LIFE INSURANCE AND ANNUITIES (A) COMMITTEE

Life Insurance and Annuities (A) Committee Nov. 18, 2024, Minutes
- Life Insurance and Annuities (A) Committee Oct. 21, 2024, Minutes (Attachment One)
  - Life Actuarial (A) Task Force 2025 Proposed Charges (Attachment One-A)
  - Life Insurance and Annuities (A) Committee 2025 Proposed Charges (Attachment One-B)
- Annuity Suitability (A) Working Group Nov. 17, 2024, Minutes (Attachment Two)
  - Chair Draft Safe Harbor Guidance Sept. 23, 2024 (Attachment Two-A)

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Draft: 11/27/24

Life Insurance and Annuities (A) Committee
Denver, Colorado
November 18, 2024

The Life Insurance and Annuities (A) Committee met in Denver, CO, Nov. 18, 2024. The following Committee members participated: Judith L. French, Chair (OH); Doug Ommen, Co-Vice Chair, Andrew Hartnett and Mike Yanacheak (IA); Carter Lawrence, Co-Vice Chair, represented by Toby Compton (TN); Mark Fowler (AL); Barbara D. Richardson (AZ); Karima M. Woods represented by Philip Barlow (DC); Grace Arnold (MN); Justin Zimmerman (NJ); Adrienne A. Harris represented by Mark McLeod (NY); Glen Mulready represented by Andrew Schallhorn (OK); Elizabeth Kelleher Dwyer (RI); Scott A. White represented by Craig Chupp (VA); and Nathan Houdek (WI). Also participating were: Nour Benchaaboun (MD); Fred Andersen (MN); Eric Dunning (NE); Michael Humphreys (PA); and Rachel Hemphill (TX).

1. Adopted its Oct. 21 Minutes

Director French said the Committee met Oct. 21 and took the following action: 1) adopted its Summer National Meeting minutes; 2) adopted the 2025 Generally Recognized Expense Table (GRET); and 3) adopted its 2025 proposed charges and those of the Life Actuarial (A) Task Force.

Director Richardson made a motion, seconded by Commissioner Arnold, to adopt the Committee's Oct. 21 minutes (Attachment One). The motion passed unanimously.

2. Heard a Federal Update

Taylor Walker (NAIC) gave an update on the U.S. Department of Labor's (DOL's) proposed Retirement Security Rule, also known as the fiduciary rule, and amendments to the prohibited transaction exemptions (PTEs), which exempt fiduciaries from what would otherwise be prohibited conflicts. Walker reminded the Committee that the final version of the fiduciary rule was published in the Federal Register on April 25, 2024.

Walker explained that the fiduciary rule: 1) expands the definition of an investment advice fiduciary. Fiduciary status applies to nearly all financial professionals who provide retirement guidance, including life insurers who sell annuity products; 2) the fiduciary definition eliminates the requirement that advice be given on a "regular basis"; and 3) the fiduciary rule adds additional restrictions and requirements to the PTEs.

Walker explained that most of the fiduciary rule was set to take effect on Sep. 23, 2024. But in July 2024, two federal district courts in Texas, in two separate cases, stayed the rule. This means that the industry does not have to comply with the fiduciary rule until the lawsuits are resolved. The first suit was filed by the Federation of Americans for Consumer Choice (FACC), along with several independent insurance agents. The second was brought by nine insurance trade associations, including the American Council of Life Insurers (ACLI), the National Association of Insurance and Financial Advisors (NAIFA), the Insured Retirement Institute (IRI), and the National Association for Fixed Annuities (NAFA). In both court cases, the judges noted that the fiduciary rule shares many of the same legal defects as the Obama-era 2016 fiduciary rule and exceeds the DOL's statutory authority. It is widely believed that the fiduciary rule will not go forward under the incoming Trump Administration.

3. Adopted the Report of Life Actuarial (A) Task Force

Hemphill said the Life Actuarial (A) Task Force met Nov. 15–16. Hemphill said the Task Force discussed the Asset Adequacy Testing for Reinsurance Actuarial Guideline draft and, after its discussion, exposed considerations for

Reinsurance Asset Adequacy Testing. The discussion and exposure included: 1) initially focusing on affiliated treaties, 2) adopting a disclosure-based approach for 2025, with individual regulators retaining the ability to follow up on any concerns that may be identified based on this reporting, and 3) allowing for aggregation within a counterparty (as opposed to at a treaty level), with more granular testing where the company or regulators have documented concern that aggregation benefits may not ultimately be realized across different lines of business or product types under moderately adverse conditions.

Hemphill said the Task Force continues to make progress toward implementing a replacement generator of economic scenarios (GOES), including discussion of equity calibration and interest rate flooring options. She reported that the Task Force had a robust and productive dialogue with regulators and interested parties, with increasing common ground. She said some regulators requested that ACLI present additional interest rate flooring options, to which the ACLI agreed. The Generator of Economic Scenarios (GOES) (A) Subgroup will continue to meet over the coming months. The Subgroup is working toward meeting later this year to consider whether an alternate equity calibration or interest rate flooring option should be model office tested. Hemphill said this model office testing would then allow regulators and the industry to understand the potential impact of any change being considered for the GOES before adoption.

Hemphill said the Task Force heard a presentation on *Valuation Manual* (VM)-22, Requirements for Principle-Based Reserves for Non-Variable Annuities, and model office testing. Field test results are currently being aggregated and will be presented publicly at a future meeting, where the number of responses allows for sufficient anonymization in aggregate results. These presentations will confirm whether industry results are generally consistent with the model office results.

Chupp made a motion, seconded by Director Dwyer, to adopt the report of the Life Actuarial (A) Task Force. The motion passed unanimously.

4. Adopted the Report of the Annuity Suitability (A) Working Group

Yanacheak said the Annuity Suitability (A) Working Group met Nov. 17, 2024. During this meeting, the Working Group discussed the chair's draft safe harbor guidance document and the comments received during the public comment period that ended Nov. 8. Yanacheak said the Working Group discussed its next steps. The Working Group plans to reconvene the small drafting group that developed the initial draft guidance document to review the comments received and revise the draft accordingly. He said the Working Group anticipates distributing the revised draft guidance document for public comment and holding a future meeting to discuss the comments received.

Yanacheak made a motion, seconded by Director Dwyer, to adopt the report of the Annuity Suitability (A) Working Group (Attachment Two). The motion passed unanimously.

5. Heard an Update on the Life Workstream of the Special (EX) Committee on Race and Insurance

Commissioner Fowler reminded the Committee that the Life Workstream of the Special (EX) Committee on Race and Insurance finalized an endorsement in support of state legislation requiring a financial literacy course as a prerequisite to high school graduation. This endorsement was adopted by the Special (EX) Committee on Race and Insurance during its meeting on Nov. 17.

Commissioner Fowler said the Life Workstream has continued to focus on "marketing, distribution, and access to life insurance products in minority communities," including focusing on criminal history. He explained that the Life Workstream has heard several presentations exploring the impact of criminal history on a person's ability to

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access life insurance. To learn more, the Life Workstream circulated a draft survey for public comment asking about insurers' use of criminal history in life insurance underwriting. Comments were requested by Sept. 5.

Based on the comments received, a revised chair draft survey was distributed and discussed during a public meeting on Oct. 17, 2024.

Commissioner Fowler said once the survey questions are finalized, the process for issuing the survey will also be finalized. The plan is to use the same process that was used to do the big data/artificial intelligence (AI) survey of life companies. Like the AI survey, states will choose to participate, with a focus on getting participation from companies that make up a significant percentage of the life insurance market. Commissioner Fowler said that he and fellow Life Workstream co-chair Commissioner Humphreys have had internal discussions with NAIC staff and the Market Regulation and Consumer Affairs (D) Committee about the process for conducting the survey and ensuring coordination with any other surveys that may be going on.

Commissioner Fowler said that the Special (EX) Committee on Race and Insurance reported during its meeting on Nov. 17 that discussions regarding transitioning the workstream work to the letter committees will begin shortly. He and Commissioner Humphreys look forward to participating in that process for the Life Workstream and plan to move forward with the survey in the meantime.

6. Heard a Presentation from the ACGA Reacquainting Regulators With Charitable Gift Annuities

Shane Leib (American Council on Gift Annuities—ACGA) gave a presentation to raise awareness of the ACGA and its purpose as well as reacquaint or introduce regulators to gift annuities. The ACGA is available to regulators if questions about gift annuities arise. Leib explained that the ACGA advocates for charities and nonprofits and their donors. The ACGA recommends payout rates charities can use for their annuities. The ACGA also monitors regulations and tries to interface with regulators. The ACGA conducts studies to help charities plan and analyze their gift annuity programs and provides training and education to various charities.

Leib explained that a charitable annuity is a way for a donor to make a contribution to a charity that serves two purposes: 1) to provide the donor with a lifetime income based on a payout rate and 2) to allow for money to be left over for the charity once the donor dies. The expectation is that 50% of the original amount of the gift annuity will be available to the charity after the death of the donor. One tax benefit to donors who buy a gift annuity is the ability to take a deduction for the amount that is expected to be left to the charity after the donor dies.

Leib said that charitable gift annuities are issued frequently and are the leading planned gift vehicle today. Charitable gift annuities share the same risks as traditional payout annuities, such as longevity risk, interest rate risk, investment risk, and inflation. There are safeguards in place to address these risks. New charitable annuities have minimum ages and amounts, and the ACGA has capped payout rates at the age of 90 to help with longevity risk. Charities set up segregated funds to hold the reserves that are determined based on the state requirements. Leib said charities tend to be prudent investors with long-term perspective. If the gift annuity is large enough, the charity may use reinsurance to help offset risk.

There are some unique challenges for charitable gift annuities that stem from the way they are designed to work. Some donors want to fund specific charitable efforts, like a particular department within an educational institution or a specific subsidiary of a larger institution, such as the Indiana chapter of the United Way. This restricts the ability to aggregate those individual risks across large pools of people. There is also a potentially heightened concentration risk for small pools. Some of the small charities issuing gift annuities may only have a handful on their books. Additionally, donations tend to increase when markets are doing well. Donors are prompted to make this kind of donation when they can maximize the tax advantages and make as large a contribution as possible. This inconsistent gift activity can concentrate inflation, interest rate, and market risks.

Leib explained the safeguards in place that are unique to charitable gift annuities. When a charity issues a gift annuity and promises to make payments for life, those payments are backed by reserves, but at the end of the day, all the funds a charity has on hand are available to fund those payments. The general assets of the charity serve as a backstop if the original donated funds are exhausted, which can be quite significant through endowments and other donations. Payout rates are determined with the expectation that 50% of the initial amount will go to the charity, so only 50% of the initial funds are being used to determine the payout rate. Additionally, a donor could always decide to forgo future payments if they felt they were eating into the charity's general assets.

Leib explained how the ACGA supports its members to help them avoid risky behaviors. The ACGA suggests appropriate payout rates and studies charitable gift annuity mortality experience to determine what drives the mortality and should be used in their assumptions. The ACGA performs industry studies to understand the effectiveness of the payout rates as well as verify and validate the rates that the ACGA suggests against the financial results of the charities. The ACGA brings in actuaries and outside consultants to review the methodologies on a regular basis. The ACGA also provides educational opportunities and webcasts to help charities understand the operational aspects and risk management topics.

Dave Ely (ACGA) shared some information about state regulation of gift annuities. The *Charitable Gift Annuities Model Act* (#240) was adopted in 2000 and does a good job with definitions, reserve, surplus, general asset, investment, annual report, and contract filing requirements. There is a lot of variation in filing requirements among states. Several states require initial and ongoing filings. Some states require an initial registration, and some states are completely silent. There is one state where it is a felony to issue a gift annuity without registration, so the ACGA wants to make sure all their member charities follow the appropriate laws across the country. Ely said the ACGA has drafted model registration requirements to help standardize and assist charities in following state requirements.

Ely said one of the reasons for giving this presentation is to be able to partner with state regulators going forward. Ely gave the example of partnering with the New York State Department of Financial Services (DFS) a couple of years ago when charitable gift annuities got caught up in some changes the DFS was making to the regulation of commercial annuities. The ACGA was able to work with the DFS to draft and pass legislation that retained its ability to regulate charitable gift annuities but alleviated some of the requirements that might impede a charity's ability to meet fundraising goals to support its missions.

7. <u>Heard a Presentation from the CAIF on Fraud Involving Life Insurance and Annuities</u>

Michelle Rafeld (Coalition Against Insurance Fraud—CAIF) gave a presentation on the rapidly evolving landscape of insurance fraud in the life and annuity markets. Rafeld explained that the CAIF is the nation's only alliance uniting consumers, government organizations, and insurers to combat insurance fraud.

Rafeld said there has been a dramatic change in consumer attitudes toward insurance fraud. Over 50 million Americans do not view insurance fraud as a crime. In addition, technology has profoundly transformed the world of insurance fraud.

Rafeld explained that technology has revolutionized how insurance fraud is prevented, detected, and investigated, but at the same time, it has created new avenues and opportunities for insurance fraud. The insurance industry is facing significant risks and challenges that demand immediate attention, increased resources, added partnerships, and innovative solutions. Insurance carriers and fraud fighters are finding themselves up against very sophisticated criminals, many of whom are malicious cyber hackers, affiliated with organized crime networks operating in the U.S. and abroad.

Rafeld outlined some key fraud trends that life and annuity writers are confronting. One of the most pervasive issues reported by carriers is the intentional misrepresentation of information on applications. Both consumers and agents motivated by a commission payout are misstating health conditions, financial status, lifestyle factors, and dates of birth to avoid policy denials or to secure lower premiums or higher coverage limits. Material misrepresentations lead to policy rescissions, claim denials, and substantial carrier losses, and while insurers are increasingly using data analytics and third-party verifications to combat these tactics, the problem continues to persist.

Another trend that has been around for years is advance commission schemes, and it remains one of the top concerns of life and annuity writers as agents continue to manipulate the advanced commission structure for personal gain.

Rafeld said while some agents regularly churn their business or game the “free look” period to pocket increased commissions, carriers are also seeing an increase in agents creating, submitting, and paying the initial premium for fraudulent life and annuity policies. Agents are collaborating with individuals willing to act as fake policyholders, submitting applications for nonexistent individuals, or using the personal and financial information of existing clients without their knowledge or permission, which is not only insurance fraud but identity theft, one of the most significant issues impacting both consumers and the industry today.

Rafeld said that identity theft is increasingly prevalent. Unlawfully obtained consumer data is being sold on the dark web where sophisticated criminals are taking out policies using bogus or stolen names to file fraudulent claims. Criminals are also impersonating consumers to cash out life and annuity products that have a high cash value, and the potential financial impact on a company is concerning.

Rafeld said that earlier this year, an overseas company was defrauded of nearly $25 million dollars by a fraudster who, through an email compromise scheme, went on to orchestrate a Zoom call where they then used manipulated images and voices of company personnel to authorize the cutting of checks to the con artist. While the organization victimized was not an insurance carrier, this story illustrates the tactics being used against insurers today. The technology is so sophisticated that bad actors are successfully defeating the voice, signature recognition, and antifraud security systems that insurers have in place.

Rafeld said insurers are also seeing an increase in the use of synthetic IDs in identity theft schemes. In these schemes, criminals combine real and fictitious information to create new identities, enabling fraudsters to apply for and access policies without triggering typical identity verification safeguards. These synthetic identities can go undetected, resulting in fraudulent policies that are later cashed out or surrendered, often leaving insurers with substantial financial losses.

Rafeld said that another trend is account takeovers, where criminals are using phishing, social engineering, or purchased credentials to breach accounts, allowing them to make withdrawals, change beneficiaries, or even transfer ownership. The fraudsters will often intercept or redirect communications to conceal their actions from policyholders. Older policyholders are particularly vulnerable to account takeover schemes due to the fact that they are less familiar with the cybersecurity attacks and methods being used today.

Rafeld said another scheme involves the creation and submission of fraudulent documents. In today’s technology age, the possibilities for exaggerating and fabricating authentic-looking government IDs, medical records, x-rays, and counterfeit death certificates are virtually endless as policyholders, third parties, and criminals can easily use online platforms and AI to buy or create fraudulent documents. Along these same lines are criminals who forge policy changes or policy surrenders to the detriment of insurers and policyholders. It is imperative that life and annuity carriers implement tighter controls and added monitoring and verification protocols.

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Rafeld said synthetic identities and stolen consumer information are also fueling new Stranger-Originated Life Insurance (STOLI) schemes. Using stolen consumer data, fraudsters are arranging for imposters to apply for coverage and pose as the insured when, in reality, the “victims” are typically unhealthy and would never qualify for insurance. These schemes typically involve policies ranging from $25,000 to $500,000, with fraudsters sometimes "stacking" policies across multiple carriers to rake in millions. Another troubling trend involves health care workers stealing the identities of their patients. Disturbingly, several human trafficking cases have involved traffickers taking out insurance on trafficked individuals.

Rafeld said that fraudsters are also targeting life and annuity insurers to launder money. While banks and other financial institutions are typically bound by "know your customer" regulations, criminals have recognized the insurance industry has fewer regulatory requirements for vetting customers and their sources of funds, making life and annuity products the perfect tool to wash illegal funds. In addition to establishing whole-life policies where withdrawals, loans, or surrenders are then later made, money launderers are also depositing funds into annuities and converting the dirty money into clean dollars through income distributions. According to the United Nations, $800 billion dollars a year is illegally laundered on an annual basis, with drug cartels being a major source of the cash being used. Both the industry and state regulators may wish to consider the benefits of adding “know your customer” risk mitigation strategies.

Rafeld explained that in the U.S., the annual cost of insurance fraud has reached a staggering level of $308.6 billion dollars. Of that figure, close to $75 billion each year is lost to life insurance fraud. Some risk mitigation strategies insurers currently use include: 1) adopting advanced technologies; 2) leveraging data analytics to enhance the monitoring of agents and activities; 3) implementing new commission structures; and 4) collaborating with state fraud bureaus and law enforcement in an attempt to hold identified fraudsters accountable.

Insurance fraud can have a detrimental financial impact on a carrier that could affect both its profitability and stability. Rafeld suggested that regulators look to utilize the financial examination process to ensure companies have robust antifraud risk mitigation systems in place. Reviewing antifraud plans offers valuable insights into an insurer’s preparedness. Robust, regularly updated plans are a strong indicator of an organization’s commitment to fraud mitigation. By conducting interviews and analyzing key antifraud data, regulators can help carriers identify potential opportunities where their antifraud efforts can be strengthened. Such a process can also help foster education and collaboration between regulators and insurers, which would only strengthen the industry as a whole.

Rafeld said that the CAIF stands ready to unite and empower private and public groups to fight insurance fraud through outreach, advocacy, and research. The coalition is comprised of over 310 member organizations, including a majority of the state departments of insurance, and has committees and task forces. Like NAIC committees and working groups, these groups meet virtually, as well as in person, to discuss and educate one another about key issues in the insurance fraud world. Rafeld said additional information about membership and their activities can be found on the CAIF website.

Hartnett asked Rafeld whether the CAIF has been seeing romance scams used to initiate account takeovers. A primary complaint on the security side in Iowa has involved situations where somebody has convinced the customer to make a request. Rafeld said that situation has not come up. What they are seeing is criminals who obtain the data illegally and sell it on the dark web to people who use it to circumvent security protocols and take over accounts.

8. <u>Discussed “Report and Hold” Laws</u>

Commissioner Ommen said he wanted to raise a financial exploitation issue that has come up on the security side that this Committee may want to consider in the context of life insurance and annuities. He said that approximately 10 insurance departments also regulate securities. He met with Maureen Adolf (Eversheds Sutherland), who, along with the law firm of Davis & Harman, represents the Committee of Annuity Insurers (CAI). Commissioner Ommen spoke to Adolf regarding some of the protections on the securities side that are in place to guard against the financial exploitation of older Americans.

Hartnett explained that around 40 states have implemented securities laws that are commonly referred to as "report and hold" laws. The idea is that if there is a reasonable suspicion that a requested transaction will result in financial exploitation, the transaction can be suspended without legal repercussions as long as certain steps have been taken, including notifying the client and the state securities regulator.

Adolf explained that the CAI was formed to address federal legislative and regulatory issues relevant to the annuity industry and to participate in the development of federal tax and securities policies regarding annuities. The committee is a coalition of 32 of the largest issuers of annuity contracts and represents approximately 80% of the annuity business in the United States. The CAI has a senior investors working group that has been focused on senior investor protection issues. The working group has been pleased with the efforts of securities regulators to protect the elderly and vulnerable from financial exploitation. These protections include Financial Industry Regulatory Authority (FINRA) rule 4512, which allows the naming of a trusted contact for an account suspected of exploitation, and rule 2165, which allows firms to pause disbursement to customers if they have a reasonable belief that financial exploitation is taking place.

North American Securities Administration (NASAA) also passed a rule similar to FINRA and the laws that Hartnett mentioned. However, there is nothing similar for insurance products with cash value, like whole life or annuities. Adolf suggested that the Life Insurance and Annuities (A) Committee might want to consider looking into the viability of a similar regime that allows for a pause on a customer's request to withdraw funds when there is a reasonable belief that financial exploitation is taking place to allow time to investigate the matter or refer the matter to authorities. Commissioner Ommen said this was just an introduction to the topic and hopes that the Committee can have discussions in the future.

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

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Life Insurance and Annuities (A) Committee
Virtual Meeting
October 21, 2024

The Life Insurance and Annuities (A) Committee met Oct. 21, 2024. The following Committee members participated: Judith L. French, Chair (OH); Doug Ommen, Co-Vice Chair (IA); Carter Lawrence, Co-Vice Chair (TN); Barbara D. Richardson (AZ); Karima M. Woods represented by Philip Barlow (DC); Grace Arnold represented by Fred Andersen (MN); Justin Zimmerman (NJ); Adrienne A. Harris represented by Bill Carmello (NY); Glen Mulready (OK); Scott A. White (VA); and Nathan Houdek (WI). Also participating was: Rachel Hemphill (TX).

1. Adopted its Summer National Meeting Minutes

Commissioner Lawrence made a motion, seconded by Commissioner White, to adopt the Committee's Aug. 15 minutes (*see NAIC Proceedings – Summer 2024, Life Insurance and Annuities (A) Committee*). The motion passed, with Carmello abstaining.

2. Adopted the 2025 GRET

Hemphill explained that the Society of Actuaries (SOA) provided the Life Actuarial (A) Task Force with the annual update to the Generally Recognized Expense Table (GRET). She said no concerns were raised with the SOA updates, and the Task Force unanimously adopted the updated 2025 GRET Sept. 5.

Commissioner Richardson made a motion, seconded by Andersen, to adopt the 2025 GRET (*see NAIC Proceedings – Fall 2024, Executive (EX) Committee and Plenary, Attachment Two*). The motion passed, with Carmello abstaining.

3. Adopted the Life Actuarial (A) Task Force's 2025 Proposed Charges

Hemphill summarized the changes to the Life Actuarial (A) Task Force's 2025 proposed charges. She said the Task Force has an added charge for 2025 to "Coordinate with the Reinsurance (E) Task Force on actuarial items related to reinsurance." She said that the Task Force has been actively coordinating with the Reinsurance (E) Task Force on reinsurance-related workstreams, but given its importance, it is being added explicitly to its charges. Hemphill said it is proposed that the Indexed Universal Life (IUL) Illustration (A) Subgroup be changed to the Life and Annuity Illustration (A) Subgroup. The focus of the Subgroup was expanded from only IUL illustrations to both life and annuity illustrations, and a corresponding charge was added for the Subgroup to "[c]onsider any guidance, actions, or recommendations that may be necessary to regulate annuity illustration practices." Lastly, Hemphill said minor revisions were made to the Variable Annuities Capital and Reserve (E/A) Subgroup's charges to reflect the transition from initial monitoring to ongoing maintenance of the variable annuity (VA) reserve framework. Hemphill said no concerns were raised with the update, and the Task Force adopted its 2025 proposed charges Oct. 9.

Commissioner Ommen made a motion, seconded by Commissioner Lawrence, to adopt the Life Actuarial (A) Task Force's 2025 proposed charges (Attachment One-A). The motion passed, with Carmello abstaining.

4. Adopted its 2025 Proposed Charges

Director French summarized the Committee's 2025 proposed charges. The Accelerated Underwriting (A) Working Group has been disbanded, as it accomplished its charge with the adoption of the *Accelerated Underwriting in Life Insurance Regulatory Guidance and Considerations* document by this Committee at the Summer National Meeting. Director French reminded the Committee that a referral was made to the Market Conduct Examination Guidelines (D) Working Group to consider additions to the *Market Regulation Handbook* on this topic. Director French said the Committee stands ready to assist if asked under its overarching charge. Director French said the Annuity Suitability (A) Working Group and its charge are being retained. The Working Group has resumed its work on a frequently asked questions (FAQ) document addressing the implementation of the safe harbor provisions in the *Annuity Disclosure Model Regulation* (#245).

Commissioner Mulready made a motion, seconded by Commissioner Houdek, to adopt the Committee's 2025 proposed charges (Attachment One-B). The motion passed, with Carmello abstaining.

5. <u>Discussed Other Matters</u>

Director French said the Committee is scheduled to meet at the Fall National Meeting on Monday, Nov. 18, 2024, from 3:00 – 4:00 p.m.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/A Cmte/2024 Fall National Meeting/11-21-22 ACmte min final

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Adopted by the Executive (EX) Committee and Plenary, TBD
Adopted by the Life Insurance and Annuities (A) Committee, 10/21/2024
Adopted by the Life Actuarial (A) Task Force, 10/9/2024

2025 Proposed Charges

LIFE ACTUARIAL (A) TASK FORCE

The mission of the Life Actuarial (A) Task Force is to identify, investigate, and develop solutions to actuarial problems in the life insurance industry.

Ongoing Support of NAIC Programs, Products, or Services

1. The **Life Actuarial (A) Task Force** will:
   A. Work to keep reserve, reporting, and other actuarial-related requirements current. This includes principle-based reserving (PBR) and other requirements in the *Valuation Manual*, actuarial guidelines, and recommendations for appropriate actuarial reporting in blanks. Respond to charges from the Life Insurance and Annuities (A) Committee and referrals from other groups or committees, as appropriate.
   B. Report progress on all work to the Life Insurance and Annuities (A) Committee and provide updates to the Financial Condition (E) Committee on matters related to life insurance company solvency. This work includes the following:
      i. Work with the American Academy of Actuaries (Academy) and the Society of Actuaries (SOA) to develop new mortality tables for valuation and minimum nonforfeiture requirements for life insurance and annuities, as appropriate.
      ii. Provide recommendations for guidance and requirements for accelerated underwriting (AU) and other emerging underwriting practices, as needed.
      iii. Work with the SOA on the annual development of the Generally Recognized Expense Table (GRET) factors.
      iv. Provide recommendations and changes to other reserve and nonforfeiture requirements to address issues as appropriate, and provide actuarial assistance and commentary to other NAIC committees relative to their work on actuarial matters.
      v. Work with the selected vendor to develop and implement the new generator of economic scenarios (GOES) for use in regulatory reserve and capital calculations.
      vi. Monitor international developments regarding life and health insurance reserving, capital, and related topics. Compare and benchmark these with PBR requirements.
      ~~vi.~~vii. Coordinate with the Reinsurance (E) Task Force on actuarial items related to reinsurance.

2. The **Experience Reporting (A) Subgroup** will:
   A. Continue the development of the experience reporting requirements within the *Valuation Manual*. Provide input on the process regarding the experience reporting agent, data collection, and subsequent analysis and use of experience submitted.

3. The **Generator of Economic Scenarios (GOES) (E/A) Subgroup** of the Life Risk-Based Capital (E) Working Group and the Life Actuarial (A) Task Force will:
   A. Monitor that the economic scenario governance framework is being appropriately followed by all relevant stakeholders involved in scenario delivery.

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B. Review material GOES updates, either driven by periodic model maintenance or changes to the economic environment, and provide recommendations.

LIFE ACTUARIAL (A) TASK FORCE (*continued*)

B. Regularly review key economic conditions and metrics to evaluate the need for off-cycle or significant GOES updates, and maintain a public timeline for GOES updates.

C. **LIFE ACTUARIAL (A) TASK FORCE (*continued*)**

D.C.

E.D.Support the implementation of the GOES for use in statutory reserve and capital calculations.

F.E. Develop and maintain acceptance criteria that reflect history as well as plausibly more extreme scenarios.

4. The **Indexed Universal Life and Annuity (IUL) Illustration (A) Subgroup** will:
   A. Consider changes to *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), as needed. Provide recommendations for the consideration of changes to the *Life Insurance Illustrations Model Regulation* (#582) to the Task Force, as needed.
   A.B. Consider any guidance, actions, or recommendations that may be necessary to regulate annuity illustration practices.

5. The **Longevity Risk (E/A) Subgroup** of the Life Actuarial (A) Task Force and the Life Risk-Based Capital (E) Working Group will:
   A. Provide recommendations for recognizing longevity risk in statutory reserves and/or risk-based capital (RBC), as appropriate.

6. The **Variable Annuities Capital and Reserve (E/A) Subgroup** of the Life Risk-Based Capital (E) Working Group and the Life Actuarial (A) Task Force will:
   A. Monitor the impact of the changes to the variable annuities (VA) reserve framework and RBC calculation, and determine if additional revisions need to be made.
   B. Develop and recommend appropriate changes, including those to improve the accuracy and clarity of VA capital and reserve requirements and reporting.

7. The **Valuation Manual (VM)-22 (A) Subgroup** will:
   A. Recommend requirements for non-variable (fixed) annuities in the accumulation and payout phases for consideration by the Task Force, as appropriate. Continue working with the Academy on a PBR methodology for non-variable annuities.

NAIC Support Staff: Scott O'Neal/Jennifer Frasier

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Adopted by the Executive (EX) Committee and Plenary, TBD
Adopted by the Life Insurance and Annuities (A) Committee, Oct. 21, 2024

2025 Proposed Charges

LIFE INSURANCE AND ANNUITIES (A) COMMITTEE

The mission of the Life Insurance and Annuities (A) Committee is to: 1) consider issues relating to life insurance and annuities; and 2) review new life insurance products.

Ongoing Support of NAIC Programs, Products, or Services

1. The **Life Insurance and Annuities (A) Committee** will:
   A. Monitor the activities of the Life Actuarial (A) Task Force.

~~2. The **Accelerated Underwriting (A) Working Group** will:~~
   ~~A. Consider the use of external data and data analytics in accelerated life underwriting, including consideration of the ongoing work of the Life Actuarial (A) Task Force on the issue; and, if appropriate, draft guidance for the states.~~

~~3~~2. The **Annuity Suitability (A) Working Group** will:
   A. Consider how to promote greater uniformity in the adoption of the *Suitability in Annuity Transactions Model Regulation* (#275) across NAIC member jurisdictions.

NAIC Support Staff: Jennifer R. Cook/Jolie H. Matthews

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Annuity Suitability (A) Working Group
Denver, Colorado
November 17, 2024

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met in Denver, CO, Nov. 17, 2024. The following Working Group members participated: Doug Ommen, Chair (IA); Lauren Van Buren, Vice Chair (WI); Jimmy Gunn (AL); Jodi Lerner (CA); Sally Frechette (DE); Shannon Hohl (ID); Craig VanAalst (KS); Renee Campbell (MI); Maggie Reinert (NE); Keith Nyhan and Michelle Heaton (NH); Daniel Bradford (OH); Andrew Schallhorn (OK); and Matt Gendron (RI). Also, participating were: Chris Heisler (IL); Nour Benchaaboun (MD); and Travis Jordan (SD).

1. <u>Discussed the Chair Draft Safe Harbor Guidance Document</u>

Commissioner Ommen said the purpose of this meeting is for the Working Group to discuss the comments received by the Nov. 8 public comment deadline on the chair's draft safe harbor guidance document (Attachment Two-A) on the safe harbor/comparable standards provision in the revised *Suitability in Annuity Transactions Model Regulation* (#275), which added a best interest standard of conduct for insurers and producers. He said the Working Group received comments from the Joint Trades—in a joint comment submission from the Insured Retirement Institute (IRI), the American Council of Life Insurers (ACLI), the National Association of Insurance and Financial Advisers (NAIFA), the Committee of Annuity Insurers (CAI), the Financial Services Institute (FSI), the Indexed Annuity Leadership Council (IALC), the National Association for Fixed Annuities (NAFA), Finseca, the Securities Industry and Financial Markets Association (SIFMA), and the Institute for Portfolio Alternatives (IPA)—and the Federation of Americans for Consumer Choice (FACC), Brenda J. Cude (NAIC consumer representative), and the Washington State Office of the Insurance Commissioner.

Sara Wood (IRI) outlined the Joint Trades' general recommendations and key concerns on the draft guidance included its comment letter. She said the Joint Trades included in the comments a chart outlining the different scenarios under which insurers can comply with their supervisory obligations and a redline, track version of the draft guidance providing suggested revisions and comments for the Working Group's consideration.

Wood highlighted the four main themes the Joint Trades' comment letter includes: 1) the draft guidance should provide greater clarity as to the distinctions between an insurer's responsibilities under the safe harbor and the provision that permits insurers to contract with third parties to perform the insurer's supervisory obligations and clarity on how insurers can satisfy their obligations under Section 6C(1) of Model #275 in either scenario; 2) the draft guidance should make clear that insurers do not need to separately determine compliance with a "comparable standard," as defined under the model matches the specific terms and obligations under the model; 3) the draft guidance should make it clear that insurers reviewing recommendations falling under the safe harbor can rely on screening system, as allowed under the model; and 4) the draft guidance should provide adequate flexibility for companies to develop compliance programs that meet their particular business models and circumstances.

Wood noted that the draft guidance appears to suggest that insurers must review the policies and procedures of their third-party distributors, but Model #275 does not include such an explicit requirement. She said the Joint Trades suggest the draft guidance include alternatives, either individually or collectively, that would achieve the same result as a direct review of policies and procedures such as interviews with the distributor or the receipt of a certification. She said the Joint Trades envision such a certification could be crafted to provide strong assurances,

specific representations, and legal protections in lieu of a generic certification of compliance with all applicable requirements.

Gendron expressed concern about an insurer relying on a certification from its third-party distributors to satisfy its supervisory obligations. He asked how an insurer would know if the third-party distributor is in compliance with the model's requirements if the insurer does not review the distributor's policies and procedures. Wood acknowledged that a review of a distributor's policies and procedures is one way to satisfy an insurer's supervisory obligations, but she noted that some insurers conduct verbal interviews with the distributor, which provides documentation. She said certifications could be a component as well. Wood noted that what the Joint Trades are seeking is flexibility depending on the insurer's relationship with the third-party distributor.

Gendron pointed out the Joint Trades' suggestion to delete the specific examples of the information or data the draft guidance suggests insurers share with the supervising entity to ensure the entity has as much information as possible in making supervisory decisions. Wood said the Joint Trades suggest deleting this language because some of its members have suggested that different data points could be provided to achieve the same goal. She also said that if the language remained, the Joint Trades would like the Working Group to clarify it to ensure the examples are illustrative. She said insurers do not want to get into the position where a state insurance regulator would take the list and use it as a checklist because some of the information or data might not be relevant to the particular relationship.

Commissioner Ommen acknowledged Wood's perspective that the third-party supervision component and the safe harbor are two different issues. He noted, however, that the supervision component in the safe harbor provision is part of the secondary review or transactional review process that the insurer is also required to do under Section 6C(1) of the model, but he believes this supervisory obligation could be satisfied through a third-party supervision assignment process. He asked Wood to describe how such a supervisory agreement would be incorporated into the framework of the contract if an insurer uses such an assignment process. Wood said some IRI members are building such arrangements into part of the contracting process, but she would have to contact her members to get specific information on how this is done.

Wayne Melman (ACLI) said that the ACLI, as a signatory to the Joint Trades comment letter, concurs with Wood's comments. He said the ACLI appreciates the Working Group's work on this issue and urges the Working Group to expose a revised draft guidance document that incorporates the Joint Trades' suggested revisions.

Commissioner Ommen said that following this meeting, the Working Group will reconvene the small drafting group that developed the initial draft guidance document to review the comments received and revise the draft accordingly. He said the Working Group anticipates distributing the revised draft guidance document for public comment and meeting in the future to discuss the comments received.

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

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Comments are being requested on this draft on or before Nov. 8, 2024. Comments should be sent by email only to Jolie Matthews at jmatthews@naic.org.

Annuity Best Interest Regulatory Guidance Considerations

Summary

The Life and Annuity (A) Committee of the National Association of Insurance Commissioners offers the following regulatory guidance for state Departments of Insurance (DOIs) to use when reviewing a life insurer's compliance with the *Suitability in Annuity Transactions Model Regulation*, Model 275-1 (the "Model Regulation"). The regulatory guidance is focused on offering guidance concerning insurance company obligations under the safe harbor provisions embodied in Section 6E—Safe Harbor of the Model Regulation, which provides:

> Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements under this regulation. This subsection applies to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue. However, nothing in this subsection shall limit the insurance commissioner's ability to investigate and enforce the provisions of this regulation.[1]

Generally, the safe harbor would be available to an insurance producer who is also registered as a financial professional under securities law and is subject to another comparable supervisory control system as a result.

This regulatory guidance and consideration document addresses five elements of the safe harbor in the Model Regulation. First, to avail itself of the safe harbor, and to create a circumstance where an insurance producer may reasonably rely on the safe harbor, the insurance company must determine that the conditions of the safe harbor have been met. Second, in each annuity transaction the insurance company must still have "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,"[2] although the insurer may base its analysis on information received from either the financial professional[3] or the entity supervising

[1] Section 6(E)(1). The prohibited practices in Section 6(D) still apply in Safe Harbor transactions.
[2] *See* Section 6(C)(1); *see also* Section 6(E)(2)("Nothing in Paragraph (1) shall limit the insurer's obligation to comply with Section 6(C)(1) of this regulation. . . ."
[3] A financial professional is a producer that is regulated and acting as
(a) A broker-dealer registered under federal [or state] securities laws or a registered representative of a broker-dealer;
(b) An investment adviser registered under federal [or state] securities laws or an investment adviser representative associated with the federal [or state] registered investment adviser; or

the financial professional. Third, for the safe harbor to apply, an insurance company must "[m]onitor the relevant conduct of the financial professional. . . or the entity supervising the financial professional."[4] Fourth, an insurance company must also "[p]rovide to the entity responsible for supervising the financial professional . . . information and reports that are reasonably appropriate to assist such entity to maintain its supervision system." Finally, an insurance company must distinguish between its obligations under the safe harbor from the situation where it has contracted with a third party for supervision.

Requirements of the Safe Harbor

One of the most common situations that will generate the use of the safe harbor is the licensed insurance producer who is also registered as a securities agent and is subject to the supervisory control system of a registered securities broker-dealer. Pursuant to the safe harbor, recommendations and sales of annuities made in compliance with business rules, controls and procedures that would satisfy comparable standards[5] are deemed to be compliant with the requirements under the Model Regulation. As an example, a financial professional recommending a variable annuity registered with the United States Securities and Exchange Commission (the "SEC") under the safe harbor is deemed to comply with the Model Regulation if the securities agent's broker-dealer has established "business rules, controls and procedures" or a supervisory control system pursuant to FINRA Rules 3110, 3120 and 3130[6] that (1) govern the appropriate recommendation of an SEC registered variable annuity and (2) that satisfies the SEC's Regulation Best Interest ("Reg BI").[7]

Making a recommendation in compliance with comparable standards means in compliance with the "business rules, controls and procedures that satisfy a comparable standard…" To avail itself of the safe harbor, the insurance company should review the broker-dealer's business rules, processes, and procedures that pertain to

(c) A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.

[4] *See* Section 6(E)(3)(a).

[5] "Comparable standards" is defined in the Model Regulation in Section 6(E)(5) to mean:

(a) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest and any amendments or successor regulations thereto;

(b) With respect to investment advisers registered under federal [or state] securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 [or applicable state securities law], including but not limited to, the Form ADV and interpretations; and

(c) With respect to plan fiduciaries or fiduciaries, means the duties, obligations, prohibitions, and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

[6] https://www.finra.org/finramanual/rules/r3110; https://www.finra.org/finramanual/rules/r3120; https://www.finra.org/finramanual/rules/r3130

[7] 17 CFR 240.15l-1 (§ 240.15l-1 Regulation best interest)

the firm's supervisory control system over the registered variable annuities to ensure that they are adequate and that they provide comparable controls as those required under the Model Regulation.

Another common dual license situation involves a licensed insurance agent who is also registered as an investment adviser representative. To avail itself of the safe harbor in this circumstance in a recommendation involving a SEC registered variable annuity, the insurance company should review the business rules, controls, and procedures of the investment adviser to ensure they are adequate and provide comparable controls as those required under the Model Regulation. The fact that an investment adviser by law is a fiduciary and carries potential liabilities for breach of those duties does not in and of itself meet the requirements of the safe harbor. The investment adviser that is in the contractual relationship with the investment adviser representative must have written business rules, controls and procedures that pertain to recommendations of the registered variable annuity that are comparable to the controls that the insurance company would need to directly establish under the Model Regulation but for the safe harbor.

The safe harbor is also available for recommendations of fixed indexed annuities if the insurance company has been able to determine that the securities broker-dealer or investment adviser has established business rules, controls and procedures that were specifically and expressly designed to apply to fixed indexed annuities. As stated in the Model Regulation, an insurance company and insurance producer may avail themselves of the comparable standards safe harbor "even if such standard would not otherwise apply to the product or recommendation at issue." Even though Reg BI does not apply to insurance products, the safe harbor allows insurance producers who are also regulated under securities laws to operate under those securities business rules, controls, and procedures so long as they are substantially similar to those otherwise required under the Model Regulation. It is important to note that these systems must be adapted to recognize the very significant differences in features and characteristics of fixed index annuities from securities. It would be problematic for an insurance company to allow a broker-dealer agent/insurance producer to recommend its fixed index annuities under the terms of the safe harbor if the broker-dealer's policies and procedures were narrowly designed to address the sale of securities under Reg BI, but do not reference fixed index annuities or consider their particular features and characteristics. Insurers may want to provide guidelines with which the partner must comply as part of the onboarding process to ensure that the entity's processes are adequate.

Reasonable Basis

When analyzing a safe harbor transaction, the model regulation is not proscriptive about how an insurer comes to have a reasonable basis to believe that an annuity would effectively address the particular consumer's financial situation, insurance needs and objectives. That said, given that the rule says that the insurer may base

its analysis on information received from the financial professional or the entity supervising the financial professional, it is clear that the rule expects the insurer to conduct an analysis that goes beyond blind adherence to the analysis and conclusions of the entity supervising the financial professional.

What should this analysis consist of? An insurance company must ascertain that a recommendation was made and documented as required by the other comparable standard. The insurer must receive adequate consumer profile information and other evidence of a good faith basis for the transaction to determine that the annuity would effectively address the consumer's financial situation, insurance needs and objectives. In light of this responsibility and its more general underwriting responsibilities, an insurer should receive, review, and retain transactional customer profile and underwriting information. Of course, insurers may not always receive precisely the same data points from the entity supervising the financial professional as it collects on the transactions it directly supervises. The more divergent the data an insurer reviews on safe harbor transactions compared to transactions it directly supervises, the more questions a regulator may have about whether the company is able to comply with Section 6(C)(1) of the Model Regulation on safe harbor transactions.

Monitor the Relevant Conduct

To avail themselves of the safe harbor, insurance companies must monitor the business conduct of the financial professional or the entity supervising the financial professional. As the following aspects of a successful monitoring program will make clear, simply relying on the statement of a financial professional that he or she complied with a comparable standard falls short of the monitoring required of an insurer. Aspects of a successful monitoring program include:

- **Onboarding**: Entering into a new contractual relationship with an entity to sell annuities should involve a review of the entity's business rules, processes, and procedures to ensure that they are adequate and that they address all the annuities that will be sold under the contractual arrangement. Insurers may want to provide guidelines with which the partner must comply as part of the onboarding process to ensure that the entity's processes are adequate.
- **Audits**: After onboarding a financial partner, insurers need to ensure that the entity's policies and procedures remain adequate, and that the entity is doing what it says it will do. This will likely involve creating a strong audit program. Hallmarks of a strong audit program include selecting an adequate sample size, auditing each financial partner frequently enough, and escalation procedures for any financial partner that fails to respond, up to and including termination of the relationship. Selection of audit frequency should be risk-based based on the volume that comes through the channel as well as other risk factors available to the insurer. An appropriate audit program will also ensure that all partners are audited on a regular cycle.

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- **Due Diligence Questionnaires**: As a supplement to audits, insurers may use due diligence questionnaires as part of their monitoring of their financial partners. These questionnaires may be stand-alone safe harbor questionnaires or wrapped into a larger vendor due diligence process that could include cybersecurity, state specific requirements, and other issues. Due diligence questionnaires are a stronger form of monitoring than certifications.
- **Ongoing Monitoring**: Due diligence questionnaires are not the only form of ongoing monitoring. Sales data, both aggregated and as segregated by partner, can be categorized, and sorted by number of contracts and by premiums to risk rate producers and partners for key elements such as sales to older consumers, free-look cancellations, early surrenders, replacements, and others.
- **Receiving Data**: Insurers might also request data on an ongoing, perhaps quarterly, basis to aid in their monitoring, including:
  - commissions paid to the producer;
  - number of policies issued;
  - number of replacements issued;
  - number of replacements subject to surrender charges at the prior company;
  - Applications that were turned down due to suitability or other concerns; and
  - Number of consumer complaints related to annuity sales received by the entity supervising the financial professional.

Insurance companies may have some of this data, of course, such as commission paid on an annuity, but the idea of this information sharing is broader than re-sharing individual transaction data. It is, rather, to ensure that both the insurer and entity supervising the financial professional have the holistic information necessary to make supervision decisions.

Provide Information and Reports

The insurance company must also give information to the entity supervising the financial professional to ensure that that entity has as much information as possible in making supervisory decisions. Information the insurer might share with the supervising entity includes the following:

- Total contracts issued through the producer over the period, including number and type of annuity;
- Amount of commissions paid for each sale to that producer over the period;
- Identify whether the insurer issued any other annuities for the same producer, and if so, how many;
- Identify how many internal replacements were issued by the same producer;
- Number of consumer complaints or lawsuits received by the insurer related to the producer;

- Number of contracts for the producer that were surrendered less than 2 years from policy issue, years 2-5, years 6-10 and more than 10 years from issuance;
- Whether any surrenders were subject to surrender charges.

Insurers may be able to offer partners detailed reports and charts that illustrate customer profile factors for fixed and variable annuities, including issue age, share class, withdrawal charges, rider elections, and free look information.

As mentioned in the last section, the idea of this information sharing requirement is not to duplicate individual transaction data the other party already has. It is, rather, to ensure that both the insurer and entity supervising the financial professional have the holistic information necessary to make supervision decisions.

Safe Harbor or Contracting for Performance of Supervision

The Model Regulation has two different mechanisms in which third parties perform part or all the supervisory process for insurers. They appear superficially similar, but are actually quite different, and it is important that insurers understand under which provision of the Model Regulation they are operating. In addition to the safe harbor, insurers may contract for performance of a part or all its supervisory function pursuant to Section 6(C)(3)(a). Where an insurer contracts for performance, it must monitor the conduct of the party to whom it outsourced its supervision, including by conducting audits, as appropriate.[8] As a result, these two circumstances seem similar, but they differ in important ways.

In a safe harbor transaction, although the financial professional and the entity supervising the financial professional make the decision that the annuity is in the best interest of the customer, the final responsibility to decide whether an annuity would effectively address the particular consumer's financial situation, insurance needs and objectives resides with the insurance company. The insurer is almost certainly basing its decision on customer profile information and the basis for the transaction collected by the entity supervising the financial professional, but the safe harbor does not relieve the insurer of its obligation to only issue annuities where it has 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."[9] Because of the safe harbor, however, the intent of the disclosure and procedural requirements that are found in the Model Regulation may be achieved by comparable business rules and procedures. For example, a broker-dealer agent would have given Form CRS to his or her client but would not have to give Appendix A to the client

[8] Section 6(C)(3)(b)(1).
[9] *See* Section 6(C)(1); *see also* Section 6(E)(2)("Nothing in Paragraph (1) shall limit the insurer's obligation to comply with Section 6(C)(1) of this regulation. . . ."

when selling an annuity. The onboarding, audits, due diligence questionnaires, contractual policies, and other methods an insurer uses to monitor the entity are to ensure that the entity's policies, procedures, and implementation of those policies and procedures are truly "comparable" to what is required under the Model Regulation.

On the other hand, where an insurer has contracted for performance, all the provisions of the Model Regulation apply. If the insurer has delegated the entire supervisory process by contract, the entity with which the insurer has contracted for performance would be the one that decides whether the annuity is in the best interest of the consumer on behalf of the insurer. This delegated supervision cannot just be simply transactions-based and must incorporate all aspects of the supervision that the insurer would have incorporated. The insurer must monitor the entity's conduct, including audits, as appropriate, to ensure that the supervisory system the entity has built "is reasonably designed to achieve the insurer's and its producers' compliance with this regulation."[10] And if the insurer is delegating to an entity that otherwise stands to benefit from the transaction, that potential conflict must be reasonably addressed.

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[10] Section 6(C)(2).

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