 9, 2021. The following Working Group members participated: Doug Ommen, Chair (IA); Amanda Baird, Vice Chair, and Michelle Brugh Rafeld (OH); Jimmy Gunn and Steve Ostlund (AL); Jodi Lerner (CA); Fleur McKendell (DE); Dean L. Cameron (ID); Shannon Lloyd and Tate Flott (KS); Renee Campbell (MI); Bruce R. Ramge, Martin Swanson and Tom Green (NE); Keith Nyhan and Denise Lamy (NH); Andrew Schallhorn and Cuc Nguyen (OK); Brian Hoffmeister (TN); Matt Gendron and Sarah Neil (RI); and Richard Wicka (WI). Also participating was: Robert Wake (ME).

1. Adopted its Feb. 22, 2021, and Dec. 14, 2020, Minutes

The Working Group met Feb. 22, 2021, and Dec. 14, 2020. During these meetings, the Working Group discussed the draft Frequently Asked Questions (FAQ) guidance document (*see NAIC Proceedings – Spring 2021, Life Insurance and Annuities Committee, Attachment Two-B1*), which the Working Group developed as one way for it to complete the second part of its 2020 charge to "[c]onsider how to promote greater uniformity across NAIC member jurisdictions." The Working Group also discussed the comments received on the draft and revisions to the draft based on the comments received.

Mr. Ostlund made a motion, seconded by Ms. Rafeld, to adopt the Working Group's Feb. 22, 2021 (Attachment Two-A) and Dec. 14, 2020, minutes (Attachment Two-B). The motion passed unanimously.

2. Discussed Comments on a Draft FAQ Guidance Document

Commissioner Ommen said that during its Feb. 22 meeting, the Working Group began discussion, but did not finish, of revisions based on the comments received to the draft FAQ guidance document. The Working Group continued with the discussion of comments received on Question 9 in the conflict of interest section using the comment chart NAIC staff developed (*see NAIC Proceedings – Spring 2021, Life Insurance and Annuities (A) Committee, Attachment Two-B2*).

Commissioner Ommen directed the Working Group's attention to the Joint Trades'—the American Council of Life Insurers (ACLI), the Committee of Annuity Insurers (CAI), the Financial Services Institute (FSI), the Indexed Annuity Leadership Council (IALC), the Insured Retirement Institute (IRI) and the National Association for Fixed Annuities (NAFA)—suggested revisions to Question 9. Jason Berkowitz (IRI) said the Joint Trades submitted a supplemental comment letter revising its suggested revisions to Question 9 to address concerns discussed during the Working Group's Dec. 14, 2020, meeting. He discussed the revised suggested revisions. Birny Birnbaum (Center for Economic Justice—CEJ) suggested that before considering this question, the Working Group should add a question describing why the Working Group decided to define "material conflict of interest" as not including cash or non-cash compensation. The Working Group discussed Mr. Birnbaum's suggestion. After additional discussion, the Working Group decided to add a new question reflecting Mr. Birnbaum's suggestion. The Working Group also decided to include the Joint Trades' revised suggested revisions to Question 9 in the next FAQ draft for additional discussion during its next meeting.

The Working Group next discussed the suggested revisions to Question 10, which discusses what a producer must do to identify and avoid or reasonably manage a material conflict of interest as provided in Section 6A(3). The Federation of Americans for Consumer Choice's (FACC's) and the Joint Trades' suggested revisions to this question. After discussion, the Working Group decided to accept the Joint Trades' suggested revisions.

No comments were received on Question 11.

The Working Group discussed the Joint Trades' and the FACC's suggested revisions to Question 12. Question 12 discusses the types of business practices Section 6C(2)(h) is intended to address. After discussion, the Working Group agreed to accept the Joint Trades' suggested revisions. The Working Group also accepted Mr. Gendron's suggested addition to the Joint Trades' suggested revisions concerning the language's consistency with other state and federal regulatory requirements. The Working Group also discussed further detailing the meaning of "specific" or "particular" annuity product. After additional discussion on the issue, the Working Group decided not to add anything to the FAQ on the subject because of unintended consequences

of such language of potentially narrowing the scope or intent the language in Section 6C(2)(h). In addition, for similar reasons, the Working Group decided not include language related to the intent of "limited period of time."

The Working Group next discussed the Joint Trades' suggestion to add a new FAQ under a new Safe Harbor section. The proposed question discusses whether insurers and producers are required to comply with the requirements of the revised *Suitability in Annuity Transactions Model Regulation* (#275) if they are acting in compliance with rules imposed by other regulators that meet or exceed the revised model's requirements—so-called "comparable standards." Mr. Berkowitz said that the Joint Trades suggest adding this question because there seems to be some differences of opinion in terms of what was intended by the safe harbor provision. This question is meant to clarify this for the states and based on their understanding of its intent, which is that recommendations and sales of annuities made in compliance with comparable standards shall satisfy the revised model's requirements.

The Working Group discussed to what extent the comparable standards in the safe harbor apply to specific requirements in the revised model, such as producer training. Mr. Berkowitz acknowledged that for some of the comparable standards, those standards may not always have listed the explicit training requirements in Section 7 of the revised model. However, he said the Joint Trades believe that it would be difficult for a registered broker-dealer or a registered investment advisor to satisfy their U.S. Securities and Exchange Commission (SEC) best interest rule obligations or fiduciary obligations if they are not properly training on the products they are recommending.

Commissioner Ommen acknowledged Mr. Berkowitz's comments, but he noted that one issue that remains unclear is whether training provided for variable annuities is going to be adequate in terms of comparability with training for fixed or fixed indexed annuities. Wes Bissett (Independent Insurance Agents & Brokers of America—IIABA) expressed his concern with the Joint Trades' proposed new question and answer and their interpretation of the safe harbor provision. He said the IIABA interprets the safe harbor as applying to a financial professional's recommendations and sales of annuities—not broadly as an exemption from all the supervisory obligations for insurers. Mr. Berkowitz disagreed with Mr. Bissett's characterization that the Joint Trades' interpretation of the safe harbor as an exemption from all supervisory obligations for insurers. He pointed out the language in the new question on the subject. He also explained how the Joint Trades view the safe harbor provision with respect to an insurer's supervisory responsibilities. Commissioner Ommen explained his concerns with the Joint Trades' question and answer, which appears to exempt financial professionals relying on the same harbor and its comparable standard provisions from the revised model's requirements. The Working Group discussed his concerns. After additional discussion, the Working Group deferred deciding on the Joint Trades' suggested new FAQ to allow the Joint Trades time to submit revised language addressing the Working Group's concerns.

3. Discussed Producer Training Comments on a Draft FAQ Guidance Document

Commissioner Ommen said NAIC staff prepared a comment chart reflecting the comments and suggested revisions to the FAQ guidance document on the revised model's producer training requirements (*see NAIC Proceedings – Spring 2021, Life Insurance and Annuities Committee, Attachment Two-B3*). He said he would like to use this chart to facilitate the Working Group's discussion. There was no objection.

Commissioner Ommen explained that most of the comments received on the producer training section of the FAQ suggest adding new questions to identify and address issues the FAQ did not cover or were not fully developed. Mr. Berkowitz discussed the Joint Trades' suggested new questions and answers on producer training completed prior to a state's adoption of the model. He explained that the Joint Trades wanted to clarify this issue to assist producers and the states in understanding when and under what circumstances a producer would need to take the updated four-hour credit training or the one-hour credit alternative training. He said the intent of the Joint Trades' suggested questions was to help ensure that a producer does not have to unnecessarily be required to take ether the four-hour credit course or the one-hour credit course more than one time as the states move to adopt the revised model.

Commissioner Ommen acknowledged that this issue with training has arisen in some states that have adopted the revised model. The Working Group discussed the Joint Trades' suggested revisions. Mr. Gendron suggested that the Joint Trades' questions could be more concise. Mr. Berkowitz agreed that it could be possible, but he noted that there has been a lot of confusion related to these issues and that one goal of the Joint Trades' questions was to provide additional context and background on the issue. Mr. Wicka suggested the Joint Trades' answer for its first question could be revised to state: "Yes, the revised model allows for states to recognize courses taken in other states before the model is adopted in their state. The revised model is intended to provide for reciprocity so producers that operate in multiple jurisdictions would not have to retake the same training multiple times." Mr. Birnbaum expressed support for Mr. Wicka's suggested revisions, but he said the Joint Trades' questions

also could be simplified. He provided suggested language. After additional discussion, the Working Group decided to try to simplify the Joint Trades' suggested questions and answers. The Working Group also asked Mr. Birnbaum to submit his suggested language to NAIC staff for the Working Group's consideration during its next meeting.

The Working Group next discussed the Joint Trades' suggested revisions to Question 13 in the FAQ, which concerns whether a producer must complete the additional training on the best interest standard of conduct even if they have already completed the existing annuity training requirements with the prior suitability standard of conduct. The Joint Trades suggest revising Question 13 to have it apply only to producers who are not relying on the safe harbor in Section 6E.

Mr. Berkowitz said the Joint Trades' suggested revision supports its belief that the safe harbor provision applies to producer training. He acknowledged that the Joint Trades' position on that issue is still being debated and that additional discussion of the issue will most likely occur later during the meeting. The Working Group discussed the Joint Trades' suggestion, specifically the Joint Trades' interpretation that the safe harbor extends to producer training. Mr. Berkowitz discussed the Joint Trades' reasoning for its interpretation. He said the Joint Trades submitted additional suggested revisions on the safe harbor issue for the Working Group's consideration (Attachment Two-C). Some Working Group members discussed why they disagreed with this interpretation because those financial professionals using the safe harbor provision are still producers and would need to take the training described in Section 7 of the model. Mr. Bissett discussed the IIABA's position on the issue and noted that the IIABA submitted written comments to the Working Group for its consideration on the issue (Attachment Two-D). After additional discussion, the Working Group requested that Mr. Berkowitz provide revised language for the Working Group's consideration that would include the ability for state insurance regulators to review and approve a training course that a producer, who is a dual registrant, believes is substantially similar to the state's training course and would satisfy the model's training requirements. The Working Group also agreed that the Joint Trades should use some of the language offered by the IIABA to redraft its question and answer.

The Working Group next discussed the Joint Trades' suggested new FAQ on the appropriateness of a producer taking the four-hour training course versus the one-hour training course. After discussion, the Working Group agreed that adding such a question would be beneficial. However, the Working Group agreed that it could be simplified and made clearer. Ms. Rafeld and Mr. Gendron agreed to work with Mr. Berkowitz to revise the FAQ for the Working Group's consideration at its next meeting.

The Working Group discussed the Joint Trades' suggested new FAQ to address situations when a producer fails to timely complete the updated four-hour training course or the one-hour training course. After discussion, the Working Group agreed that adding this FAQ would be helpful to provide clarification for producers. Ms. Rafeld agreed to work Mr. Berkowitz to simplify the FAQ for the Working Group's consideration during its next meeting. Mr. Birnbaum offered suggested language to clarify the FAQ. Mr. Berkowitz and Ms. Rafeld agreed to take Mr. Birnbaum's suggested language into consideration as they work to clarify and simplify the Joint Trades' suggested new FAQ.

4. Discussed a New FAQ Conflict of Interest Question

Mr. Birnbaum discussed his suggested language for a new FAQ explaining why cash and non-cash compensation is not considered a material conflict of interest (Attachment Two-E). This new FAQ would precede Question 9. The Working Group discussed the suggested language. Ms. Baird suggested that the CEJ's suggested language was a good beginning. However, she said she believes the Working Group should review for discussion later the several states' suggested language because it provides more background and context on the issue. She explained why that was important. The Working Group deferred deciding on the FAQ language until the Working Group's next meeting.

The Working Group decided its next meeting would be sometime in late April or early May, during which it hopes to complete its work.

Having no further business, the Annuity Suitability (A) Working Group adjourned.

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Draft: 3/4/21

Annuity Suitability (A) Working Group
Virtual Meeting
February 22, 2021

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met Feb. 22, 2021. The following Working Group members participated: Doug Ommen, Chair (IA); Amanda Baird, Vice Chair, represented by Michele Brugh Rafeld (OH); Jimmy Gunn and Steve Ostlund (AL); Jodi Lerner (CA); Tate Flott (KS); Renee Campbell (MI); Bruce R. Ramge (NE); Keith Nyhan (NH); Brian Hoffmeister (TN); Matt Gendron and Sarah Neil (RI); and Richard Wicka (WI).

1. Discussed Comments on a Draft FAQ Guidance Document

During the Working Group's meeting at the 2020 Summer National Meeting, the Working Group agreed to distribute for a 30-day public comment period a draft Frequently Asked Questions (FAQ) guidance document (*see NAIC Proceedings – Spring 2021, Life Insurance and Annuities (A) Committee, Attachment Two-B1*), which the Working Group developed as one way for it to complete the second part of its 2020 charge to "[c]onsider how to promote greater uniformity across NAIC member jurisdictions." The purpose of this guidance document is to assist the states as they move forward with adopting the revised *Suitability in Annuity Transactions Model Regulation* (#275), which added a best interest standard of conduct for insurers and producers, through either an administrative or a legislative process.

Commissioner Ommen said the Working Group received several comment letters in response to its request for comments and discussed the comments during its Dec. 14, 2020, meeting. He said NAIC staff incorporated the comments received into a chart (*see NAIC Proceedings – Spring 2021, Life Insurance and Annuities (A) Committee, Attachment Two-B2*), which he would like to use to facilitate the Working Group's discussion of potential revisions to the guidance document. There was no objection to his suggestion.

Commissioner Ommen directed the Working Group to the Federation of Americans for Consumer Choice's (FACC) suggestion for Question 1, which explains why the NAIC decided to revise Model #275 to add a best interest standard of conduct, to replace the word "harmonization" with "compatibility." There was no objection to accepting the suggested revision.

The Working next Group discussed the FACC's and the Joint Trades'—the American Council of Life Insurers (ACLI), the Committee of Annuity Insurers (CAI), the Financial Services Institute (FSI), the Indexed Annuity Leadership Council (IALC), the Insured Retirement Institute (IRI) and the National Association for Fixed Annuities (NAFA)—suggested revisions to Question 2. This question explains how Section 989J of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) applies to the revised model. Commissioner Ommen asked for comments from Working Group members. He said the suggested revisions are meant to be clarifying. After discussion, the Working Group agreed to accept the Joint Trades' suggested revisions.

The Working Group next discussed the Joint Trades' suggestion to add a question discussing the process the Working Group used to develop and adopt the Model #275 revisions. After discussion, the Working Group decided not to add the suggested question because such a question was unnecessary.

The Working Group next discussed Question 3, which relates to the provision in the revised model providing an exemption to for annuities purchased in response to a direct response solicitation. Commissioner Ommen said he believes the Joint Trades' suggestion possibly would expand the exemption with addition of "telephone" communications. Wes Bissett (Independent Insurance Agents & Brokers of America—IIABA) noted the IIABA's comments concerning the direct response solicitation exemption in Model #275. He also agreed that the Joint Trades' suggested revisions appear to expand the exemption. Jason Berkowitz (IRI) said the intent of the Joint Trades' suggested revisions were to align it with the definition of "direct response solicitation" in the *Life Insurance and Annuities Replacement Model Regulation* (#613). After discussion, the Working Group decided not to accept adding the word "telephone," but it agreed to accept the Joint Trades' suggestion to delete "a digital platform."

The Working Group next discussed Question 4, which describes the best interest standard of conduct and how a producer or insurer would satisfy it. Commissioner Ommen said the FACC suggests a few revisions to more closely align the answer to the model's language. The Working Group agreed to accept the FACC's suggested revisions.

The Working Group next discussed Question 5, which describes what types of recommendations fall under the best interest standard of conduct. Commissioner Ommen said the FACC suggests additional language specifying that insurers are only expected to supervise recommendations that result in an application being submitted to the insurer. After discussion, the Working Group decided not to accept the suggested revision.

The Working Group next discussed Question 6, which concerns the application of the best interest standard of conduct to a producer who never meets the client but assists a producer in making a recommendation to that client. Commissioner Ommen noted the importance of this question given its potential application to independent marketing organizations (IMOs). He said the Joint Trades and the FACC submitted suggested revisions. Mr. Gendron expressed support for the FACC's suggestion to add words "the standard applies, if." The Working Group did not believe it was necessary to include a definition of "material control or influence." After discussion, the Working Group agreed to add language from the model describing activities that, in and of themselves, would not constitute material control or influence instead of adding a definition of "material control or influence." The Working Group also agreed to modify the FACC's language to add "the standard can apply."

The Working Group next discussed Question 7, which describes the provisions of Section 6A(1)(c) of the revised model requiring producers to be held to standards applicable to other producers with similar authority and licensure. Commissioner Ommen said the Joint Trades and the FACC suggest revisions to this question. The Working Group discussed what is meant by the language "similar authority and licensure" with respect to the care obligation, which is extensively outlined in the model. Mr. Gendron expressed concern with Joint Trades' suggested language which appears to be limiting.

Duane Thompson (XY Planning Network) discussed the XY Planning Network's comments on Question 7. The XY Planning Network suggests revisions to the question to include more information to remind and guide producers holding other licenses that require fiduciary accountability about the overlapping regulatory authorities with respect to market conduct standards. Mr. Thompson said it should be made clear that in one capacity, such as that of an investment adviser representative (IAR), an individual has a fiduciary obligation to consider reasonable products and alternative products or strategies that are best-suited, at the time of the recommendation, in meeting the client's financial goals and objectives. In addition, the XY Planning Network suggests the question should disclose that, separately in the capacity of an insurance producer, product availability is limited to those insurance contracts for which the producer is licensed to sell.

The Working Group discussed the suggested revisions, including the XY Planning Network's comments, and whether the current language needed to be clarified with respect to dual registrants. The Working Group decided not to accept the Joint Trades' or the FACC's suggested revisions. The Working Group asked Mr. Thompson and Mr. Gendron to work together to provide language for the Working Group's consideration that would clarify the question's application to dual registrants, who may be subject to a different standard of conduct, such as a fiduciary standard of conduct, than the best interest standard of conduct provided in the revised model.

The Working Group next discussed Question 8. Question 8 describes how a producer or insurer can use the "Insurance Agent (Producer) Disclosure for Annuities" form to satisfy the disclosure obligation by providing it during an initial client meeting and/or at later date when it requires updating. The Joint Trades and the FACC submitted comments. The Working Group agreed to accept the Joint Trades' suggestion to add "or sale of an annuity" for consistency with the revised model's language. Some Working Group expressed concern with the FACC's suggested revisions related to the timing of providing the form. After additional discussion, the Working Group decided not to accept the FACC's suggested revisions.

The Working Group discussed the Joint Trades' suggestion to add a new question to the FAQ guidance document on the application of the safe harbor provision in Section 6E of the revised model with respect to providing the Insurance Agent (Producer) Disclosure for Annuities" form. The Working Group agreed that it was unnecessary to add such a question, particularly in this section of the FAQ guidance document.

The Working Group next discussed Question 9. Question 9 describes Section 5I(2) of the revised model concerning the definition of "material conflict of interest." The Joint Trades and the FACC provided comments. Commissioner Ommen noted his concerns with providing examples and the possibility of stakeholders believing these examples are the only examples that meet the definition of "material conflict of interest." Mr. Berkowitz directed the Working Group's attention to the Joint Trades' comments on this question it submitted following the Working Group's previous meeting. He discussed the Joint Trades' intent behind its comments. He also suggested that the Joint Trades would not object to not including examples.

Commissioner Ommen said the Working Group would need to schedule another meeting to continue its discussion of revisions to the FAQ guidance document beginning where it ended during this meeting with Question 9. He said the Working Group also needs to discuss the training piece. The Working Group requested NAIC staff to prepare a working draft of the FAQ guidance document for the Working Group's consideration during its next meeting reflecting the discussion during this meeting.

Having no further business, the Annuity Suitability (A) Working Group adjourned.

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Draft: 1/26/21

Annuity Suitability (A) Working Group
Virtual Meeting
December 14, 2020

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met Dec. 14, 2020. The following Working Group members participated: Doug Ommen, Chair (IA); Amanda Baird, Vice Chair (OH); Jimmy Gunn and Steve Ostlund (AL); Jodi Lerner (CA); Fleur McKendell (DE); Tate Flott and Shannon Lloyd (KS); Renee Campbell (MI); Bruce R. Ramge (NE); Keith Nyhan (NH); Jim Everett (NY); Andrew Schallhorn (OK); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); and Richard Wicka (WI).

1. Discussed Comments on a Draft FAQ Guidance Document

Commissioner Ommen said during the Working Group's meeting at the 2020 Summer National Meeting, the Working Group agreed to distribute for a 30-day public comment period a draft Frequently Asked Questions (FAQ) guidance document (Attachment Two-B1), which the Working Group developed as one way for it to complete the second part of its 2020 charge to "[c]onsider how to promote greater uniformity across NAIC member jurisdictions." He explained that the purpose of this guidance document is to assist the states as they move forward with adopting the revised *Suitability in Annuity Transactions Model Regulation* (#275), which added a best interest standard of conduct for insurers and producers, through either an administrative or a legislative process.

Commissioner Ommen said the Working Group received several comment letters in response to its request for comments by Oct. 2, 2020. He said NAIC staff incorporated the comments received into a chart (Attachment Two-B2), which he would like to use to facilitate the Working Group's discussion of the comments. There was no objection to his suggestion.

The Working Group discussed the comments received on Question 1, which explains why the NAIC decided to revise Model #275 to add a best interest standard of conduct. Kim O'Brien (Federation of Americans for Consumer Choice—FACC) said the FACC suggests replacing the word "harmonization" with "compatibility." She said this change would clarify how the revised model should work with other regulatory authorities. The Working Group took this suggestion under advisement.

The Working Group discussed the comments received on Question 2. This question explains how Section 989J of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) applies to the revised model. Commissioner Ommen said the FACC and the Joint Trades—the American Council of Life Insurers (ACLI), the Committee of Annuity Insurers (CAI), the Financial Services Institute (FSI), the Indexed Annuity Leadership Council (IALC), the Insured Retirement Institute (IRI), and the National Association for Fixed Annuities (NAFA)—submitted comments. Ms. O'Brien said the FACC's comments are intended to ensure that the explanation of Section 989J is accurate. Jason Berkowitz (IRI) said the Joint Trades suggest revisions to Question 2 to also ensure its accuracy and emphasize state insurance regulatory authority over fixed and fixed indexed annuities. Wesley Bissett (Independent Insurance Agents and Brokers of America—IIABA) expressed concern with the suggested revisions because the IIABA believes the revisions could possibly expand the scope of the Section 989J exemption. Commissioner Ommen said the Working Group would take a closer look at Section 989J to make sure Question 2 is consistent.

The Working Group next discussed the Joint Trades' suggestion to add a question discussing the process the Working Group used to develop and adopt the Model #275 revisions. Mr. Berkowitz said the Joint Trades suggest adding this question because they believe it would be helpful to stakeholders, including state insurance regulators who were not a part of the drafting process, to understand how the revisions were developed. Robbie Meyer (ACLI) said the ACLI believes this is an important addition to the FAQ guidance document because it is starting to see proposals introduced in the states that deviate from the revised model's provisions. The ACLI believes that including this question would show what a robust inclusive process the NAIC used to develop the model revisions. Birny Birnbaum (Center for Economic Justice—CEJ) expressed concern with including the suggested question. Mr. Bissett also suggested not including this question in the FAQ guidance document, given its subjective nature. The Working Group took this suggestion under advisement.

The Working Group next discussed Question 3, which relates to the provision in the revised model on exemptions. Gary Sanders (National Association of Insurance and Financial Advisors—NAIFA) suggested that the proposed answer to the question does not actually answer the question. Mr. Berkowitz said the Joint Trades' suggested revision to the question aligns with the actual language in the model. Ms. Meyers said the ACLI is concerned with the reference to a simulated voice; as such, she suggested

the revisions. The Working Group discussed the meaning of a "direct response solicitation." Mr. Birnbaum suggested that the Working Group focus on the idea of the meaning of a "solicitation without a recommendation" and try to clarify that instead of the medium used to make the solicitation. Mr. Sanders reiterated the NAIFA's concern with the exemption in Section 4A because it exempts certain recommendations from having to comply with the revised model's provisions. The Working Group did not make any decisions based on the discussion. It plans to revisit the question and potentially consider revisions reflecting the discussion later.

The Working Group next discussed Question 4, which describes the best interest standard of conduct and how a producer or insurer would satisfy it. Ms. O'Brien said the FACC recognizes that the purpose of the FAQ guidance document is not to restate what is in the revised model word-for-word, but the FACC believes it is important to add "sources and types of" in the next to last bullet to avoid confusion that the best interest standard of conduct requires the discussion of actual compensation. She said the FACC also requests replacing the word "justification" with "basis" in the last bullet to mirror the revised model's language because the FACC believes there is a legal distinction between the two words. The Working Group took the suggestions under advisement.

Mr. Birnbaum suggested that the Working Group consider adding language to the FAQ guidance document that would illustrate the differences between the revised model's best interest standard of conduct and the prior model's suitability standard. The Working Group took this suggestion under advisement.

The Working Group next discussed Question 5, which discusses what types of recommendations fall under the best interest standard of conduct. Ms. O'Brien said the FACC requests additional language to clarify that insurers are only expected to supervise recommendations that result in an application being submitted to the insurer. The Working Group took this suggestion under advisement.

The Working Group next discussed Question 6, which concerns the application of the best interest standard of conduct to a producer who never meets the client but assists a producer in making a recommendation to that client. The Joint Trades and the FACC submitted comments. Mr. Berkowitz said the Joint Trades suggest revisions to this question to provide additional context and clarity related to the provision's intent. He referenced the revisions related to the meaning of "direct compensation' as an example. Ms. O'Brien said the FACC suggests revisions to clarify the meaning of "material control and influence" because the FACC believes the term is ambiguous. She said the FACC also recommends that the question explicitly state that a producer exercising material control or influence is not required to provide a disclosure notice to the client because such a requirement could create unnecessary confusion. Mr. Birnbaum said the CEJ has concerns about the way the question is written. He suggested rewriting the question to highlight the circumstances when certain requirements of the best interest standard of conduct would not apply.

The Working Group next discussed Question 7, which describes the provisions of Section 6A(1)(c) of the revised model requiring producers to be held to standards applicable to other producers with similar authority and licensure. The FACC suggests revisions to align the language more closely with the revised model's language. The Joint Trades suggest clarifying language. The Working Group took the suggested revisions under advisement.

The Working Group next discussed Question 8. Question 8 describes how a producer or insurer can use the "Insurance Agent (Producer) Disclosure for Annuities" form to satisfy the disclosure obligation. The Joint Trades and the FACC submitted comments. Mr. Berkowitz said the Joint Trades suggest changes to make the question more understandable. He said the Joint Trades also suggest deleting the word "yes" because the Joint Trades believe the answer is not absolute and is more nuanced. Mr. Gendron expressed support for removing the word "yes." Mr. Berkowitz said the Joint Trades also suggest adding a question to clarify how the disclosure obligation applies to producers relying on the safe harbor in Section 6E of the revised model, particularly with respect to completing the "Insurance Agent (Producer) Disclosure for Annuities" form to satisfy the disclosure obligation. Ms. O'Brien said the FACC suggests several revisions and additional questions related to the "Insurance Agent (Producer) Disclosure for Annuities" form intended to clarify whether this form is a relationship document or a transactional document. The Working Group took the suggested revisions under advisement.

The Working Group next discussed Question 9. Question 9 describes Section 5I(2) of the revised model concerning the definition of "material conflict of interest." The Joint Trades and the FACC provided comments. Mr. Berkowitz said the Joint Trades struggled with this proposed question and proposed answer. He said the Joint Trades' suggested revisions revise the proposed answer to more closely align with the question and the Model #275 revisions. The Joint Trades also suggest additional examples of what could be considered a material conflict of interest. The Working Group discussed the suggested revisions and the proposed examples. Ms. O'Brien said the FACC supports the Joint Trades' comments. However, the FACC would

have concerns with adding the example concerning a producer acting as an attorney for the client and any other similar examples, such as a financial advisor acting as an accountant for the client because of concerns about how an insurer would supervise such conduct. The Working Group discussed the FACC's concerns regarding the potential additional examples the Joint Trades suggest and the FACC's potential additional examples. The Working Group also discussed how an insurer could possibly supervise producer compliance.

Duane Thompson (XY Planning Network) discussed the XY Planning Network's comments on this issue and other issues previously discussed and its support for additional clarity to this question, particularly for dual registrants. The Working Group discussed whether there should be separate questions included in the FAQ guidance document for dual registrants. Mr. Berkowitz suggested that the Working Group keep in mind that the FAQ guidance document concerns obligations imposed under the revised model that relate to the conduct of a financial professional as an insurance producer. As such, any conduct that such a producer engages in as a state licensed investment advisor most likely falls outside the scope of the FAQ guidance document. However, Mr. Berkowitz noted that there are most likely issues that could be addressed in the FAQ guidance document related to dual registrants to ensure that they are providing the appropriate information to consumers, but this question may not be the appropriate place to include such language.

The Working Group deferred discussion of Question 10, which discusses how a producer could satisfy the conflict of interest obligation required under Section 6A(3). No comments were received on Question 11.

The Working Group next discussed the comments received on Question 12, which describes the provisions of Section 6C(2)(h). The Joint Trades and the FACC submitted comments. Ms. O'Brien said the FACC would appreciate any additional clarity on sales contests with respect to Section 6C(2)(h).

The Working Group next discussed the Joint Trades' suggestion to add a new question concerning the revised model's safe harbor provision. The proposed new question concerns whether insurers and producers in compliance with rules imposed by other regulators that meet or exceed the requirements in the revised model must comply with the revised model's requirements. Mr. Berkowitz said the Joint Trades suggest adding this question to clarify the Working Group's intent related to the safe harbor provision. Mr. Bissett suggested that the Working Group provide more clarity on what specific provisions in the revised model still apply to financial professionals that fall under the safe harbor provision. The Working Group took the suggestions under advisement, recognizing the complexity of the regulatory scheme and the difficulty of reflecting that in a FAQ guidance document.

The Working Group next discussed the comments received related to the revised model's training requirements. The new training requirements require producers, who have already completed the existing training requirements prior to a state's effective date of adoption of the revised model within six months after that effective date, to complete either a four-credit training course or an additional one-credit training course on the appropriate sales practices, replacement and disclosure requirements under the revised model. NAIC staff incorporated those comments into a chart (Attachment Two-B3) that was distributed prior to the meeting.

Mr. Berkowitz discussed the Joint Trades' comments and suggested revisions, which reflect discussions with the states that have already adopted the revised model. He explained that the Joint Trades' suggested revisions, including additional questions on the topic, reflect their interpretation of the revised model's training provisions. He said the Joint Trades believe it is critical to get clarity on these issues to ensure consistent interpretation and application amongst the states as they move forward with adopting the revised model. He discussed some of the issues, including the difference between the one-credit training versus the four-credit training, when it is appropriate for a producer to take the one-credit training versus the four-credit training, and any implications with respect to state reciprocity. He also discussed one state's interpretation of the six-month grace period that appears to be contrary to the Working Group's intent.

Mr. Sanders said the NAIFA also submitted comments on the training requirement and suggested revisions to the FAQ guidance document that it also received from the states and producers. Mr. Bissett expressed concern with the Joint Trades' suggested revision that suggest that a financial professional using the safe harbor provision is not required to complete the four-credit training or the one-credit training. He said this would create an unlevel playing field. Commissioner Ommen asked Mr. Bissett if his concerns remained if the financial professional is in compliance with comparable standards, including the content of such standards. Mr. Bissett said in theory, it could address his concerns, but such comparable standards, including content, may not address specific annuity provisions in the revised model.

Mr. Berkowitz said the Joint Trades believe their suggested additional question and the other questions related to the safe harbor provision reflect their belief that, in including the safe harbor provision, the Working Group implicitly recognized that the provisions of the revised model as compared to the components and specific requirements from other comparable standards would be roughly equivalent, including those provisions related to the training requirement. He questioned the value of the safe harbor provision if financial professionals relying on comparable standards are required to comply with specific provisions in the revised model. He also noted that if an insurance commissioner determines that a producer has failed to comply with the requirements of the comparable standard that the producer is relying on for compliance with the revision model, the insurance commissioner can hold the producer responsible for compliance with the revised model's provisions. Commissioner Ommen pointed out that in some respects, the Working Group is working in the dark with respect to the safe harbor provision, particularly with respect to the U.S. Securities and Exchange Commission's (SEC's) best interest regulation because the SEC is not that far ahead of the states in implementing its regulation. As such, it is hard to know what is comparable because the Working Group does not have that information yet.

Commissioner Ommen said as next steps, he believes that the Working Group should hold a regulator-to-regulator call to discuss any revisions to the FAQ guidance document based on the discussion during this meeting. There was no objection to this suggestion.

Having no further business, the Annuity Suitability (A) Working Group adjourned.

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Draft: 9/4/20

Comments are being requested on this draft document by Oct. 2, 2020. Comments should be sent only by email to Jolie Matthews at jmatthews@naic.org.

SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION (#275)

BEST INTEREST STANDARD OF CONDUCT REVISIONS

FREQUENTLY ASKED QUESTIONS

This Frequently Asked Questions (FAQ) document is intended to specifically address those questions that are likely to arise as the states work to adopt the revised *Suitability in Annuity Transactions Model Regulation* (#275) and to assist in the uniform implementation and enforcement of its provisions across all NAIC member jurisdictions. No provision of this FAQ document is intended to supersede the specific language in Model #275.

This FAQ document is offered to any state that chooses to use it. It is not intended to expand the content of the model regulation but provides interpretive guidance regarding certain aspects of its provisions.

GENERAL

Q1. Why did the NAIC decide to revise the model to include a best interest standard of conduct?

A1. The revised model was developed, in part, in response to the U.S. Department of Labor's (DOL) fiduciary rule, which was finalized in April 2016 but vacated in its entirety in March 2018. The DOL fiduciary rule would have expanded the scope of who is considered a fiduciary to federal Employee Retirement Income Security Act of 1974 (ERISA) retirement plans and individual retirement accounts (IRAs) to include a broader set of insurance agents, insurance brokers and insurers. Separately, the U.S. Securities and Exchange Commission (SEC) released a proposed rule package in May 2018, which included Regulation Best Interest (Reg BI). The SEC finalized Reg BI in June 2019. The final Reg BI establishes a best interest standard of conduct for broker-dealers beyond the existing suitability obligation that applies to federally registered variable annuities. Recognizing the SEC's and the DOL's role in the regulatory landscape and believing that consumers are better protected when, to the extent possible, there is harmonization of the regulations enforced by the states, the SEC and the DOL, the NAIC revised the model to establish a framework for an enhanced standard of conduct that is more than the model's current suitability standard but not a fiduciary standard.

Q2. How does the Harkin amendment, Section 989J of the Dodd-Frank Act apply to the revised model?

A2. Section 989J confirms state authority to regulate the sale of fixed indexed annuities and exemption from federal securities regulation when certain conditions are met, including when the state in which the contract is issued or the state in which the insurer issuing the contract is domiciled:1) has adopted requirements that "substantially meet or exceed the minimum requirements" established by the 2010 version of the NAIC's *Suitability in Annuity Transactions Model Regulation* (#275); and 2) "adopts rules that substantially meet or exceed the minimum requirements of any **successor modifications** to the model regulation[]" within 5 years of the adoption by the NAIC. The only exception to this requirement is if the product is issued by an insurance company that adopts and implements practices on a nationwide basis that meet or exceed the minimum requirements established by the NAIC's Model #275, "and **any successor thereto**," and is therefore subject to examination by the State of domicile or by any other State where the insurance company conducts sales of such products.

The NAIC considers the 2020 revisions to be a successor modification to the model that exceeds the requirements of the 2010 revisions, which is reflected in a drafting note to Section 1—Purpose:

"Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") specifically refers to this model regulation as the "Suitability in Annuity Transactions Model Regulation." Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation."

As such, states need to work toward adopting the 2020 revisions within 5 years after its adoption by the full NAIC membership in February 2020 to maintain their authority to regulate the sale of fixed annuities.

EXEMPTIONS

Q3. What is the intent of the exemption to the revised model's provisions under Section 4A to allow a consumer in response to a direct response solicitation to purchase an annuity product where no recommendation is made based on information collected from the consumer?

A3. This exception from the rule was in the 2010 model rule and was not changed in the 2020 version. A direct-response solicitation is a solicitation through a sponsoring or endorsing entity solely through mails, the Internet, a digital platform, or other mass communication media that does not involve a communication directed to a specific individual by a natural person, or by a simulated human voice.

BEST INTEREST STANDARD OF CONDUCT

Q4. What is the best interest standard of conduct and how would a producer or insurer satisfy it?

A4. To satisfy the best interest obligation, a producer or an insurer must satisfy the four obligations: 1) care; 2) disclosure; 3) conflict of interest; and 4) documentation.

To satisfy the four obligations, when making a recommendation, producers must:

- Know the consumer's financial situation, insurance needs and financial objectives;
- Understand the available recommendation options;
- Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives;
- Communicate the basis of the recommendation to the consumer;
- Disclose their role in the transaction, their compensation, and any material conflicts of interest; and
- Document, in writing, any recommendation and the justification for such recommendation.

Q5. What types of recommendations fall under the best interest standard of conduct?

A5. All recommendations made by a producer or insurer to purchase, exchange or replace an annuity product must comply with the best interest standard of conduct. Specifically, as defined in Section 5M, a "recommendation" is advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice. A recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

Q6. Does the best interest standard of conduct apply to a producer who never meets the client, but assists a producer in making a recommendation to the client?

A6. Yes, under Section 6A(5), a producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer.

CARE OBLIGATION

Q7. What is the intent of language in Section 6A(1)(c), which states "Producers shall be held to standards applicable to producers with similar authority and licensure?"

A7. The intent of this language is to help to ensure that in any compliance or enforcement action, a producer's recommendation is compared only to other producers as opposed to being compared to investment advisers or possibly

higher-level fiduciaries, such as trust officers or plan sponsors under the federal Employee Retirement Income Security Act of 1974 (ERISA) for compliance and enforcement purposes.

DISCLOSURE OBLIGATION

Q8. To satisfy the disclosure obligation, Section 6A(2)(a) requires a producer to provide the completed "Insurance Agent (Producer) Disclosure for Annuities" form in Appendix A prior to a recommendation, can a producer provide the form at the initial client meeting? Is the producer required to update the form and provide it again or can the producer provide it once and satisfy this obligation?

A8. Yes, a producer can satisfy the disclosure obligation by providing a completed form during the initial client meeting. However, if, after the completed form is provided to the client, the information on the completed form becomes out-of-date prior to a recommendation, the producer is expected to provide the consumer with an updated form.

CONFLICT OF INTEREST OBLIGATION

Q9. As defined in Section 5I(2), a material conflict of interest does not include cash compensation or non-cash compensation, what other type of financial interest would be considered a material conflict of interest? Is it only an ownership interest as referenced in Section 6A(3)?

A9. A producer who is also dually registered as an investment advisor under state securities law is required under Section 6A(3) to reasonably manage and disclose the related conflicts of interest. This management must commence when the producer first meets with a potential customer even before the dually licensed producer knows the ultimate capacity in which the producer will be acting. The actual capacity when the producer executes a specific transaction may not be known early in the relationship and the related professional or contractual obligations may not be determined based upon the specific facts and circumstances and the consumer profile information until later in the relationship, thus creating a conflict of interest for the producer. The dually licensed producer should assume that both Model #275 and the Investment Advisers Act apply, and that the producer must manage and disclose the conflict of interest.

Q10. Under Section 6A(3), to satisfy the conflict of interest obligation, what must a producer do to identify and avoid or reasonably manage a material conflict of interest? Examples?

A10. The differences in professional and contractual obligations between a producer acting in the consumer's best interest at the time of the transaction and an investment advisor acting in the consumer's best interest over the term of a professional advisory contract are substantial. Managing this conflict of interest will require more than simple disclosure. The dually licensed producer must ensure that the customer has a timely comprehension of the producer's varied interests in the relationship decisions and the producer must ultimately and before making a recommendation have a reasonable basis to believe the producer's recommended professional relationship or capacity along with any related annuity recommendation effectively addresses the consumer's financial situation, insurance needs and financial objectives.

SUPERVISION SYSTEM

Q11. Do these revisions require insurers to set up new supervision systems to ensure producer compliance with this new standard of conduct?

A11. No, but the revisions do add additional insurer supervision requirements by requiring insurers to establish and maintain reasonable procedures in three additional areas:

- To assess whether a producer has provided to the consumer the information required by the revised model.
- To identify and address suspicious consumer refusals to provide consumer profile information.
- To identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time.

Q12. Section 6C(2)(h) requires an insurer as part of its supervision system to identify and eliminate sales contests, quotas, bonuses, and non-cash compensation based on the sale of specific annuities within a limited period of time. What type of business practices is provision intended to address?

A12. The requirements of Section 6C(2)(h) are not intended to prohibit general incentives regarding sales of an insurance company's products where there is no emphasis on a particular product. As the provisions states, insurer business practices involving sales contests, quotas, bonuses and non-cash compensation based on the sale of a specific annuity or annuities within a specified or limited period of time are prohibited and should be identified and eliminated.

TRAINING

Q13. Do producers complete additional training on the new standard of conduct even if they have already completed the existing annuity training requirements?

A13. Yes, Section 7 requires a producer who has already completed the existing annuity training requirements prior to a state's effective date of the revised model to complete within 6 months of that date either a four credit training course or an additional one-time one credit training course on the appropriate sales practices, replacement an disclosure requirements under the revised model. In adopting this section, a state could choose a different timeframe for this requirement.

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FREQUENTLY ASKED QUESTIONS IMPLEMENTATION DOCUMENT
Stakeholder Oct. 2 Comments

GENERAL

Q1. Why did the NAIC decide to revise the model to include a best interest standard of conduct?

A1. The revised model was developed, in part, in response to the U.S. Department of Labor's (DOL) fiduciary rule, which was finalized in April 2016 but vacated in its entirety in March 2018. The DOL fiduciary rule would have expanded the scope of who is considered a fiduciary to federal Employee Retirement Income Security Act of 1974 (ERISA) retirement plans and individual retirement accounts (IRAs) to include a broader set of insurance agents, insurance brokers and insurers. Separately, the U.S. Securities and Exchange Commission (SEC) released a proposed rule package in May 2018, which included Regulation Best Interest (Reg BI). The SEC finalized Reg BI in June 2019. The final Reg BI establishes a best interest standard of conduct for broker-dealers beyond the existing suitability obligation that applies to federally registered variable annuities. Recognizing the SEC's and the DOL's role in the regulatory landscape and believing that consumers are better protected when, to the extent possible, there is harmonization of the regulations enforced by the states, the SEC and the DOL, the NAIC revised the model to establish a framework for an enhanced standard of conduct that is more than the model's current suitability standard but not a fiduciary standard.

FACC	**Q1. Why did the NAIC decide to revise the model to include a best interest standard of conduct?** A1. The revised model was developed, in part, in response to the U.S. Department of Labor's (DOL) fiduciary rule, which was finalized in April 2016 but vacated in its entirety in March 2018. The DOL fiduciary rule would have expanded the scope of who is considered a fiduciary to federal Employee Retirement Income Security Act of 1974 (ERISA) retirement plans and individual retirement accounts (IRAs) to include a broader set of insurance agents, insurance brokers and insurers. Separately, the U.S. Securities and Exchange Commission (SEC) released a proposed rule package in May 2018, which included Regulation Best Interest (Reg BI). The SEC finalized Reg BI in June 2019. The final Reg BI establishes a best interest standard of conduct for broker-dealers beyond the existing suitability obligation that applies to federally registered variable annuities. Recognizing the SEC's and the DOL's role in the regulatory landscape and believing that consumers are better protected when, to the extent possible, there is compatibility with the regulations enforced by the states, the SEC and the DOL, the NAIC revised the model to establish a framework for an enhanced standard of conduct that is more than the model's current suitability standard but not a fiduciary standard.

Q2. How does the Harkin amendment, Section 989J of the Dodd-Frank Act apply to the revised model?

A2. Section 989J confirms state authority to regulate the sale of fixed indexed annuities and exemption from federal securities regulation when certain conditions are met, including when the state in which the contract is issued or the state in which the insurer issuing the contract is domiciled:1) has adopted requirements that "substantially meet or exceed the minimum requirements" established by the 2010 version of the NAIC's *Suitability in Annuity Transactions Model Regulation* (#275); and 2) "adopts rules that substantially meet or exceed the minimum requirements of any **successor modifications** to the model regulation[]" within 5 years of the adoption by the NAIC. The only exception to this requirement is if the product is issued by an insurance company that adopts and implements

practices on a nationwide basis that meet or exceed the minimum requirements established by the NAIC's Model #275, "and **any successor thereto**," and is therefore subject to examination by the State of domicile or by any other State where the insurance company conducts sales of such products. The NAIC considers the 2020 revisions to be a successor modification to the model that exceeds the requirements of the 2010 revisions, which is reflected in a drafting note to Section 1—Purpose: "Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") specifically refers to this model regulation as the "Suitability in Annuity Transactions Model Regulation." Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation." As such, states need to work toward adopting the 2020 revisions within 5 years after its adoption by the full NAIC membership in February 2020 to maintain their authority to regulate the sale of fixed annuities.	
FACC	**Q2. How does the Harkin amendment, Section 989J of the Dodd-Frank Act apply to the revised model?** A2. Section 989J confirms state authority to regulate the sale of fixed annuities providing that such annuities are exempt from federal securities regulation when certain conditions are met, including when the state in which the contract is issued or the state in which the insurer issuing the contract is domiciled:1) has adopted requirements that "substantially meet or exceed the minimum requirements" established by the 2010 version of the NAIC's *Suitability in Annuity Transactions Model Regulation* (#275); and 2) "adopts rules that substantially meet or exceed the minimum requirements of any **successor modifications** to the model regulation[]" within 5 years of the adoption by the NAIC. The only exception to this requirement is if the product is issued by an insurance company that adopts and implements practices on a nationwide basis that meet or exceed the minimum requirements established by the NAIC's Model #275, "and **any successor thereto**," and is therefore subject to examination by the State of domicile or by any other State where the insurance company conducts sales of such products. The NAIC considers the 2020 revisions to be a successor modification to the model that exceeds the requirements of the 2010 revisions, which is reflected in a drafting note to Section 1—Purpose: "Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") specifically refers to this model regulation as the "Suitability in Annuity Transactions Model Regulation." Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation." As such, states need to work toward adopting the 2020 revisions within 5 years after its adoption by the full NAIC membership in February 2020 to maintain their exclusive authority to regulate the sale of fixed annuities.
Joint Trades[1]	**Q2. How does the Harkin amendment, Section 989J of the Dodd-Frank Act apply to the revised model?**

[1] Joint submission from the American Council of Life Insurers (ACLI), the Committee of Annuity Insurers (CAI), the Financial Services Institute (FSI), the Indexed Annuity Leadership Council (IALC), the Insured Retirement Institute (IRI) and the National Association for Fixed Annuities (NAFA).

	A2. Section 989J confirms state authority to regulate the sale of fixed and fixed indexed annuities and provides an exemption for such annuities from federal securities regulation when certain conditions are met, including when the state in which the contract is issued or the state in which the insurer issuing the contract is domiciled:1) has adopted requirements that "substantially meet or exceed the minimum requirements" established by the 2010 version of the NAIC's *Suitability in Annuity Transactions Model Regulation* (#275); and 2) "adopts rules that substantially meet or exceed the minimum requirements of any **successor modifications** to the model regulation[]" within 5 years of the adoption by the NAIC. The only exception to this requirement is if the product is issued by an insurance company that adopts and implements practices on a nationwide basis that meet or exceed the minimum requirements established by the NAIC's Model #275, "and **any successor thereto**," and is therefore subject to examination by the State of domicile or by any other State where the insurance company conducts sales of such products. The NAIC considers the 2020 revisions to be a successor modification to the model that exceeds the requirements of the 2010 revisions, which is reflected in a drafting note to Section 1—Purpose: "Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") specifically refers to this model regulation as the "Suitability in Annuity Transactions Model Regulation." Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation." As such, states need to work toward adopting the 2020 revisions within 5 years after its adoption by the full NAIC membership in February 2020 to maintain the status of fixed and fixed indexed annuities meeting the requirements of Section 989J as outside the scope of federal securities regulation.
NEW QUESTION	
Joint Trades	**Q2. How did the NAIC develop and promulgate these revisions to the model?** A2. The NAIC had a robust, collaborative and transparent process that included a wide array of stakeholders through the drafting and vetting processes. The NAIC's Annuity Suitability (A) Working Group completed the revisions to the model with the input of consumer groups, regulators, academics, and industry trade associations in open deliberations. Ultimately, the revised model is a work product that will provide enhanced consumer protections and amend regulation of annuity transactions in a sensible way.
EXEMPTIONS	

Q3. What is the intent of the exemption to the revised model's provisions under Section 4A to allow a consumer in response to a direct response solicitation to purchase an annuity product where no recommendation is made based on information collected from the consumer? A3. This exception from the rule was in the 2010 model rule and was not changed in the 2020 version. A direct-response solicitation is a solicitation through a sponsoring or endorsing entity solely through mails, the Internet, a digital platform, or other mass communication media that does not involve a communication directed to a specific individual by a natural person, or by a simulated human voice.	
Joint Trades	**Q3. What is the intent of the exemption to the revised model's provisions under Section 4A to allow a consumer in response to a direct response solicitation to purchase an annuity product where no recommendation is made based on information collected from the consumer?** A3. This exception from the rule was in the 2010 model rule and was not changed in the 2020 version. A direct-response solicitation is a solicitation through a sponsoring or endorsing entity solely through mails, telephone, the Internet, or other mass communication media.
National Association of Insurance and Financial Advisors (NAIFA)	Questions the rationale for this exemption.
Independent Insurance Agents & Brokers of America (BIG i)	Questions necessity of the exemption and believes contrary to the underlying goals of the model.
BEST INTEREST STANDARD OF CONDUCT	
Q4. What is the best interest standard of conduct and how would a producer or insurer satisfy it? A4. To satisfy the best interest obligation, a producer or an insurer must satisfy the four obligations: 1) care; 2) disclosure; 3) conflict of interest; and 4) documentation. To satisfy the four obligations, when making a recommendation, producers must: • Know the consumer's financial situation, insurance needs and financial objectives; • Understand the available recommendation options; • Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives; • Communicate the basis of the recommendation to the consumer; • Disclose their role in the transaction, their compensation, and any material conflicts of interest; and	

• Document, in writing, any recommendation and the justification for such recommendation.	
FACC	**Q4. What is the best interest standard of conduct and how would a producer or insurer satisfy it?** A4. To satisfy the best interest obligation, a producer or an insurer must satisfy the four obligations: 1) care; 2) disclosure; 3) conflict of interest; and 4) documentation. To satisfy the four obligations, when making a recommendation, producers must: • Know the consumer's financial situation, insurance needs and financial objectives; • Understand the available recommendation options; • Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives; • Communicate the basis of the recommendation to the consumer; • Disclose their role in the transaction, their sources and types of compensation, and any material conflicts of interest, as defined by the regulation; and • Document, in writing, any recommendation and the basis for such recommendation.
Q5. What types of recommendations fall under the best interest standard of conduct? A5. All recommendations made by a producer or insurer to purchase, exchange or replace an annuity product must comply with the best interest standard of conduct. Specifically, as defined in Section 5M, a "recommendation" is advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice. A recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.	
FACC	**Q5. What types of recommendations fall under the best interest standard of conduct?** A5. All recommendations made by a producer or insurer to purchase, exchange or replace an annuity product must comply with the best interest standard of conduct. Specifically, as defined in Section 5M, a "recommendation" is advice provided by a producer to an individual consumer that was intended to result or does result in a purchase, an exchange or a replacement of an annuity in accordance with that advice. Insurers providing supervision are responsible for any recommendation contained in an application made for purchase that is submitted to the insurer. A recommendation does not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

Q6. Does the best interest standard of conduct apply to a producer who never meets the client, but assists a producer in making a recommendation to the client? A6. Yes, under Section 6A(5), a producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer.	
Joint Trades	**Q6. Does the best interest standard of conduct apply to a producer who never meets the client, but assists a producer in making a recommendation to the client?** A6. Under Section 6A(5), a producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, has an obligation to comply with the revised model's best interest standard regardless of whether the producer has had any direct contact with the consumer. Compensation tied to overall sales volume of a firm or a producer would not be considered "direct compensation" for purposes of this section. A producer will not be treated as having exercised material control or influence merely because the producer provides or delivers marketing or educational materials, product wholesaling or other back office product support, or general supervision of another producer.
FACC	**Q6. Does the best interest standard of conduct apply to a producer who never meets the client, but assists a producer in making a recommendation to the client?** A6. Yes, the standard applies, if under Section 6A(5), the producer exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. "Material control or influence" means the producer from a position of authority over another producer directs selection of the product for recommendation and how the recommendation is communicated to the client. A producer who exercises material control or influence, but has no direct contact with the consumer, is subject to the standard of conduct but not required to provide a disclosure form as provided for under Section 6a(2)(a).
CARE OBLIGATION	
Q7. What is the intent of language in Section 6A(1)(c), which states "Producers shall be held to standards applicable to producers with similar authority and licensure?" A7. The intent of this language is to help to ensure that in any compliance or enforcement action, a producer's recommendation is compared only to other producers as opposed to being compared to investment advisers or possibly higher-level fiduciaries, such as trust officers or plan sponsors under the federal Employee Retirement Income Security Act of 1974 (ERISA) for compliance and enforcement purposes.	
Joint Trades	**Q7. What is the intent of language in Section 6A(1)(c), which states "Producers shall be held to standards applicable to producers with similar authority and licensure?"**

	A7. The intent of this language is to help to ensure that in any compliance or enforcement action by a state insurance regulator related to the model, a producer's recommendation is compared only to other producers possessing the same insurance license line(s) of authority as the producer making the recommendation as opposed to being compared to investment advisers or possibly higher-level fiduciaries, such as trust officers or plan sponsors under the federal Employee Retirement Income Security Act of 1974 (ERISA) for compliance and enforcement purposes.
FACC	**Q7. What is the intent of language in Section 6A(1)(c), which states "Producers shall be held to standards applicable to producers with similar authority and licensure?"** A7. The intent of this language is to help to ensure that in any compliance or enforcement action, a producer's recommendation is compared only to other producers with similar authority and licensure as opposed to being compared to investment advisers or possibly higher-level fiduciaries, such as trust officers or plan sponsors under the federal Employee Retirement Income Security Act of 1974 (ERISA) for compliance and enforcement purposes.
DISCLOSURE OBLIGATION	
Q8. To satisfy the disclosure obligation, Section 6A(2)(a) requires a producer to provide the completed "Insurance Agent (Producer) Disclosure for Annuities" form in Appendix A prior to a recommendation, can a producer provide the form at the initial client meeting? Is the producer required to update the form and provide it again or can the producer provide it once and satisfy this obligation? A8. Yes, a producer can satisfy the disclosure obligation by providing a completed form during the initial client meeting. However, if, after the completed form is provided to the client, the information on the completed form becomes out-of-date prior to a recommendation, the producer is expected to provide the consumer with an updated form.	
Joint Trades	**Q8. To satisfy the disclosure obligation, Section 6A(2)(a) requires a producer to provide the completed "Insurance Agent (Producer) Disclosure for Annuities" form in Appendix A prior to a recommendation or sale of an annuity. Can a producer provide the form at the initial client meeting? Is the producer required to update the form and provide it again or can the producer provide it once and satisfy this obligation?** A8. A producer can satisfy the disclosure obligation by providing a completed form during the initial client meeting. However, if, after the completed form is provided to the client, the information on the completed form becomes out-of-date prior to a recommendation or sale, the producer is expected to provide the consumer with an updated form. **Q. Do producers who are relying on the safe harbor in Section 6E have to provide the completed "Insurance Agent (Producer) Disclosure for Annuities" form in Appendix A?**

	A. No, a producer operating in compliance with business rules, controls and procedures that satisfy a "comparable standard" (as defined under the revised model) is not required to also provide disclosure on the form in Appendix A. Under such circumstances, the producer need only comply with the disclosure requirements imposed under the applicable comparable standard (e.g., the disclosures contemplated by Reg BI and Form CRS).
FACC	**Q8. To satisfy the disclosure obligation, Section 6A(2)(a) requires a producer to provide the completed "Insurance Agent (Producer) Disclosure for Annuities" form in Appendix A prior to a recommendation, can a producer provide the form at the initial client meeting? Is the producer required to update the form and provide it again or can the producer provide it once and satisfy this obligation?** A8. A producer can satisfy the disclosure obligation by providing the completed form during the initial client meeting or at any time prior to the recommendation or sale. A separate completed form must be provided by the producer to the client for each recommendation or sale. A form substantially similar to Appendix A is deemed to satisfy the requirements set forth in Section 6A((2)(a). If, after the completed form is provided to the client, the information on the completed form becomes out-of-date prior to a recommendation or sale, the producer is expected to provide the consumer with an updated form prior to consummation of the transaction. For purposes of supervision, insurers may accept attestation from the producer that the completed form was presented to the client, and insurers are not responsible for content of the completed disclosure form except to the extent it applies to the relationship between the insurer and the producer or products offered by the insurer. **Q8a. On the Appendix A disclosure form where it asks "whose annuities can I sell to you," how should producers differentiate between "two or more" and "two or more although I primarily sell annuities from" a specific insurer in cases where the producer sells mostly for one insurer but is not required to do so by contract?** A8a. When answering the question "whose annuities can I sell to you", the response "two or more" is appropriate rather than "two or more although I primarily sell annuities from" a specific insurer if the agent has no contractual obligation to work exclusively or semi-exclusively with a single company or family of companies. The fact that an agent sells products mostly for a certain insure in a given time period, absent a contractual obligation, should not affect how that item is completed on the disclosure form. **Q8b. For the Appendix A disclosure form section titled "How I'm Paid for My Work," does that only apply to cash compensation paid to the producer for sale of the annuity that is being recommended, as opposed to any compensation paid to the producer for other kinds of financial services.** Q8b. Yes, the producer is expected to disclose information on the form concerning compensation paid to the producer that is directly related to purchase of the annuity which in most cases will either be commission paid by the insurance company or fees paid by the consumer in the case of fee-based annuities. However, to the extent the agent provides any other kinds of services (for example, investment advice, accounting, tax consulting, legal services), compensation for such services are not required to be disclosed on this form if unrelated to purchase of the annuity though in most cases other laws and regulations will require separate disclosure of such compensation and agreement to the same by the consumer.

	Q8c. Is it permissible for a producer to use the Appendix A disclosure form to disclose any material conflicts of interest? Q8c. Yes, producers are required to make disclosures required by the regulation using a form substantially similar to Appendix A. This means producers may modify the form to include additional information disclosing material conflicts of interest as required by Section 6(A)(3), or absence of any such conflicts, provided the additional information does not interfere with presentation of the required information described in Section 6(A)(2).
CONFLICT OF INTEREST OBLIGATION	
Q9. As defined in Section 5I(2), a material conflict of interest does not include cash compensation or non-cash compensation, what other type of financial interest would be considered a material conflict of interest? Is it only an ownership interest as referenced in Section 6A(3)? A9. A producer who is also dually registered as an investment advisor under state securities law is required under Section 6A(3) to reasonably manage and disclose the related conflicts of interest. This management must commence when the producer first meets with a potential customer even before the dually licensed producer knows the ultimate capacity in which the producer will be acting. The actual capacity when the producer executes a specific transaction may not be known early in the relationship and the related professional or contractual obligations may not be determined based upon the specific facts and circumstances and the consumer profile information until later in the relationship, thus creating a conflict of interest for the producer. The dually licensed producer should assume that both Model #275 and the Investment Advisers Act apply, and that the producer must manage and disclose the conflict of interest.	
Joint Trades	**Q9. As defined in Section 5I(2), a material conflict of interest does not include cash compensation or non-cash compensation. What other type of financial interest would be considered a material conflict of interest? Is it only an ownership interest as referenced in Section 6A(3)?** A9. The revised model defines material conflict of interest as "a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation." Cash and non-cash compensation are not considered to be material conflicts of interest, though the revised model does require disclosure about producer compensation and impose restrictions on certain types of non-cash compensation, as described in Q14/A14 below. An ownership interest (such as where a producer has a material ownership interest in an insurance company whose products the producer is authorized to recommend) is one example of a material conflict of interest that would be subject to the revised model's conflict of interest obligation. Depending on the particular facts and circumstances, a producer could also be deemed to have a material conflict of interest if, for example, he or she, while acting as a producer: 1) Makes a personal loan of money or securities to a customer, or accepts such a loan from a customer; or 2) Acts as an attorney for the same customer.
FACC	**Q9. As defined in Section 5I(2), a material conflict of interest does not include cash compensation or non-cash compensation. What other type of financial interest would be considered a material conflict of interest? Is it only an ownership interest as referenced in Section 6A(3)?**

	A9. The revised model defines material conflict of interest as "a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation." As stated in the model regulation, material conflict of interest could include ownership interest in the insurance company issuing the recommended annuity if that ownership interest is significant enough that a reasonable person would expect it to influence the producer's impartiality in comparing annuity product options. Ownership interest is mentioned in the model regulation as an example and is not exclusive. Depending on facts and circumstances, other examples would include situations where a producer or the producer's agency has borrowed funds from an insurance company or the producer's relative such as spouse/partner or parent holds an executive position at an insurance company if in those situations a reasonable person would expect the producer's impartiality to be affected when making a recommendation of an annuity.
Q10. Under Section 6A(3), to satisfy the conflict of interest obligation, what must a producer do to identify and avoid or reasonably manage a material conflict of interest? Examples? A10. The differences in professional and contractual obligations between a producer acting in the consumer's best interest at the time of the transaction and an investment advisor acting in the consumer's best interest over the term of a professional advisory contract are substantial. Managing this conflict of interest will require more than simple disclosure. The dually licensed producer must ensure that the customer has a timely comprehension of the producer's varied interests in the relationship decisions and the producer must ultimately and before making a recommendation have a reasonable basis to believe the producer's recommended professional relationship or capacity along with any related annuity recommendation effectively addresses the consumer's financial situation, insurance needs and financial objectives.	
Joint Trades	**Q10. Under Section 6A(3), to satisfy the conflict of interest obligation, what must a producer do to identify and avoid or reasonably manage and disclose a material conflict of interest? Examples?** A10. The appropriate steps to satisfy the obligation to identify and avoid or reasonably manage and disclose material conflicts of interest will depend on the specific facts and circumstances. In some cases, material conflicts of interest can be effectively managed by a producer by informing his or her client of the conflict, and answering any questions the client may have regarding the conflict and confirming that the client is willing to continue working with the producer. In other instances, informed disclosure alone may be insufficient and the producer will have to take additional steps to ensure that the conflict does not cause the producer to make a recommendation that is not in the client's best interest or that puts the producer's own financial interests ahead of the client's. In such instances, a producer could, for example, consult with his or her manager, supervisor or agency principal to assess whether a conflict is inappropriately influencing the impartiality of the producer's recommendations. Finally, there may be material conflicts of interest that cannot be effectively mitigated through informed disclosure and additional measures. In those situations, the producer would have to avoid engaging in the activity or relationship that would give rise to the conflict, or, alternatively, abstain from making the recommendation. In all cases, the producer must ultimately and before making a recommendation have a reasonable basis to believe the producer's professional relationship or capacity along with any related annuity recommendation effectively addresses the consumer's financial situation, insurance needs and financial objectives.

FACC	**Q10. Under Section 6A(3), to satisfy the conflict of interest obligation, what must a producer do to identify and avoid or reasonably manage and disclose a material conflict of interest? Examples?** **A10.** As noted above, a material conflict of interest for purposes of the model regulation means a "financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation." The regulation is concerned with whether the producer is motivated by financial interests other than compensation in recommending one annuity over anther that may conflict with the interests of the client. In all cases, the producer must identify such conflicts, and if they exist, the producer must either avoid the conflict or disclose and reasonably manage the conflict. For example, if the producer's agency has borrowed money from an insurance company, the producer must identify whether that debt obligation rises to a material conflict of interest, and if it does, the producer must either avoid the conflict by refraining from recommending annuities issued by that insurer, or disclosing the conflict to the consumer and taking steps to ensure recommendations of an annuity issued by that insurance company would effectively address the needs and objectives of the consumer in accordance with the model regulation. It should be noted here that a producer who is also an investment advisor, lawyer, CPA, or other kind of professional who "wears more than one hat" would not have a material conflict of interest based solely on the fact the producer serves in that dual capacity based on the definition of material conflict of interest in this regulation but may have a conflict of interest under protocols pertaining to those other professions. From an insurance regulatory perspective, the obligation of the producer is to disclose that he or she is in the business of selling annuities and compensated for such sales which is accomplished by compliance with the disclosure obligation under Section 6(A)(2).

SUPERVISION SYSTEM

Q11. Do these revisions require insurers to set up new supervision systems to ensure producer compliance with this new standard of conduct?

A11. No, but the revisions do add additional insurer supervision requirements by requiring insurers to establish and maintain reasonable procedures in three additional areas:

- To assess whether a producer has provided to the consumer the information required by the revised model.
- To identify and address suspicious consumer refusals to provide consumer profile information.
- To identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time.

No comments received	

Q12. Section 6C(2)(h) requires an insurer as part of its supervision system to identify and eliminate sales contests, quotas, bonuses, and non-cash compensation based on the sale of specific annuities within a limited period of time. What type of business practices is provision intended to address?

A12. The requirements of Section 6C(2)(h) are not intended to prohibit general incentives regarding sales of an insurance company's products where there is no emphasis on a particular product. As the provisions states, insurer business practices involving sales contests, quotas, bonuses and non-cash compensation based on the sale of a specific annuity or annuities within a specified or limited period of time are prohibited and should be identified and eliminated.	
Joint Trades	**Q12. Section 6C(2)(h) requires an insurer as part of its supervision system to identify and eliminate sales contests, quotas, bonuses, and non-cash compensation based on the sale of specific annuities within a limited period of time. What type of business practices this provision intended to address?** A12. As the provision states, insurer business practices involving sales contests, quotas, bonuses and non-cash compensation based on the sale of a specific annuity or annuities within a limited period of time are prohibited and should be identified and eliminated. For example, this provision would apply where a producer's eligibility for a particular bonus is tied to his or her sales of one particular annuity product during a particular month. However, the requirements of Section 6C(2)(h) are not intended to prohibit general incentives regarding sales of an insurance company's products where there is no emphasis on the sale of specific annuities within a limited period of time.
FACC	**Q12. Section 6C(2)(h) requires an insurer as part of its supervision system to establish reasonable procedures to identify and eliminate sales contests, quotas, bonuses, and non-cash compensation based on the sale of specific annuities within a limited period of time. What type of business practices this provision intended to address?** A12. The requirements of Section 6C(2)(h) are intended to prohibit sales contests, quotas, bonuses and non-cash compensation based on the sale of a particular product within a limited period of time. It is not intended to prohibit an insurance company from providing general incentives to producers with no emphasis on any particular product. The purpose of this provision is to prevent short-term targeted incentives that put undue pressure on producers to sell particular annuities in a manner that could be contrary to the best interest of the consumer. In general, this means incentives that reward sale of a particular annuity product (identified commonly by a product name) over a shorter period of time (for example a month or a quarter) should be identified and eliminated. because they put undue pressure on the producer to promote that product over other annuities that may more effectively address the consumer's needs and objectives.
NEW SECTION – SAFE HARBOR	
Joint Trades	**Q15. Are insurers and producers required to comply with the requirements of the revised model if they are acting in compliance with rules imposed by other regulators that meet or exceed the requirements of the revised model?** A15. No, Section 6E provides a safe harbor for recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy "comparable standards" (as defined in the revised model), such as the best

	interest standard under Reg BI, the fiduciary standard applicable to federally regulated investment advisers under the Investment Advisers Act of 1940, or the fiduciary standard imposed under ERISA. Under such circumstances, producers and insurers need not comply with any of the specific requirements included in the revised model, including the care, disclosure, conflict of interest, and documentation obligations, as well as the insurer supervision and producer training requirements. However, insurers do have important supervisory obligations with respect to annuity recommendations made by financial professionals relying on the safe harbor: • Section 6E(2) specifies that, even where the safe harbor applies, insurers remain subject to the obligation under Section 6C(1) to "not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information." • Section 6E(3) provides that an insurer must monitor the conduct of the financial professional relying on the safe harbor or the entity responsible for supervising the financial professional based on information collected in the normal course of the insurer's business.

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FREQUENTLY ASKED QUESTIONS IMPLEMENTATION DOCUMENT

Stakeholder Comments on Continuing Education/Training Requirements

Questions on Training Completed in a State Prior to State Adoption of the Revised Model	
Joint Trades[1]	**Q. Can producers satisfy their training obligations under the revised model by taking the new four credit training course or the new one credit training course before the revised model takes effect in a particular state?** A. The revised model provides for reciprocity so producers that operate in multiple jurisdictions do not have to retake the same training multiple times. If a producer has completed a properly approved training course in a state where the revised model has been adopted (whether or not such revised model has become effective), the producer should not be required to complete the required training again in that same state after the effective date or in another state that subsequently adopts the revised model. **Q. Can producers satisfy their training obligations under the prior version of the model in a state which has not yet adopted the revised model by taking the new four credit training course?** A. The new four-credit training course includes all of the topics that were required to be covered under the prior version of the model (with information on the best interest standard of conduct now required under the revised model). As such, if a producer has completed a properly approved four credit training course in a state that has adopted the revised model, the producer should not be required to also complete a course that satisfies the requirements of the prior version of the model in a state that has not yet adopted the revised model.
National Association of Insurance and Financial Advisors (NAIFA)	**Q. If a producer takes a new four credit and/or one credit training course--which complies with the requirements of Section 7 of the Amended Model and has been approved by the appropriate state authorities-- prior to the effective date of a state's amended annuity suitability regulation, would successful completion of that course i) count towards compliance with the state's amended annuity suitability regulation once it becomes effective, and/or ii) count towards compliance with Section 7 B (9) of the Amended Model and be deemed to satisfy the training requirements of another state if/when that other state adopts the Amended Model?** A. Yes—an approved training course taken prior to the effective date of a state's amended regulation would count towards compliance with that state's or another state's amended regulation (including Section 7 B (9)) once it becomes effective. **Q. If a producer takes an approved four credit training course in a state that has not adopted the Amended Model, would that producer be able to satisfy the training requirements in another state that has already adopted the Amended Model by taking the new one credit course specified in Section 7 B (6) (b) of the Amended Model?**

[1] Joint submission from the American Council of Life Insurers (ACLI), the Committee of Annuity Insurers (CAI), the Financial Services Institute (FSI), the Indexed Annuity Leadership Council (IALC), the Insured Retirement Institute (IRI) and the National Association for Fixed Annuities (NAFA).

	A. Yes—completing both the old four credit course—at any time-- and the new one credit course is "substantially similar" to completing the new four credit course provided for in Section 7 of the Amended Model, and would comply with the requirements of Section 7 B (6) of the Amended Model. **Q. If a producer takes the new four credit training course in a state that has adopted the Amended Model, would that producer be deemed to have satisfied the training requirement of a state that has not adopted the Amended Model?** A. Yes—the new four credit training course provided for in the Amended Model is "substantially similar" to the four credit training course required under the prior version of Model #275, and would meet the requirements of Section 7 B (9) of the prior version of Model #275.
Questions on Training and the Safe Harbor	
Q13. Do producers complete additional training on the new standard of conduct even if they have already completed the existing annuity training requirements? A13. Yes, Section 7 requires a producer who has already completed the existing annuity training requirements prior to a state's effective date of the revised model to complete within 6 months of that date either a four credit training course or an additional one-time one credit training course on the appropriate sales practices, replacement an disclosure requirements under the revised model. In adopting this section, a state could choose a different timeframe for this requirement.	
Joint Trades	**Q13. Do producers who are not relying on the safe harbor in Section 6E have to complete additional training on the new standard of conduct even if they have already completed the existing annuity training requirements?** A13. Yes, Section 7 requires a producer who has already completed the existing annuity training requirements prior to a state's effective date of the revised model to complete within 6 months of that date either a four credit training course or an additional one-time one credit training course on the appropriate sales practices, replacement and disclosure requirements under the revised model. **Q. Are producers who are relying on the safe harbor required to complete the 4-hour training course (or, if eligible, the optional 1-hour training course), which includes training on the new standard of conduct under the revised model?** A. No. Producers relying on the safe harbor are not required to take the training prescribed by the revised model; the training required under the appropriate "comparable standards" (as defined in the revised model) will suffice. Insurers should, however, ensure that producers operating under the safe harbor have nonetheless completed appropriate training on the specific annuity products they are authorized to recommend and sell.

Questions about the One-Hour Training Requirement versus the Four-Hour Training Requirement	
Joint Trades	**Q. Under what circumstances would a producer be permitted to take the additional one credit training course rather than the full four credit training course? What is the difference between the one credit and four credit training courses? For how long should the one credit training course be available as an option?** A. The one credit training course is available as an option only to producers who have previously completed a four-credit training course that met the requirements of the prior version of the model. The four-credit training course would include information on all of the topics listed in Section 7B(3) of the revised model, whereas the one credit training course would include only information on the appropriate standard of conduct, sales practices, replacement and disclosure requirements. The one credit option was included in the revised model because the NAIC recognized that adoption of the revised model would not cause any changes in the information provided on the other topics covered by the four credit training course required under the prior version of the model. The option to complete the one credit training course should be left available for as long as the prior version of the model remains in effect in any jurisdiction. This will ensure that producers who satisfy the training requirements in states where the prior version is still in effect would not have to retake the entire four credit training course, and can instead take the one credit training course to ensure that they understand how the rules have changed. In sum, producers who are not relying on the safe harbor should be permitted to satisfy their training obligations by completing either (a) the four credit training course under the revised model OR (b) a combination of the four credit training course under the prior version of the model AND the one credit training course under the revised model. The preceding applies to situations where a producer has taken an approved four credit training course in a state that has not adopted the amended NAIC Model and then seeks to satisfy the training requirement by taking the new one credit course in a state that has adopted the amended NAIC Model.
Failure to Timely Complete the Updated Four-Hour or One-Hour Training Course	
Joint Trades	**Q. Under Section 7B(6), if a producer who was already qualified by taking the old four credit training course fails to take the updated four credit training course or the one hour training course within six months after the effective date of the amended regulation, what training must a producer take to become requalified to offer annuities again?** A. A producer who does not timely meet the requirements to take the training courses but has already taken the old 4 credit training course may satisfy such new requirements by taking either the one credit or the four credit training course (which shall remain available)

	at any point after the expiration of the six month time period. The producer should cease all annuity sales activities until the updated training courses have been completed.

Draft Revisions to Industry Coalition's Proposed FAQ on NAIC Best Interest Model Safe Harbor Provision

Q. Are producers required to comply with the specific requirements of the revised model if they are acting in compliance with rules imposed by other regulators that meet or exceed the requirements of the revised model?

A. Section 6E of the revised model provides a safe harbor for recommendations and sales of annuities made by producers who meet the definition of "financial professional" and operate in compliance with business rules, controls and procedures that satisfy "comparable standards." For purposes of the safe harbor, comparable standards include the best interest standard under Reg BI, the fiduciary standard applicable to federally regulated investment advisers under the Investment Advisers Act of 1940, and the fiduciary standard imposed on providers of investment advice to retirement plans and participants under federal law. When making recommendations and sales of annuities in compliance with comparable standards, financial professionals need not comply with the specific requirements included in the revised model, such as the care, disclosure, conflict of interest, and documentation obligations set forth in Section 6A and, as discussed further below, the supervision requirements included in Section 6C(2) and the producer training requirements set forth in Section 7.

Reliance on the safe harbor does not remove an annuity transaction from insurance regulatory oversight. State insurance regulators retain their full authority to investigate and enforce the requirements of the revised model against any financial professional that fails to fully satisfy the requirements of the relevant comparable standard. In other words, a financial professional cannot use the safe harbor to avoid their obligations under the revised model by simply asserting that they are a financial professional operating under a comparable standard – actual compliance with the comparable standard is required. As a drafting note in the revised model clearly indicates, non-compliance with comparable standards results in a recommendation or sale being subject to the requirements of the model.

This provision was included in the revised model to avoid the imposition of differing or duplicative requirements on financial professionals as they endeavor to achieve and maintain full compliance with multiple overlapping regulations that are aligned in terms of application and public policy objectives but are not fully identical in terms of specific regulatory requirements. The safe harbor recognizes and acknowledges that consumers will receive no greater level of protection against improper conduct by requiring financial professionals to separately comply with the particular requirements of multiple regulations that are designed to achieve the same objectives but take different approaches that are tailored to the different segments of the financial services industry to which they apply.

Q. Who is responsible for supervision of recommendations and sales of annuities made in reliance on and compliance with a comparable standard under the safe harbor, and what are their supervisory obligations?

A. Under Section 6.C of the revised model, insurers are generally responsible for supervising the conduct of producers who recommend and sell the insurer's annuities. However, the safe harbor recognizes that the comparable standards establish their own supervisory obligations that are carefully tailored to the types of transactions covered by those rules. As such, insurers are not required to supervise safe harbor transactions in the same ways as non-safe harbor transactions as long as the supervising entity is meeting its obligations to supervise for compliance with the comparable standard.

For example, the revised model places responsibility for supervision on insurers whereas Regulation Best Interest puts that obligation on broker-dealer firms. While this distinction is necessary and appropriate based on the differences between the insurance and securities industries, the end result is the same in both cases – a highly regulated entity is responsible for supervising the conduct of individuals who make recommendations to consumers.

The safe harbor does not, however, fully relieve insurers of supervisory responsibility with respect to financial professionals who comply with comparable standards when recommending and selling annuities. Insurers are subject to the following important supervisory obligations with respect to annuity recommendations made by financial professionals relying on the safe harbor:

- Section 6E(2) specifies that, even where the safe harbor applies, the insurer remains subject to the obligation under Section 6C(1) to "not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the

annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information."

- Section 6E(3) requires that the insurer monitor the conduct of the financial professional relying on the safe harbor or the entity responsible for supervising the financial professional based on information collected in the normal course of the insurer's business and must provide the supervising entity any information and reports that are appropriate to assist such entity to maintain its supervision system.

However, just as a financial professional would lose the benefit of the safe harbor if she fails to actually comply with the relevant comparable standard, the insurer would have to satisfy the supervisory obligations in Section 6C of the revised model if the entity responsible for oversight of the financial professional fails to satisfy its supervisory responsibilities under the comparable standard.

This framework ensures proper alignment between the regulatory standard under which the financial professional is operating and the supervisory system implemented by the entity with primary responsibility for oversight. The supervisory system contemplated by Section 6C(2) of the revised model is designed to ensure compliance with Section 6A of the revised model and therefore would not necessarily be an effective mechanism by which to ensure compliance with the requirements of a comparable standard. If an insurer applies its Section 6C(2) system to supervise a financial professional operating under the safe harbor, that financial professional could potentially be flagged for noncompliance even if she is in full compliance with the comparable standard. The safe harbor's approach to supervision is intentionally designed to avoid this problem.

Q. Are producers who are relying on the safe harbor required to complete the 4-hour training course (or, if eligible, the optional 1-hour training course), which includes training on the new standard of conduct under the revised model?

A. Producers relying on the safe harbor are not required to take the training prescribed by the revised model as long as they are properly trained under the relevant comparable standard. The training requirement under the revised model is intended to ensure that producers understand general annuity principles, the specific annuity products they can recommend to their clients, and the rules under which they are required to operate. A training program designed to meet the specific requirements of the revised model would not achieve this objective in the context of a producer relying on the safe harbor as it would not cover the rules under which producer is actually operating (because, as noted above, the requirements of comparable standards may not be fully identical to those established under the revised model). By covering the training provision, the safe harbor ensures that producers will be required to complete the right training for their specific circumstances.

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Proposed Additions to the Frequently Asked Questions Implementation Document
Submitted by IIABA / March 23, 2021

Q_. Must producers that rely on the safe harbor comply with the requirements that are established by the model?

A_. No. There are differences and distinctions between the obligations established under the model and the duties imposed by the "comparable standards" identified in Section 6(E)(5). The model in some ways applies more robust consumer protections upon producers that recommend annuities than the "comparable standards." The model, for example, establishes a duty to make a written record of any recommendation and the basis for that recommendation, but Regulation Best Interest includes no analogous obligation. States that are concerned with establishing uniformity in annuity transactions (and the market conduct regulatory implications of not doing so) and applying consistent obligations on producers who make such recommendations may wish to consider narrowing the scope of the safe harbor and/or expressly applying certain elements of the model to those producers who seek to rely on it.

States that are concerned the safe harbor might inadvertently relieve producers of other important duties – such as obligations under Section 6(D) (related to prohibited practices), Section 8 (related to enforcement), and Section 9 (related to recordkeeping) – may wish to further narrow the application of the safe harbor and make clear that it only applies to the core requirements set forth in Section 6(A).

Q_. When may a broker-dealer or registered representative rely on the safe harbor?

A_. The definition of "comparable standards" in Section 6(E)(5) provides that broker-dealers and registered representatives may only rely on the safe harbor when they comply with "applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales" (emphasis added). In other words, broker-dealers and registered representatives may only take advantage of the safe harbor when a SEC or FINRA rule *applies* on its own to a particular annuity recommendation. The safe harbor is not limited to investment advisors and plan fiduciaries or fiduciaries in the same way.

Q__. Does the safe harbor exempt insurers from any of the supervisory or other requirements established by the model?

A__. No. The safe harbor applies to the recommendations and sales activities of certain producers, and, regardless of whether one of its producers relies on the safe harbor, insurers remain responsible for complying with the supervisory requirements of Section 6(C), the prohibitions of Section 6(D), the enforcement provisions of Section 8, and the recordkeeping obligations of Section 9. While insurers are ultimately responsible for a producer's actions and compliance with the regulation, they are permitted to enter into arrangements and contracts with other parties for the performance of supervisory functions.

Q__. Are all producers who recommend annuities required to satisfy the training requirements of Section 7(B)?

A__. Yes. The safe harbor does not eliminate any producer's obligation to satisfy the training requirements of Section 7(B). Those training requirements provide basic instruction on the issues and considerations that any person selling an annuity should know, such as the types and uses of annuities, how annuity contract features affect consumers, and tax implications. Any person seeking to take advantage of the safe harbor must be licensed as a producer and in good standing (which includes satisfying the training requirements of Section 7(B)) and be appointed by the insurer where and as required by state law.

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Additional Proposed Conflict of Interest FAQ Question and Answer

Questions: The model regulation defines "material conflict of interest" as a financial interest of the producer that a reasonable person would expect to influence the impartiality of the recommendation. The model regulation also specifically excludes "cash and non-cash compensation" from the requirement for material conflicts of interest. Why did the NAIC determine that "cash and non-cash compensation" is excluded from the requirement to "identify and avoid or reasonably manage and disclose" material conflicts of interest?

CEJ Proposed Answer: The NAIC determined that most forms of routine compensation do not create a material conflict of interest and that most conflicts of interest that might be created by compensation arrangements can be addressed through the Insurance Agent (Producer) Disclosure of Annuities, required by the model regulation to be provided to the consumer and which includes a section "How I'm Paid for My Work." The NAIC determined that general incentives regarding the sales of a company's products with no emphasis on any particular product do not create a material conflict of interest. The NAIC identified some types of compensation arrangements that likely create a material conflict of interest and requires the insurer to identify and eliminate sales contests, sales quotas, bonuses and non-cash compensation based on sales of specific annuities within a limited time frame.

Several States' Proposed Answer: The NAIC determined that most forms of producer compensation do not present a material conflict of interest with the purchaser, and that purchasers expect producers to be compensated. The revisions to Model #275 make it clear that annuity recommendations by producers must be in the best interest of the consumer, and that producers may not place the producer's financial interest ahead of the consumer's interest. Therefore, the NAIC determined that the requirement to "identify and avoid or reasonably manage and disclose" should not apply to "cash and non-cash compensation". Rather, disclosure of the producer relationship and related compensation is the appropriate management requirement.

Under the new disclosure requirement producers must prominently disclose to a consumer certain information about cash compensation and non-cash compensation to be received by the producer, and must prominently notify the consumer of the right to additional cash compensation information. For clarity, the NAIC developed a model disclosure form (Appendix A) which includes a section "How I'm Paid for My Work." Producers must disclose cash and non-cash compensation on Appendix A or a substantially similar form.

The NAIC also determined that general incentives regarding production levels with no emphasis on any particular product do not create an unanticipated conflict of interest requiring avoidance or management.

However, the NAIC did conclude that sales contests, sales quotas, bonuses and non-cash compensation based on sales of specific annuities within a limited time frame should be avoided. Accordingly, the Model #275 revisions require insurers to identify and eliminate these arrangements.

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Draft: 3/31/21

Life Insurance Illustration Issues (A) Working Group
Virtual Meeting
March 10, 2021

The Life Insurance Illustration Issues (A) Working Group of the Life Insurance and Annuities (A) Committee met March 10, 2021. The following Working Group members participated: Richard Wicka, Chair (WI); Chris Struk (FL); Teresa Winer (GA); and Jana Jarrett (OH). Also participating were: Denise Lamy (NH); Sarah Neil (RI); John Carter (TX); James Young (VA); and David Hippen (WA).

1. Continued Review of the Sample Overview Post Underwriting Comment Chart

Mr. Wicka reminded the Working Group that the issue of timing for the delivery of the policy overview is an issue that the Working Group had not resolved. He said alternate versions of revisions to the *Life Insurance Disclosure Model Regulation* (#580), as well as sample policy overview documents reflecting the different timing for delivery, had been developed. He said draft samples of the policy overview reflecting delivery at the time of application and delivery post underwriting were developed. Comments were received and put in a chart for discussion by the Working Group (. During its Feb. 23 meeting, the Working Group did not finish discussing the comments received on the policy overview delivered post underwriting. He said the Working Group planned to continue going through that comment chart during this meeting and move to comments received on the policy overview delivered at the time of application.

The Working Group continued to review the comment chart for the sample term life overview delivered post underwriting. Comments were received from the American Council of Life Insurers (ACLI), funded consumer representative Birny Birnbaum (Center for Economic Justice—CEJ) and funded consumer representative Brenda J. Cude (University of Georgia).

The Working Group discussed the policy information in the sample overview.

a. What is the name of this product?

Mr. Wicka suggested, and the Working Group agreed to, revising the language in the sample to reflect the more common group level term policy rather than the less common joint policy he had used initially.

b. Does the policy ever expire?

The Working Group discussed the section titled "Does the policy ever expire?" The section currently reads:

> Does the policy ever expire?
>
> Yes, you have chosen a 20-year term. Once the term expires, there is an option to renew this policy each year until both insureds reach 95 but the cost of this policy will increase every year after the initial term.

Mr. Wicka summarized comments received from Michael Lovendusky (ACLI), Mr. Birnbaum and Ms. Cude. He suggested, and the Working Group agreed to, the following revised language that combines the suggestions made:

> Does the policy ever end? If so, what is the term of the policy?
>
> Yes. The policy ends when the term you choose (20 years) ends, but you can choose to renew this policy each year until you are age 95.

c. What is the death benefit?

The Working Group discussed the section titled "What is the death benefit?" The section currently reads:

> The death benefit is $500,000. The death benefit is paid upon the death of the first spouse.

Mr. Wicka suggested, and the Working Group agreed to, the following revisions based on the comments that Mr. Birnbaum and Ms. Cude submitted:

> The death benefit is $500,000.

d. Can the death benefit change?

The Working Group discussed the section titled "Can the death benefit change?" The section currently reads:

> No, the death benefit will not change unless you request additional coverage.

Mr. Wicka suggested, and the Working Group agreed to, the following revisions based on the suggestions of Mr. Birnbaum and Ms. Cude:

> No. The death benefit will stay the same unless you ask, and the company agrees, to increase it.

e. Can I take a loan from my policy?

The Working Group discussed the section titled "Can I take a loan from my policy?" The section currently reads:

> This policy does not have any loan options.

Mr. Wicka suggested, and the Working Group agreed to, the following simplified language that Mr. Birnbaum and Ms. Cude suggested:

> No. You can't borrow money from this policy.

f. Does the policy have a waiver of premium option?

The Working Group discussed the section titled "Does the policy have a waiver of premium option?" The section currently reads:

> Yes, this policy includes a waiver of premium rider that allows you to not pay premiums if you have been totally disabled for at least 4 months. This rider has an additional cost.

Mr. Wicka suggested, and the Working Group agreed to, the following revised language that Mr. Birnbaum and Ms. Cude suggested:

> Yes, you can buy a waiver of premium rider for an extra cost. A waiver of premium rider for this policy means you won't have to pay premiums after you've been totally disabled for at least four months.

g. Can I convert this policy to another type of life insurance?

The Working Group discussed the section titled "Can I convert this policy to another type of life insurance?" The section currently reads:

> Yes, this policy may be converted to a permanent life insurance policy prior to the end of the policy term and before you reach age 70.

Mr. Wicka suggested, and the Working Group agreed to, the following revised language that Ms. Cude suggested:

> Yes, you can convert this policy to a whole life insurance policy before the policy term ends, as long as you're younger than age 70.

h. Can I extend the term of coverage?

The Working Group discussed the section titled "Can I extend the term of coverage?" The section currently reads:

> Yes, this policy may be renewed annually up to age 95 after the initial term expires. The cost of the policy will increase each year the policy is renewed.

Mr. Wicka suggested, and the Working Group agreed to, the following simplified language that Ms. Cude suggestion and relocation of this question to after the following revised questions: "Does the policy ever end? If so, what is the term of the policy?"

> Yes. After the initial term ends, you can renew this policy until you are age 95. The premium will increase each year you renew the policy.

i. Are there optional riders available for this policy?

The Working Group discussed the section titled "Can I extend the term of coverage?" The section currently reads:

> Are there optional riders available for this policy?
>
> Yes, optional riders are available. To learn what riders are available and their cost, talk to your insurance agent or a company representative.

Mr. Wicka suggested, and the Working Group agreed to, the following revised language that combines language that Mr. Birnbaum and Ms. Cude suggested:

> Are there other policy enhancements or optional riders available for this policy?
>
> Yes, there are other policy enhancements – known as riders. Ask the agent, broker, advisor or a company representative offering this product about them.

j. Does this policy have any living benefit options?

The Working Group discussed the section titled "Does this policy have any living benefit options." The section currently reads:

> Does this policy have any living benefit options?
>
> Yes, there is an optional living benefit rider available for an additional cost.

Mr. Wicka suggested, and the Working Group agreed to, the following revised language that combines language that Mr. Birnbaum and Ms. Cude suggested:

> Is there a policy option that allows me to access my death benefit while I'm alive?
>
> Yes, for additional premium, you can get part of your death benefit before you die if you are terminally ill.

k. Does this policy accumulate cash value?

The Working Group discussed the section titled "Does this policy accumulate cash value?" The section currently reads:

> Does this policy accumulate cash value?
>
> No.

Mr. Wicka suggested, and the Working Group agreed to, the following revised language that combines language that Mr. Birnbaum and Ms. Cude suggested:

> No. This policy provides no cash benefits other than the death benefit.

2. Continued Review of the Sample Overview at Time of Application Comment Chart

The Working Group reviewed the comment chart for the sample term life policy overview to be delivered at the time of application. Mr. Wicka explained that the revisions that were agreed-upon for the sample policy overview to be delivered post underwriting would be incorporated into the sample overview to be delivered at the time of application. The summary chart includes comments on those sections where the language will differ based on the timing of the delivery.

a. What are the costs of this Life Insurance Policy?

The Working Group discussed the section titled "What are the costs of this Life Insurance Policy?" The current section reads:

> What are the costs of this Life Insurance Policy?
>
> Based on the death benefit selected and the quoted risk class, the premium is estimated to be – per month. The premium may be paid either monthly, quarterly, semi-annually or annually. If you pay premiums monthly, quarterly, or semi-annually, the total premium will be greater than if you pay annually.

Mr. Wicka suggested, and the Working Group agreed to, the following revised language that Ms. Cude suggested:

> What does this life insurance policy cost?
>
> Based on the death benefit selected and the quoted risk class, your premium is estimated to be – per year.
>
> You may pay the premium monthly, quarterly, semi-annually or annually. If you pay premiums monthly, quarterly or semi-annually, the total premium you pay will be greater than if you pay annually.

b. Does the policy ever expire?

The Working Group discussed the section titled "Does the policy ever expire?" The current section reads:

> Does the policy ever expire?
>
> Yes, you have chosen a 20-year term. Once the term expires, there is an option to renew this policy each year until both insureds reach 95, but the cost of this policy will increase every year after the initial term.

Mr. Wicka suggested, and the Working Group agreed to, making changes to this question that parallel the changes made to the sample policy overview delivered post underwriting, with some tweaks that take into account the delivery at the time of application. He explained that the reference to the cost of policy can be removed because that is covered elsewhere in the overview. The revised language reads:

> Does the policy ever end? If so, what is the term of the policy?
>
> Yes. The policy ends when the term you chose ends. You may choose a 10-, 20- or 30-year term. You can choose to renew this policy each year until you are age 95.

Mr. Birnbaum said he does not have a problem with the revised language but pointed out that this question seems to provide similar information to the later question: "Can I extend the term of coverage." Mr. Wicka agreed that the Working Group should revisit this and whether to combine these two questions.

c. What is the death benefit?

The Working Group discussed the section titled "What is the death benefit?" The current section reads:

> What is the death benefit?
>
> You have selected a death benefit of $500,000 to generate this quote. You may select a death benefit between $250,000 and $2 million subject to underwriting approval.

Mr. Wicka suggested, and the Working Group agreed to, making changes to this question that parallel the changes made to the sample policy overview delivered post underwriting, with some tweaks that take into account the delivery at the time of application. The revised language reads:

> You have chosen a $500,000 death benefit. That amount was used to generate this quote. You may choose a death benefit between $250,000 and $2 million.

d. What do I need to do to obtain this policy?

The Working Group discussed the section titled "What do I need to do to obtain this policy?" The current section reads:

> You will need to fill out an application and go through the underwriting process to determine if you are eligible for this product, what the cost of the product will be and the amount of coverage you are eligible to receive.
>
> In the course of considering an insured's application, an insurer may request or collect health information about the insured in variety of ways. If you qualify, you may be able to obtain this policy without a health questionnaire or physical examination. If you do not qualify, you may still be eligible for this policy, but you will be required to fill out a health questionnaire and undergo a physical examination.

Mr. Wicka suggested, and the Working Group agreed to, the following revised language that included much of the language that Ms. Cude suggested:

> You'll need to fill out an application. You also must go through an underwriting process. Underwriters review your application and decide if you're eligible to buy this policy, and, if you are, what your premium would be and how much coverage you could buy.
>
> In the course of considering your application, an insurer may request or collect health information about you in a variety of ways.
>
> You might be approved to buy a policy without any information about your health. If you aren't, you may still be eligible for this policy, but you'll be required to fill out a health questionnaire and undergo a physical examination.

Mr. Wicka said Mr. Birnbaum had suggested including the additional two questions: "Can I get a discount for a healthy lifestyle? Does the insurer offer products or services to help me stay healthy?" He explained that questions would yield meaningful information for a consumer comparing policies. Mr. Wicka wondered whether this was a benefit added to term life policies. He suggested, and the Working Group agreed, tabling this suggestion for a more fulsome discussion during a future meting.

Mr. Wicka said he would make the changes to the two alternate versions of the sample overview that the Working Group agreed on during its last two meetings, as well as make corresponding changes to the two versions of Model #580 to post to the Working Group's web page prior to its next meeting. He said he would like for the Working Group, during its next meeting, to consider a motion to send these preliminary drafts to the Life Insurance and Annuities (A) Committee to aid it in providing guidance to the Working Group on next steps.

Having no further business, the Life Insurance Illustration Issues (A) Working Group adjourned.

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Draft: 3/31/21

Life Insurance Illustration Issues (A) Working Group
Virtual Meeting
February 23, 2021

The Life Insurance Illustration Issues (A) Working Group of the Life Insurance and Annuities (A) Committee met Feb. 23, 2021. The following Working Group members participated: Richard Wicka, Chair (WI); Jodi Lerner (CA); Chris Struk (FL); Teresa Winer (GA); Bruce R. Ramge (NE); Jana Jarrett (OH); and John Carter (TX). Also participating were: Denise Lamy (NH); Sarah Neil (RI); James Young (VA); and David Hippen (WA).

1. Reviewed Next Steps

Mr. Wicka reminded the Working Group of its charge to "explore how the narrative summary required by Section 7B of the *Life Insurance Illustrations Model Regulation* (#582) and the policy summary required by Section 5A(2) of the *Life Insurance Disclosure Model Regulation* (#580) can be enhanced to promote consumer readability and understandability of these life insurance policy summaries, including how they are designed, formatted and accessed by consumers."

Mr. Wicka reminded the Working Group that it had initially decided to add a requirement for a policy overview document in both Model #580 and Model #582 to fulfill the Working Group's charge. However, in September 2018, the Working Group agreed to simplify its approach by revising Model #580 to include the requirement of a policy overview document to accompany all life insurance policies for delivery with the *Life Insurance Buyer's Guide* (Buyer's Guide). This new approach eliminates the need for revisions to Model #582.

Mr. Wicka reminded the Working Group that the issue of timing for the delivery of the policy overview was an issue that the Working Group continues to discuss. He said alternative versions of revisions to Model #580, as well as sample policy overview documents reflecting the different timing for delivery, had been developed. He said one version maintains the delivery requirements set out in Model #582 that tie delivery of the policy overview to the delivery of the Buyer's Guide, which, under certain circumstances, can be delivered as late as the time of delivery of the policy. The other version requires delivery of the policy overview at the time of application. He said draft samples for both versions of the policy overview document were developed for term life insurance policies, noting that comments were requested by Aug. 28, 2020.

Mr. Wicka said comments were received and have been put in a chart for discussion by the Working Group during this meeting. He said the American Council of Life Insurers (ACLI) wrote a letter to Commissioner Caride and members of the Life Insurance and Annuities (A) Committee suggesting that the charge of the Working Group to "explore" had been achieved, and the Working Group should be retired. Mr. Wicka explained that Commissioner Marlene Caride (NJ) would like for the work product that the Working Group has achieved so far to be brought to the Life Insurance and Annuities (A) Committee so that the Committee can see a preliminary draft of the work that has been done before it provides guidance.

Mr. Wicka explained that the Working Group will have additional opportunities to make changes to the sample policy overview documents and Model #580. He reminded the Working Group that this process will need to be undertaken for whole life and universal life policies. He said he would like to have a preliminary draft to reflect the term life product for the Life Insurance and Annuities (A) Committee to react to. He reminded the Working Group that the answers in the sample policy overview documents are based on a particular term life policy that that he used in creating the sample. He explained that any necessary corresponding changes will be made to Model #580 to reflect changes made to the sample policy overview documents.

2. Discussed Comments Submitted on Sample Policy Overview Documents

Mr. Wicka reviewed the comments that were received on the two versions of the sample policy overview. He said a chart of the comments had been distributed to the Working Group, interested state insurance regulators and interested parties, and it was posted on the NAIC website.

The Working Group started with reviewing comments on the sample term life overview delivered post underwriting. Comments were received from Michael Lovendusky (American Council of Life Insurers—ACLI), funded consumer representative Birny Birnbaum (Center for Economic Justice—CEJ) and funded consumer representative Brenda Cude (University of Georgia).

a. Introduction

The Working Group discussed the introductory section. The current introduction states:

> This document lists this product's key features and benefits. You can get a similar summary of key product features from other insurance companies to help you compare similar products. If you have questions about this particular life insurance product, ask the agent, broker, advisor, or a company representative offering this product for clarification. If you have questions about life insurance products generally or about company or agent licensing, contact [insert reference to state department of insurance].

Mr. Birnbaum and Ms. Cude's comments pointed out that the rest of the document talks about "policies," not "products." Mr. Birnbaum also suggested referencing the NAIC website. Ms. Cude suggested removing the reference to contacting a company representative for clarification. Mr. Wicka suggested, and the Working Group agreed, to the following revised introduction:

> This document lists this insurance policy's key features and benefits. You can get a similar summary of key policy features from other insurance companies to help you compare similar policies.
>
> If you have questions about life insurance generally or other types of policies, the National Association of Insurance Commissioners has useful information at https://content.naic.org/consumer/life-insurance.htm/
>
> If you have questions about this particular life insurance policy, ask the agent, broker, advisor, or a company representative.
>
> If you have questions about company or agent licensing, contact [insert reference to state department of insurance].

b. Information About the Insured

The Working Group discussed comments received on the section titled "Information about the Insured."

The ACLI pointed out that the sample says the overview is prepared for Mr. and Mrs. Smith, when most policies are owned by an individual, noting that the applicant should be named, along with the risk class.

Mr. Birnbaum suggested titling the section "Information We Use to Determine Your Annual Premium" and included a list of information beyond the age and sex provided for in the sample overview that is collected from the policy owner, including family history, tobacco usage, occupation and hobbies, as well as information obtained from third parties, such as motor vehicle registration, auto, home and other insurance claims, driving records, prescription history and criminal history. Mr. Birnbaum also suggested including the possible range of risk classes before naming the risk class to which the policy owner belongs.

Mr. Wicka said he would revise this portion of the overview for review by the Working Group. The Working Group agreed with this plan.

c. What Are the Costs of This Life Insurance Policy?

The Working Group discussed the comments received on the section titled "Cost Information." The current section reads:

> The premium is X per month.
>
> The premium must be paid either monthly, quarterly, semi-annually or annually. If you pay premiums monthly, quarterly, or semi-annually the total premium will be greater than if you pay annually.

Mr. Wicka suggested, and the Working Group agreed, to make the following revision, which is a combination of suggested revisions from Mr. Birnbaum and Ms. Cude:

> The premium is $AAA annually or $BBB quarterly or $CCC monthly.

You may pay the premium monthly, quarterly, semi-annually or annually. If you pay premiums monthly, quarterly or semi-annually, the total premium you pay will be more than if you pay annually.

d. Will My Premium Ever Change?

The Working Group discussed comments received on the section titled "Will my premium ever change?" The current section reads:

No, the premium is guaranteed to remain level for the term of the policy. After that term expires, the premium will increase annually if you chose to renew the policy.

The Working Group discussed language suggestions from Mr. Birnbaum and Ms. Cude.

Mr. Wicka pointed out that the answer "no" is followed by a description of the circumstances when the premium may increase, which is confusing. Mr. Wicka suggested, and the Working Group agreed, to the following language that eliminates the "no" and incorporates the simplified language suggested by Mr. Birnbaum and Ms. Cude:

The premium will stay the same for the initial term of the policy. After that term ends, the premium will increase each year if you choose to renew the policy.

e. Are There Any Costs if I Decide to Cancel the Policy?

The Working Group discussed the section titled "Are there any costs if I decide to cancel the policy?" The current section reads:

No, there are no costs to cancel this policy. However, this policy does not accumulate cash value and you will not receive any return of the amount of premiums paid.

Mr. Birnbaum and Ms. Cude submitted language suggestions to clarify the section.

Mr. Wicka suggested, and the Working Group agreed, to the following language that is a combination of Mr. Birnbaum's and Ms. Cude's suggestions:

Are there any costs if I decide to cancel the policy? Do I get any money back if I cancel the policy?

No, there are no costs to cancel this policy. However, if you do cancel this policy, you won't get any money back.

f. Can I Lower the Death Benefit Amount to Reduce Premium?

The Working Group discussed the section titled "Can I lower the death benefit amount to reduce premium?" The section reads:

Can I lower the death benefit amount to reduce premium?

No.

Mr. Wicka said the ACLI comment letter pointed out that reducing benefits to reduce premium is not a practice for this type of policy and would likely not be permitted under state laws, because it alters the terms of the contract and would be tantamount to a new policy. Mr. Wicka and the Working Group agreed to eliminate this question.

The Working Group agreed to reconvene to finish going through the comments submitted.

Having no further business, the Life Insurance Illustration Issues (A) Working Group adjourned.

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