LIFE INSURANCE AND ANNUITIES (A) COMMITTEE

Life Insurance and Annuities (A) Committee December 8, 2019, Minutes
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The Life Insurance and Annuities (A) Committee met in Austin, TX, Dec. 8, 2019. The following Committee members participated: Doug Ommen, Chair, and Mike Yanacheak (IA); Stephen C. Taylor, Vice Chair (DC); Jim L. Ridling represented by Steve Ostlund and Reyn Norman (AL); Keith Schraad (AZ); Trinidad Navarro represented by Fleur McKendell and Frank Pyle (DE); Dean L. Cameron (ID); James J. Donelon represented by Frank Opelka (LA); Jon Godfread (MD); Bruce R. Ramge Matt Holman and Rhonda Ahrens (NE); Barbara D. Richardson (NV); Linda A. Lacewell represented by Victor Agbu (NY); Jillian Froment (OH); Hodgen Mainda (TN); and Mark Afable and Richard Wicka (WI). Also participating were: Nour Benchaaboun (MD); Michael Humphreys (PA); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Travis Jordan (SD); Mike Boerner (TX).

1. **Adopted its Nov. 4 Minutes**

The Committee met Nov. 4 and took the following action: 1) adopted its 2020 proposed charges; 2) adopted the Life Actuarial (A) Task Force’s 2020 proposed charges; 3) adopted *Actuarial Guideline LII—Variable Annuity Early Adoption* (AG 52); 4) adopted the 2020 Generally Recognized Expense Table (GRET); and 5) adopted its Summer National Meeting minutes.

Director Froment made a motion, seconded by Commissioner Taylor, to adopt the Committee’s Nov. 4 minutes (Attachment One). The motion passed unanimously.

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

Director Froment said the Annuity Suitability (A) Working Group met Dec. 7 and took the following action: 1) adopted its Nov. 5, Oct. 29, Oct. 15, Oct. 8, Sept. 17, July 29, July 23 and Summer National Meeting minutes reflecting the Working Group’s work since the Summer National Meeting. She explained that the Working Group’s goal was to develop a framework for revising the *Suitability in Annuity Transactions Model Regulation* (#275) to include a best interest standard of conduct that is more than the model’s current suitability standard, but not a fiduciary standard. She said the Working Group developed draft revisions incorporating a best interest standard to require producers and insurers to satisfy requirements outlined in a care obligation, a disclosure obligation, a conflict of interest obligation and a documentation obligation to meet this standard of conduct. The Working Group exposed the draft for a public comment period and then worked through the comments received section-by-section during a series of conference calls during October and November.

During each of the conference calls, there was robust discussion among all stakeholders on those provisions in the draft related to the proposed best interest obligations and supervision system. The Working Group also discussed and made revisions to the model’s safe harbor provisions as part of its effort to harmonize as much as possible its revisions with the U.S. Security and Exchange Commission’s (SEC) final Regulation Best Interest for the benefit of consumers and the industry. At the end of its last conference call on Nov. 5, the Working Group agreed that it had completed its work as directed by the Life Insurance and Annuities (A) Committee and forwarded the Nov. 5 draft to the Committee for its consideration. Commissioner Ommen, Life Insurance and Annuities (A) Committee chair, exposed the draft for a public comment period ending Nov. 26.

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

3. **Discussed Comments Received on the Nov. 26 Revisions to Model #275**

Commissioner Ommen explained the history of Model #275 that resulted in the Nov. 5 draft revisions to Model #275. He said Model #275 is a professional conduct standard that by most measures is an important part of each state’s and territory’s consumer protection toolkit. He said it was not, is not and never will be the silver bullet to cure all concerns in the annuity market. He said well-informed sellers and well-informed buyers who understand and can therefore balance the risks and potential rewards of any given annuity contract may be the most important ingredients to a healthy, functioning competitive market. He said the professional care and competence standards for insurers and producers is also very important.

Commissioner Ommen said the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was a long, complicated and at times, not well-understood law that was signed into law in 2010. He said it contained two important
provisions that have shaped the work of the Annuity Suitability (A) Working Group over the last several years: Section 989J and Section 913(g)(2). He said Section 913(g)(2) authorized the SEC to promulgate a standard of conduct across both the securities brokerage business and the investment adviser business that required all securities professionals to “act in the best interest of the customer.” He said that while legal opinions vary as to what the U.S. Congress meant, it is clear that it did not intend to require a fiduciary relationship. He said Congress wrote in Section 913 that “material conflicts of interest shall be disclosed and may be consented to by the customer.” Congress also wrote in the text of Section 913 that “the receipt of compensation based upon commission or fee shall not, in and of itself, be considered a violation.” Commissioner Ommen said if Congress intended to impose a fiduciary standard, it would have used the word “fiduciary,” and it did not.

Commissioner Ommen explained that the states are not required by law to use exactly the same language that Congress chose to use in the Dodd-Frank Act, but there are consumer protection reasons to harmonize our standards. He said one reason is that most insurance producers already act in the best interest of their customers, so a best interest standard makes sense. He said, however, regulators must keep in mind that all regulations carry costs and other burdens on businesses establishing and maintaining procedures. He said compliance costs include preparation for and cooperation with regulatory examinations, and dual or redundant standards would burden many annuity issuers and dually licensed financial professionals requiring them to try to implement and maintain two parallel systems. He said it is obvious that these costs would raise costs for consumers, with no measurable benefit to consumers. He said that, as Director Froment explained, the Working Group has defined thorough its care, disclosure, conflict of interest and documentation obligations a best interest standard in Model #275 that is more than suitability and draws on the provisions in Section 913 of the Dodd-Frank Act and SEC Regulation Best Interest, but is not a fiduciary mandate.

Commissioner Ommen explained that Section 989J was also enacted in the Dodd-Frank Act. He said it confirmed the state insurance regulators’ role in establishing the appropriate standards of conduct for annuity sales and confirmed the state safe harbor for fixed indexed annuities from federal securities law and the SEC. He said he reads Section 989J as providing congressional direction to state insurance regulators to do what is best in light of the SEC’s recent change. He said that the Annuity Suitability (A) Working Group, under the leadership of Director Froment, has developed a draft that reflects that best balance of preserving for consumers the choice between commission-based and fee-based retirement advice. The Working Group’s Nov. 5 draft aligns the state standard of conduct with the SEC’s final Regulation Best Interest, which also struck that balance of more than suitability, but not a fiduciary mandate.

Commissioner Ommen said he would like to review the comments received on the Nov. 5 draft revisions to Model #275. He said he considers most of the comments received as recommendations for clarification.

a. Comments on Section 1. Purpose

Birny Birnbaum (Center for Economic Justice—CEJ) suggested inserting clarifying language in Section 1A. The Committee agreed to add the following clarifying language:

A. The purpose of this regulation is to require producers, as defined in this regulation, to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations so that the insurance needs and financial objectives of consumers at the time of the transaction are effectively addressed.

The Independent Insurance Agents and Brokers of America (IIABA) suggested adding language to Section 1B to clarify that the revisions are not intended to civil liability or a private right of action. Director Ramge said he supports the additional clarification. Director Froment said, and Mr. Ostlund agreed, that the suggested language is in line with the intent of the provision. The Committee agreed to make the following change:

B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation or to subject a producer to civil liability under the best interest standard of care outlined in Section 6 of this regulation or under standards governing the conduct of a fiduciary.

b. Comments on Section 5. Definitions

Mr. Birnbaum suggested revisions to Section 5I “material conflict of interest.” He suggested deleting 5I(2) “Material conflict of interest does not include cash compensation or noncash compensation.” Commissioner Taylor said he does not think this revision is necessary. The Committee agreed not to make this change.
Mr. Birnbaum suggested the following revisions to Section 5M “Recommendation”:

(2) “Recommendation” does not include general communication to the public, generalized consumer services assistance or administrative support, general educational information and tools, or prospectuses, or other product and sales material.

The Committee agreed not to make this change.

c. Comments on Section 6. Duties of Insurers and Producers

The Committee discussed comments on Section 6A:

A. Best Interest Obligations. A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer’s or the insurer’s financial interest ahead of the consumer’s interest. A producer has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation:

The IIABA suggested deleting section 6A. Best Interest Obligations or, alternatively, deleting just the term “best interest.” The Committee did not agree with either suggested change. Mr. Birnbaum suggested that this section should be revised to make clear that the best interest of the consumer requires a producer to disregard his or her own interests completely. Mr. Birnbaum said the current language says a producer should not put his or her financial interests ahead of the consumer’s, which sets up an unenforceable situation where the producer is weighing his own financial interest against a consumer’s. Mr. Birnbaum also suggested that this language could be vulnerable to the creation of a ploy where a producer could sell several products, one of which is a very high commission but is never sold, just so that he can always point to that product as evidence of not putting his financial interests first.

Director Cameron said that he appreciates Mr. Birnbaum’s perspective but disagrees that the language in the Nov. 5 draft is unenforceable. He said it is not realistic to set a standard where someone is expected to disregard information once they have it. He said the Nov. 5 draft language takes the honest approach in a system where producers know how they are going to be compensated. He said that there are always competing factors and that a producer’s decision will always involve some measure of judgment. He said the concern about a scheme would be exposed in a market conduct review, and it is expensive to develop and market products that are never sold, so he doesn’t envision this scheme being very likely. Director Ramge said the language in the Nov. 5 draft is consistent with consumer’s expectations and the way producers operate. Commissioner Taylor said the standard in the Nov. 5 draft strikes the right balance. The producer has to put his or her needs behind the consumer’s, and there are also the obligations of care, disclosure, conflict of interest and documentation. Mr. Gendron said from an enforcement perspective, it is impossible to know what a producer is thinking, and he said he does not see any reason to change the language in the Nov. 5 draft. The Committee agreed not to make any changes to the language.

The IIABA suggested adding the following language to Section 6A(1)(d):

(d) The requirements under this subsection do not create a duty of loyalty or a fiduciary obligation or relationship and only create a regulatory obligation as established in this regulation.

Commissioner Taylor said that adding this language is not necessary and may create confusion. The Committee agreed not to make this change.

The Fixed Annuity Consumer Choice Campaign (FACCC) suggested the following revision to 6A(1)(c) and the creation of a new 6A(1)(k):

(c) The requirements under subparagraph (a) of this paragraph require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer’s financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers shall be held to standards applicable to producers with similar authority and licensure.
Draft Pending Adoption

(k) Nothing in this regulation should be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit or negotiate insurance in this state, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this regulation; provided the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

Director Range said the suggested language is reasonable and that it is important to acknowledge that this standard does not mean producers need to get a new license. Commissioner Ommen agreed that the proposed language is consistent with the intent of the revised Model #275. Commissioner Richardson agreed that the new language clarifies things. The Committee agreed to add the revision 6A(1)(c) and the new 6A(1)(k).

Mr. Birnbaum suggested revisions to Section 6A(2)(a) Disclosure Obligation. He suggested the following revisions:

(a) Prior to or at the time of the recommendation or sale of an annuity, the consumer providing to the producer the consumer’s consumer profile information, the producer shall prominently disclose to the consumer on a form substantially similar to the “Producer Relationship Disclosure Form” in Appendix A:

Mr. Birnbaum explained a consumer needs information to be able to decide whether to work with a particular producer, and at the time of the recommendation or sale is too late to be meaningful. Commissioner Taylor agreed with changing the timing to “prior to” and deleting “or at the time of” in order for the consumer to be able to get the information. The Committee agreed to the following language as suggested by Commissioner Taylor:

(a) Prior to or at the time of the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to the “Producer Relationship Disclosure Form” in Appendix A:

The IIABA suggested adding a new Section 6A(2)(a)(vi) and deleting the 6A(3) Conflict of interest obligation.

(vi) A description of any material ownership interests the producer has in the insurer that would issue the recommended annuity or any parent, subsidiary or affiliate of that insurer.

(3) Conflict of interest obligation. A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

The Committee discussed whether “material conflicts of interest” need to be defined. The Committee concluded that materiality is a facts and circumstances question, and a list would be limiting in an enforcement context. The Committee agreed not to make either change suggested by the IIABA and to keep the language in Section 6A(3) unchanged.

The Committee discussed and agreed to make the following change suggested by the CEJ to Section 6A(5) Application of the best interest obligation.

(5) Application of the best interest obligation. Any requirement applicable to a producer under this subsection shall apply to every producer who has exercised material control or influence in the making of an individualized recommendation and has directly received compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

The Committee discussed and agreed to make the following revision suggested by the CEJ to Section 6C(2)(g) Supervision system

(g) The insurer shall establish and maintain reasonable procedures to identify and address potentially suspicious consumer refusals to provide consumer profile information.
The Committee discussed the CEJ suggestion to delete Section 6C(4)(b) from what an insurer is not required to include in its system of supervision:

(b) Include consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

Director Froment explained that this exception was included because producers cannot be expected to understand products that they are not authorized to sell. Mr. Ostlund and Mr. Gendron also agreed with keeping this exception. The Committee agreed not to make this change.

The Committee discussed and agreed to make the following revisions to Section 6C(2)(e) jointly suggested by the American Council of Life Insurers (ACLI), Committee of Annuity Insurers (CAI), Financial Services Institute (FSI), Indexed Annuity Leadership Council (IALC), Insured Retirement Institute (IRI), National Association for Fixed Annuities (NAFA), National Association of Insurance and Financial Advisors (NAIFA) and Association for Advanced Life Underwriting (AALU)

(e) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not suitable in compliance with subsections A, B, D and E. This may include, but is not limited to, confirmation of the consumer’s suitability consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming the suitability consumer profile information or other required information under this section after issuance or delivery of the annuity;

The Committee discussed and agreed not to follow the suggestion by the IIABA to delete Section 6C(2)(h):

(h) The insurer shall establish and maintain reasonable procedures 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. The requirements of this subparagraph are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time;

The Committee discussed and agreed to make the following revision to the title of Section 8 and to add a new 8C:

Section 8. Compliance Mitigation; Penalties; Enforcement

C. The authority to enforce compliance with the regulation is vested exclusively with the commissioner.

The Committee approved the Nov. 5 draft, as revised during this meeting, with the exception of the draft templates, which were referred back to the Annuity Suitability (A) Working Group for discussion during a conference call to be scheduled before the end of the year. The Committee planned to meet via conference call before the end of the year to consider adoption of the model with the revised template/appendices language and any other technical revisions.

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

Director Cameron made a motion, seconded by Mr. Ostlund, to adopt the following reports: the Annuity Disclosure (A) Working Group, including its Sept. 19 minutes (Attachment Three) and an extension of the Request for NAIC Model Law Development; the Accelerated Underwriting (A) Working Group (Attachment Four), including its Oct. 2 minutes (Attachment Four-A); the Life Insurance Illustration Issues (A) Working Group, including its Oct. 21 (Attachment Five), Sept. 17 (Attachment Six), Sept. 3 (Attachment Seven) and July 30 (Attachment Eight) minutes and an extension of the Request for NAIC Model Law Development; the Life Actuarial (A) Task Force, including the creation of a new Guaranteed Issue Life Valuation (A) Subgroup; and the Retirement Security (A) Working Group, including its Nov. 13 (Attachment Nine) and Oct. 23 (Attachment Ten) minutes.

Having no further business, the Life Insurance and Annuities (A) Committee adjourned.
The Life Insurance and Annuities (A) Committee met via conference call Nov. 4, 2019. The following Committee members participated: Doug Ommen, Chair, Lindsay Bates, Russ Gibson and Mike Yanacheak (IA); Stephen C. Taylor, Vice Chair, represented by Philip Barlow (DC); Jim L. Ridling represented by Steve Ostlund (AL); Keith Schraad represented by Erin Klug and Vincent Gosz (AZ); Dean L. Cameron represented by Weston Trexler (ID); James J. Donelon, Tom Travis and Frank Opelka (LA); Jon Godfread represented by John Arnold and Ross Harlley (ND); Bruce R. Ramge represented by Matt Holman (NE); Linda A. Lacewell represented by James Regalbuto and Mark McLeod (NY); Jillian Froment and Peter Weber (OH); Hodgen Mainda represented by Brian Hoffmeister and Rachel Jrade-Rice (TN); and Mark Afable represented by Jerry DeArmond and Richard Wicka (WI). Also participating were: Perry Kupferman (CA); Jason Lapham (CO); Fleur McKendell (DE); David Altmaier represented by Chris Struk (FL); Teresa Winer (GA); Mike Chrysler (IL); Barbara Torkelson, Tate Flott and Julie Holmes (KS); Mary Mealer (MO); Regan Hess (MT); Denise Lamy (NH); Ron Kreiter (OK); Thomas Kilcoyne (PA); Sarah Neil (RI); Mike Boerner and Deanna Osmonson (TX); and Tanji Northrup and Tomasz Serbinowski (UT).

1. **Adopted its 2020 Proposed Charges**

   Commissioner Ommen explained that the Committee’s charges reflect the addition of two new working groups—the Accelerated Underwriting (A) Working Group and the Retirement Security (A) Working Group—adopted by the Committee at the Summer National Meeting. Birny Birnbaum (Center for Economic Justice—CEJ) submitted revisions to the Committee’s charges. He explained that these changes are necessary because the Working Groups are not coordinating with each other, and his proposed revisions will better reflect the current work being undertaken, as well as allow for much needed coordination on life and annuity disclosures being undertaken currently.

   Mr. Ostlund said Alabama is supportive of Mr Birnbaum’s suggestions and would like to discuss them at the upcoming Fall National Meeting.

   Mr. Ostlund made a motion, seconded by Mr. Wicka, to adopt the Committee’s 2020 proposed charges (see NAIC Proceedings – Fall 2019, Executive (EX) Committee and Plenary, Attachment Two). The motion passed unanimously.

2. **Adopted the Life Actuarial (A) Task Force’s 2020 Proposed Charges**

   Mr. Boerner explained that most of the changes to the Task Force’s charges were updates necessitated by the completion of the variable annuity (VA) framework.

   Mr. Wicka made a motion, seconded by Commissioner Mainda, to adopt the Task Force’s 2020 proposed charges (see NAIC Proceedings – Fall 2019, Executive (EX) Committee and Plenary, Attachment Two). The motion passed unanimously.

3. **Adopted AG 52**

   Mr. Boerner said Actuarial Guideline LII—Variable Annuity Early Adoption (AG 52) is informational only and explains the availability of early adoption of the VA framework at a company’s election. Brian Bayerle (American Council of Life Insurance—ACLI) said the ACLI is supportive of AG 52.

   Director Schraad made a motion, seconded by Mr. Wicka, to adopt AG 52 (see NAIC Proceedings – Fall 2019, Executive (EX) Committee and Plenary, Attachment Four). The motion passed unanimously.

4. **Adopted the 2020 GRET**

   Mr. Boerner said the Generally Recognized Expense Table (GRET) is updated by the Society of Actuaries (SOA) every year, and it is adopted by the Committee and NAIC membership. He said the GRET is referenced in the Life Insurance Illustrations Model Regulation (#582) to be used as assumed experience in illustrations, and it is used by 25–28% of companies.

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Mr. Ostlund made a motion, seconded by Mr. Wicka, to adopt the 2020 GRET (see NAIC Proceedings – Fall 2019, Executive (EX) Committee and Plenary, Attachment Three). The motion passed unanimously.

5. **Adopted its Summer National Meeting Minutes**

Commissioner Donelon made a motion, seconded by Mr. Ostlund, to adopt the Committee’s Aug. 4 minutes (see NAIC Proceedings – Summer 2019, Life Insurance and Annuities (A) Committee). The motion passed unanimously.

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

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The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met in Austin, TX, Dec. 7, 2019. The following Working Group members participated: Jillian Froment, Chair (OH); Doug Ommen, Vice Chair (IA); Steve Ostlund (AL); Fleur McKendell (DE); Dean L. Cameron (ID); Vicki Schmidt (KS); Nour Benchaaboun (MD); Renee Campbell (MI); Matt Holman (NE); Victor Agbu (NY); Andrew Schallhorn (OK); Matt Gendron and Sarah Neil (RI); Rachel Jade-Rice (TN); and Mark Afable and Richard Wicka (WI). Also participating were: Stephen C. Taylor (DC); Karl Knable (IN); Tricia Goldsmith (OR); and Michael Humphreys (PA).


The Working Group met Nov. 5, Oct. 29, Oct. 15, Oct. 8, Sept. 17, Aug. 3, July 29 and July 23. During these meetings, the Working Group took the following action: 1) reviewed and discussed a draft of proposed revisions to the Suitability in Annuity Transactions Model Regulation (#275) developed by a technical drafting group. The technical drafting group’s draft reflected the framework developed by the Working Group during its discussions at the Summer National Meeting, its July 29 and July 23 conference calls, and its June 20 meeting in Columbus, OH to include a best interest standard of conduct in Model #275; 2) exposed a Working Group draft of proposed revisions to Model #275 for a public comment period ending Sept. 30; 3) discussed the comments received by the Sept. 30 public comment period deadline; and 4) adopted a motion to forward the revised draft of revisions to Model #275 to the Life Insurance and Annuities (A) Committee for its consideration. As part of that motion, it was noted that in sending the draft to the Committee, it does not mean that each Working Group member supports every provision in the draft, but that the Working Group has completed its work as directed by the Committee at the Spring National Meeting. The Committee chair exposed the revised draft for a public comment period ending Nov. 26.

Commissioner Schmidt acknowledged and applauded the hard work done by the Working Group chair and the Working Group to develop the Model #275 revisions.

Mr. Ostlund made a motion, seconded by Mr. Gendron, to adopt the Working Group’s Nov. 5 (Attachment Two-A), Oct. 29 (Attachment Two-B), Oct. 15 (Attachment Two-C), Oct. 8 (Attachment Two-D), Sept. 17 (Attachment Two-E), July 29 (Attachment Two-F), July 23 (Attachment Two-G) and Aug. 3 minutes (see NAIC Proceedings – Summer 2019, Life Insurance and Annuities (A) Committee, Attachment Four). The motion passed unanimously.

Having no further business, the Annuity Suitability (A) Working Group adjourned.
The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Nov. 5, 2019. The following Working Group members participated: Jillian Froment, Chair (OH); Doug Ommen, Vice Chair (IA); Jerry Workman and Steve Ostlund (AL); Jodi Lerner (CA); Fleur McKendell (DE); Weston Trexler (ID); Vicki Schmidt, Tate Flott and Shannon Lloyd (KS); Nour Benchaboun (MD); Renee Campbell (MI); Keith Nyhan (NH); Matt Holman (NE); Karen Pinto (NJ); Andrew Schallhorn (OK); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Rachel Jrade-Rice (TN); and Richard Wicka (WI).

1. Continued its Discussion of the Comments Received on Proposed Revisions to Model #275

Director Froment reminded the Working Group of its goals for its June 20 meeting and its subsequent meetings, which is to develop a framework for revising the *Suitability in Annuity Transactions Model Regulation (#275)* to include a best interest standard of conduct that is more than the model’s current suitability standard, but not a fiduciary standard. She said that based on the developed framework and as discussed at the Working Group’s meeting at the Summer National Meeting, the Working Group’s technical drafting group met in September and developed a draft of proposed revisions to Model #275 (see NAIC Proceedings – Fall 2019, Life Insurance and Annuities (A) Committee, Attachment ?). She said that during the Working Group’s Sept. 17 conference call, the Working Group developed a Working Group draft of proposed revisions to Model #275 (see NAIC Proceedings – Fall 2019, Life Insurance and Annuities (A) Committee, Attachment ?) based on the technical drafting group’s draft and exposed it for a public comment period ending Sept. 30. She said the purpose of this conference call is for the Working Group to continue its section-by-section discussion of the comments received by the public comment deadline. She explained that the Working Group would begin its discussion with Section C—Disclosure Obligation, deferring discussion of the additional suggested revisions in Section 5 because those definitions involved the safe harbor provision in Section 6E. The Working Group would discuss those definitions as part of its discussion of that provision.

Director Froment also explained that the Working Group received additional suggested revisions on specific issues in response to the Working Group’s request for additional comment. She said those suggested revisions would be discussed at the appropriate time and would include discussion of outstanding issues, such as the proposed drafting note in Section 1B concerning the successor draft issue. Director Froment reminded the Working Group members and interested parties that only those suggested revisions having the support of a Working Group member and broad consensus from the Working Group would be considered for inclusion in the revised model.

a. Section 6C—Supervision System

Director Froment said the Joint Trades—in a joint comment 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), the National Association for Fixed Annuities (NAFA), the National Association of Insurance and Financial Advisers (NAIFA) and the Association for Advanced Life Underwriting (AALU)—the Fixed Annuity Consumer Choice Campaign (FACC) and the Independent Insurance Agents & Brokers of America (IIABA) submitted comments on Section 6C—Supervision System.

Jason Berkowitz (IRI) said the Joint Trades suggest deleting Section 6C(1) because the substance of this paragraph is covered in other provisions in Section 6C. Birny Birnbaum (Center for Economic Justice—CEJ) disagreed with the Joint Trades’ reasoning for deleting Section 6C(1). There was no Working Group support for deleting Section 6C(1).

Robbie Meyer (ACLI) said the Joint Trades suggest technical revisions to Section 6C(2)’s lead-in paragraph to make it clear that an insurer’s supervision system only applies to the insurer’s annuity products. She said that in addition, the Joint Trades suggest adding language to Section 6C(2)(e) to make it clear an insurer is not required to warrant the producer is acting in the consumer’s best interest. Specifically, the Joint Trades suggest revising Section 6C(2)(e) as follows: “The insurer shall establish and maintain reasonable procedures to detect recommendations that where there is not a reasonable basis to determine the recommendation would effectively address the particular consumer’s financial situation, insurance needs and financial objectives are not in compliance with subsections A, B, D and E. This may include, but is not limited to, confirmation of the consumer’s consumer profile information, systematic customer surveys, interviews, confirmation letters and programs of...
internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming the consumer profile information after issuance or delivery of the annuity. An insurer is not required to warrant the producer is acting in the consumer’s best interest.” Commissioner Ommen asked how this revised language would apply when no recommendation is made.

Ms. Meyer said the Joint Trades also suggest deleting Section 6C(2)(f) in its entirety because when a producer is engaged in activities relating to the sale of other insurers’ products, an insurer does not have the requisite knowledge or control over the producer to gauge compliance with the disclosure requirements of Section 6A(2). There was no support from the Working Group for the Joint Trades’ suggested revisions to Section 6C(2)’s lead-in paragraph or Section 6C(2)(e) or deleting Section 6C(2)(f).

Wes Bissett (IIABA) discussed the IIABA’s suggestion to delete Section 6C(2)(h). He said Section 6C(2)(h) is not needed given the provisions of Section 6A. He also questioned if states could implement Section 6C(2)(h) by regulation. There was no support for the IIABA’s suggestion to delete Section 6C(2)(h).

Ms. Meyer discussed the Joint Trades’ suggested revisions to Section 6C(2)(h). She said the purpose of the suggested revisions is to make the provisions of Section 6C(2)(h) applicable to sales contests and other types of non-cash compensation based on the sales of specific annuities of the insurer. She said the Joint Trades suggest deleting the reference to “specific types of annuities” because of concerns that the language may be overly broad as applied in the context of annuities. She said the Joint Trades also have clarified that Section 6C(2)(h) only applies to the insurer because the insurer does not have control over the business of third-party entities. She said the Joint Trades’ additional suggested revisions clarify, consistent with the U.S. Securities and Exchange Commission’s (SEC) best interest regulation (Reg BI), that the requirements of Section 6C(2)(h): 1) do not apply to compensation practices based on total annuity products sold; 2) would not prevent the offering of proprietary products, placing material limitations on the menu of products or incentivizing the sale of such products through its compensation practices, as long as the incentive is not based on the sale of a specific annuity product of the insurer within a limited period of time; and 3) are not intended to prohibit the receipt of employee benefits by employees.

The Working Group discussed the Joint Trades’ suggested revisions to Section 6C(2)(h). Some Working Group members expressed support for some of the suggested revisions. After discussion, the Working Group agreed on the following language for Section 6C(2)(h), which accepts some of the Joint Trades' suggested revisions: “The insurer shall establish and maintain reasonable procedures 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. The requirements of this subparagraph are not intended to prohibit the receipt of health insurance, office rent, office support, retirement benefits or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time.”

Kim O’Brien (FACC) discussed the FACC’s suggested revisions for Section 6C(4). She said the FACC suggests revising Section 6C(4) to clarify an insurer’s scope of supervision for its producers by adding the following language: “nor is it required to include consideration of or comparison to options available to the producer or compensation related to those options other than annuities offered by the insurer.” The Working Group discussed the suggested language. After discussion, the Working Group agreed to add the suggested language with some modifications.

No comments were received on Section 6D—Prohibited Practices.

b. Section 6E—Safe Harbor

The Working Group next discussed Section 6E—Safe Harbor. Director Froment said the IRI, Nationwide and Jackson National Life Insurance Company (Jackson) submitted comments. She explained that the IRI had submitted revised comments on Section 6E expanding the provision’s safe harbor language to apply to all financial professionals, including broker-dealers, investment advisers and fiduciaries. Mr. Berkowitz said the IRI supports its initial suggested revisions to Section 6E, but the IRI believes the Working Group should consider expanding the safe harbor provisions to apply to all financial professionals. Drew Bowden (Jackson) expressed support for the IRI’s suggested revisions. He also said that if the Working Group accepts the revisions, it would address Jackson’s comments. Mr. Birnbaum, Mr. Bissett and Ms. O’Brien expressed concern with the safe harbor provisions.

Ms. Campbell said she believes the Working Group should consider the IRI’s proposal. Commissioner Ommen agreed. Mr. Gendron expressed caution with the proposal and whether it could require state insurance regulators to become experts on
Director Froment said the Working Group does not need to discuss the additional suggested definitions in Section 5 related to the safe harbor provision because those additional suggested definitions are included in the IRI’s revised comments, which the Working Group agreed to include in the revised draft in order to receive comments on it.

c. Section 7—Producer Training

Director Froment said the Joint Trades submitted comments on Section 7B—Producer Training. Mr. Berkowitz said the Joint Trades suggest adding a new paragraph to Section 7B to account for producers who have had required training before the effective date of the revised model. Mr. Gendron asked if Mr. Berkowitz had had discussions with any continuing education (CE) providers on whether they could develop a course for producer training within the proposed six-month timeframe provided in the Joint Trades’ proposed language. Mr. Berkowitz said he spoke with one CE provider, which said it could meet the proposed six-month timeframe. Mr. Bissett said he believes CE providers would be challenged to develop a course and receive approval from state departments of insurance (DOI) within the proposed time frame. After discussion, the Working Group decided to add the language to the revised draft.

No comments were received on Section 9—Recordkeeping or Section 10—Effective Date.

d. Appendix A—Producer Relationship Disclosure Form and Appendix B—Consumer Refusal to Disclose All or Partial Consumer Profile Information Form

Director Froment said the Joint Trades had submitted comments on Appendix A—Producer Relationship Disclosure Form. The Working Group decided to defer discussion of the comments and have the Life Insurance and Annuities (A) Committee finalize the form language because the language in Section 6 related to the form has not been finalized. The Working Group agreed to take the same approach for Appendix B—Consumer Refusal to Disclose All or Partial Consumer Profile Information Form.

2. Discussed the Working Group Chair’s Requested Supplemental Comments

a. Section 5C—Definition of “Consumer Profile Information”

Mr. Berkowitz said the Joint Trades submitted supplemental comments on Section 5C—Definition of “Consumer Profile Information” in response to the Working Group’s discussion of the Joint Trades’ initial comments during its Oct. 8 conference call. He said that during that call, the Joint Trades had expressed concern about the uncertainty inherent in the addition of “including debts and other obligations” in Section 5C(3). He said that to address this concern, in its supplemental comments, the Joint Trades suggest adding “to the extent relevant to the recommendation” to the lead-in paragraph, and deleting “including debts and other obligations” in Section 5C(3) and adding that language to Section 5C(7). Some Working Group members questioned the value of adding the suggested language to the lead-in paragraph. After additional discussion, there was no Working Group support expressed for the Joint Trades’ suggested language.

b. Section 6A—Best Interest Obligations

Mr. Berkowitz said the Joint Trades submitted supplemental comments related to its initial comments discussed during the Working Group’s Oct. 15 conference call on the Joint Trades’ suggested language for Section 6A—Best Interest Obligations to prevent a producer’s or insurer’s recommendation being evaluated in hindsight based on things that may happen that are out of the producer’s or insurer’s control. He said the Working Group expressed concern with the Joint Trades’ initial suggested language to address the situation. He said to address the Working Group’s concern, the Joint Trades suggest adding the following language as a new paragraph in Section 6A: “Compliance with the obligation to act in the best interest of the consumer in this Section 6A and the obligations regarding care, disclosure, conflicts of interest and documentation in paragraphs (1) through (4) above shall be determined on the basis of the conduct of the producer at the time of the recommendation, and not on the basis of the actual financial performance of the recommended annuity (whether positive or negative) so long as the relevant facts and factors, including the reasonable range of possible outcomes in the performance of non-guaranteed elements of the annuity, were appropriately considered in light of the consumer’s financial situation, insurance
needs and financial objectives. Nothing contained herein will be deemed to impair or otherwise impact contractual guarantees included in a recommended annuity.” There was no Working Group support for the Joint Trades’ suggested language.

c. **Section 6A(2)—Disclosure Obligation**

Director Froment said that during the Working Group’s Oct. 29 conference call, the Working Group discussed suggested revisions to Section 6A(2)(a). Section 6A(2)(a) describes what information a producer must disclose to a consumer about the producer’s relationship with the consumer on a form substantially similar to the Producer Relationship Disclosure Form in Appendix A. She said the Working Group asked Mr. Gendron to develop language for the Working Group’s review. Mr. Gendron said his suggested revisions to Section 6A(2)(a) are derived in part from requirements for financial professionals selling securities. Ms. Meyer expressed concern generally with including a list and with the list including non-insurance products. Ms. O’Brien agreed with Ms. Meyer. After discussion, the Working Group agreed to add Mr. Gendron’s suggested language to Section 6A(2)(a) with some wordsmithing, non-substantive changes.

d. **Section 6A—Additional Paragraph**

Director Froment said that during the Working Group’s Oct. 29 conference call, the Working Group discussed placeholder language based on New York language, which would apply the model’s provisions to any producer who “materially participated” in the transaction. She said the Working Group requested Mr. Gendron develop language on this issue for the Working Group’s review. Mr. Gendron said the goal of his suggested language is to notify producers not directly involved in a recommendation of their potential liability if a producer has exercised material control or influence in the making of an individualized recommendation and has directly received compensation as a result regardless of whether the producer has had any direct contact with the consumer.

The Working Group discussed Mr. Gendron’s suggested language. Mr. Birnbaum expressed opposition to the language. He said New York’s language is a lot clearer and more straightforward. Gary Sanders (NAIFA) said Mr. Gendron’s suggested language is better than New York’s language, but he said he still is unclear on how the language provides additional protections to consumers. He said it could have a chilling effect. There was no opposition from Working Group members to adding the language. However, some Working Group members suggested the language is unnecessary given other provisions in the revised model.

3. **Adopted the Revised Model and Exposed it for Comment**

Director Froment said that during the Working Group’s Oct. 8 conference call, the Working Group discussed comments from the IIABA concerning the drafting note for Section 1—Purpose. The proposed drafting note states that for purposes of Section 989J of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), the revised Model #275 is a successor to the 2010 revisions, which added a suitability standard of conduct. Director Froment said the Working Group deferred discussion on the drafting note and asked the NAIC Legal Division to research whether the revised model would be considered a successor model to the 2010 revisions for purposes of Section 989J. She said the Legal Division most likely would consider the revised model to be a successor to the 2010 revisions. She said given this, she believes this is a policy issue for the Life Insurance and Annuities (A) Committee, the Executive (EX) Committee and Plenary to decide.

Mr. Gendron made a motion, seconded by Commissioner Ommen, to refer the draft to the Life Insurance and Annuities (A) Committee for its consideration. As part of the motion, it was noted that in sending the draft to the Life Insurance and Annuities (A) Committee, it does not mean that each Working Group member supports every provision in the draft, but that the Working Group has completed its work as directed by the Life Insurance and Annuities (A) Committee at the Spring National Meeting. The motion passed.

Commissioner Ommen said that as chair of the Life Insurance and Annuities (A) Committee, he is exposing the draft for a 21-day public comment period ending Nov. 26. He said the Life Insurance and Annuities (A) Committee will consider any comments received during its meeting at the Fall National Meeting.

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

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Annuity Suitability (A) Working Group
Conference Call
October 29, 2019

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Oct. 29, 2019. The following Working Group members participated: Jillian Froment, Chair (OH); Doug Ommen, Vice Chair (IA); Steve Ostlund (AL); Jodi Lerner (CA); Fleur McKendell (DE); Tate Flott (KS); Nour Benchaaboun (MD); Renee Campbell (MI); Matt Holman (NE); Keith Nyhan (NH); James Regalbuto (NY); Andrew Schallhorn (OK); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Rachel Jrade-Rice (TN); and Richard Wicka (WI).

1. Continued its Discussion of the Comments Received on Proposed Revisions to Model #275

Director Froment reminded the Working Group of its goal from its June 20 meeting and its subsequent meetings, which was to develop a framework for revising the *Suitability in Annuity Transactions Model Regulation* (#275) to include a best interest standard of conduct that is more than the model’s current suitability standard, but not a fiduciary standard. She said that based on the developed framework and as discussed at the Working Group’s meeting at the Summer National Meeting, the Working Group’s technical drafting group met in September and developed a draft of proposed revisions to Model #275 (see NAIC Proceedings – Fall 2019, Life Insurance and Annuities (A) Committee, Attachment ?). She said that during the Working Group’s Sept. 17 conference call, the Working Group developed a Working Group draft of proposed revisions to Model #275 (see NAIC Proceedings – Fall 2019, Life Insurance and Annuities (A) Committee, Attachment ?) based on the technical drafting group’s draft and exposed it for a public comment period ending Sept. 30. Director Froment said the purpose of this conference call is for the Working Group to continue its section-by-section discussion of the comments received by the public comment deadline. She explained that the Working Group would begin its discussion with Section 6A(2)—Disclosure Obligation, deferring discussion of the additional suggested revisions in Section 5 because those definitions involved the safe harbor provision in Section 6E. She said the Working Group would discuss those definitions as part of its discussion of that provision.

a. Section 6A(2)—Disclosure Obligation

Director Froment said the Joint Trades—in a joint comment 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), the National Association for Fixed Annuities (NAFA), the National Association of Insurance and Financial Advisers (NAIFA) and the Association for Advanced Life Underwriting (AALU)—and the Independent Insurance Agents & Brokers of America (IIABA) submitted comments on Section 6A(2)—Disclosure Obligation.

Before discussing the Joint Trades’ suggested revisions, Robbie Meyer (ACLI) pointed out that Section 6A(2)(a) references the defined term “non-cash compensation.” She reiterated the Joint Trades’ concern raised during the Working Group’s Oct. 8 conference call about the definition of “material conflict of interest” in Section 5I and the definition of “non-cash compensation” in Section 5J and its suggested revisions to exclude certain benefits from being considered non-cash compensation for purposes Section 6C(2)(h), which could prohibit producers from receiving these benefits if considered non-cash compensation. The Working Group discussed the suggested revisions, with some Working Group members noting the importance of Section 6C(2)(h) to discourage any of the types of benefits listed in the definition of “non-cash compensation” being tied to the sale of a particular annuity within a specified period of time. The Working Group decided to defer discussion of the issue until it discusses Section 6C(2)(h).

Jason Berkowitz (IRI) discussed the Joint Trades’ suggested revisions to Section 6A(2)(a) and Section 6A(2)(b) explaining that except for the suggestion to add a new item (v) to Section 6A(2)(a), the suggested revisions were technical and clarifying. Ms. Meyer said the Joint Trades suggest adding the new item (v) to Section 6A(2)(a) to require a producer or insurer to disclose any material of conflicts of interest to better align with the requirements under the U.S Securities and Exchange Commission’s (SEC) best interest final regulation (Reg BI). She said the Joint Trades suggest a conforming change to Appendix A, Producer Disclosure Form. Wes Bissett (IIABA) asked if the suggested revision to add a new (v) to Section 6A(2)(a) to require a producer to disclose material conflicts of interest would affect Section 6A(3)—Conflict of Interest Obligation. Jim Szostek (ACLI) explained that this provision concerns disclosure and that the ACLI believes this suggested revision would not affect Section 6A(3)’s provisions.
The Working Group discussed the Joint Trades’ suggested revisions. There was no support for the Joint Trades’ suggested revisions to Section 6A(2)(a)(iii) to restructure the language. The Working Group deferred making a decision on whether to add the new item (v) until it discusses Section 6A(3)—Conflict of Interest Obligation.

Mr. Berkowitz explained that the Joint Trades’ suggested revisions to Section 6A(2)(b) are intended to be technical and clarifying, such as specifying that the consumer would make the request to the producer to disclose additional information about the producer’s cash compensation, not a member of the general public. He said the other revisions are meant to address salaried employees who are not directly compensated for the sale of a particular annuity. The revisions would require such employees only to provide a description of general compensation practices relevant to the producer. Mr. Birnbaum expressed concern with the revisions. He suggested that if the Working Group accepted the suggested revision concerning the consumer requesting the information that the language also include the consumer’s authorized representative. The Working Group discussed the suggested revisions. After discussion, the Working Group decided to accept the Joint Trades’ suggested revisions concerning the consumer making the request, but there was no support to accept the Joint Trades’ suggested revisions concerning salaried employees.

Mr. Bissett discussed the IIABA’s suggestion to restructure item (ii) in Section 6A(2)(a) for clarity and remove the word “limitations.” The Working Group discussed the suggested revisions. Some Working Group members expressed concern that the IIABA’s restructured language was too vague with respect to what the producer would need to disclose concerning the products the producer is authorized and licensed to recommend or sell. Birny Birnbaum (Center for Economic Justice—CEJ) expressed concern that the IIABA’s restructured language is too limiting because it references only annuity and securities products. Some Working Group members expressed support for the IIABA’s efforts to provide more clarity, but they could not support the IIABA’s suggested revisions. After additional discussion, the Working Group asked Mr. Gendron to develop language to address the issue for the Working Group to discuss during its Nov. 5 conference call. The Working Group deferred discussion of the IIABA’s suggestion to add a new provision to Section 6A(2)(a) to require a producer to disclose a description of any material ownership interest the producer has in the insurer that would issue the recommended annuity until it discusses Section 6C(2)(h) and the definition of “material conflict of interest.”

b. Section 6A(3)—Conflict of Interest Obligation

Director Froment said the Joint Trades, the Fixed Annuity Consumer Choice Campaign (FACC) and the IIABA submitted comments on Section 6A(3)—Conflict of Interest Obligation. Mr. Berkowitz said the Joint Trades’ suggested revisions are intended to be clarifying. The Working Group discussed the suggested revisions. After discussion, no Working Group member expressed support for accepting the suggested revisions.

Kim O’Brien (FACC) said the FACC suggests striking “avoid or otherwise reasonably manage” and replacing it with a disclosure requirement because to “reasonably manage” is to disclose. Mr. Bissett explained the IIABA’s suggestion to delete Section 6A(3). He said the language “material conflict” is ambiguous and asked what a producer is supposed to do if a “material conflict” exists. He said the FACC’s suggested revision addresses this issue. He expressed support for a disclosure-based approach. Mr. Szostek expressed support for the FACC’s suggested revision.

The Working Group discussed Section 6A(3)’s language, the definition of “material conflict of interest” in Section 51 and whether material conflicts of interest should be “managed and disclosed” or “managed or disclosed.” Commissioner Ommen suggested revising Section 6A(3) to require a producer to “identify and avoid or reasonably manage and disclose material conflicts of interest.” After discussion, the Working Group agreed to accept Commissioner Ommen’s suggested revision.

c. Section 6A(4)—Documentation Obligation

Director Froment said the Joint Trades and the FACC submitted comments on Section 6A(4)—Documentation Obligation. Mr. Berkowitz said the Joint Trades’ suggested revisions are intended to be clarifying. The Working Group discussed the suggested revisions. After discussion, no Working Group member expressed support for accepting the suggested revisions. Ms. O’Brien said the FACC suggests adding language to Section 6A(4)(a) requiring a producer to make a written “reasonable summary” record of any recommendation and the basis for the recommendation. She said the FACC’s suggested revision is based on a provision in New York’s best interest regulation. After discussion, no Working Group member expressed support for accepting the suggested revision.

The Working Group next discussed the comments received on a proposed provision in the revised model suggested by New York. The Working Group had requested specific comments on whether such a provision should be included in the revised...
model. Mr. Berkowitz said the Joint Trades suggest not including this provision, which would apply the model’s provisions to any producer who “materially participated” in the transaction. He said such language is too vague and as such would create too much uncertainty in the marketplace as to when a producer is considered to have “materially participated” in a transaction and, therefore, subject to the model’s provisions. He said the model includes supervision requirements that would address any issues this proposed provision is intended to address, such as ensuring that more senior producers were not shielding themselves from responsibility by using junior producers to technically make a recommendation. He said the Joint Trades believe this provision is not needed and urged the Working Group not to include it in the revised model.

The Working Group discussed the Joint Trades’ comments and the proposed revisions. Mr. Gendron viewed the proposed language as fair warning to producers as to how state insurance regulators will interpret the model’s provisions and its application. Mr. Regalbuto said New York has a host of examples it could provide where this has been an issue, which is why its best interest regulation includes such a provision. Mr. Berkowitz acknowledged Mr. Gendron’s comments. He said he believes these issues are already addressed in the model. He said his concern is that the language could be interpreted and applied to any person who had any involvement in the transaction. Director Froment reminded the Working Group that this provision is not in the revised model. As such, a Working Group member would have to express support for adding it. The Working Group discussed what “materially participated” means. After additional discussion, the Working Group requested that Mr. Gendron work on language for the Working Group to discuss during its Nov. 5 conference call.

d. Section 6B—Transactions Not Based on a Recommendation

Director Froment said the Joint Trades submitted comments on Section 6B—Transactions Not Based on a Recommendation. Mr. Berkowitz said the revised draft defines “producer” to include an insurer where no producer is involved in Section 5K. He said that the revised definition works throughout the model except for Section 6B. He said in Section 6B, the insurer is the supervising entity. He said the Joint Trades’ suggested revision addresses this issue. Mr. Birnbaum said the Joint Trades are conflating two issues. He said Section 6B is intended to limit a producer’s obligation, not the insurer’s obligation as a supervising entity. There was no Working Group support for accepting the Joint Trades’ suggested revision.

e. Section 8—Compliance Mitigation; Penalties

Director Froment said the Joint Trades submitted comments on Section 8—Compliance Mitigation; Penalties. Mr. Berkowitz said the Joint Trades suggest revising Section 8 for consistency with the model’s insurer supervision responsibilities, which require an insurer to supervise transactions related to the insurer’s own annuity products. There was no Working Group support for accepting the Joint Trades’ suggested revision.

Having no further business, the Annuity Suitability (A) Working Group adjourned.
Continued its Discussion of the Comments Received on Proposed Revisions to Model #275

Director Froment reminded the Working Group of its goal for its June 20 meeting and its subsequent meetings, which was to develop a framework for revising the *Suitability in Annuity Transactions Model Regulation* (#275) to include a best interest standard of conduct that is more than the model’s current suitability standard, but not a fiduciary standard. She said that based on the developed framework and as discussed during the Working Group’s meeting at the Summer National Meeting, the Working Group’s technical drafting group met in September and developed a draft of proposed revisions to Model #275 (see NAIC Proceedings – Fall 2019, Life Insurance and Annuities (A) Committee, Attachment Two-E1). She said that during the Working Group’s Sept. 17 conference call, the Working Group developed a Working Group draft of proposed revisions to Model #275 (see NAIC Proceedings – Fall 2019, Life Insurance and Annuities (A) Committee, Attachment Two-D1) based on the technical drafting group’s draft and exposed it for a public comment period ending Sept. 30. She said the purpose of this conference call is for the Working Group to continue its section-by-section discussion of the comments received by the public comment deadline. She explained that the Working Group would begin its discussion with Section 6—Duties of Insurers and Producers, deferring discussion of the additional suggested revisions in Section 5 because those definitions involved the safe harbor provision in Section 6. The Working Group would discuss those definitions as part of its discussion of that provision.

1. **Section 6A—Best Interest Obligations**

Director Froment said the Joint Trades—in a joint comment 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), the National Association for Fixed Annuities (NAFA), the National Association of Insurance and Financial Advisers (NAIFA), and the Association for Advanced Life Underwriting (AALU)—the Fixed Annuity Consumer Choice Campaign (FACC) and the Independent Insurance Agents & Brokers of America (IIABA) submitted comments on the lead-in paragraph for Section 6A—Best Interest Obligations.

Robbie Meyer (ACLI) said the Joint Trades suggest adding the following language at the end of Section 6A’s lead-in paragraph: “independent of the performance of the recommended annuity.” She said the Joint Trades suggest this language to avoid a producer’s or insurer’s recommendation being evaluated in hindsight based on things that may happen that are out of the producer’s or insurer’s control. The Working Group discussed the suggested language and after discussion decided that if this issue needs to be addresses, the Section 6A lead-in paragraph is not the appropriate place to address it. Director Froment suggested revising the lead-in paragraph as follows: “A producer has acted in the best interest of the consumer if they have satisfied the following obligations regarding care, disclosure, conflict of interest and documentation.” After discussion, the Working Group agreed to include the suggested language in the revised draft.
b. **Section 6A(1)—Care Obligation**

Director Froment said the Joint Trades, the FACC and the IIABA submitted comments on Section 6A(1). Ms. Meyer said the Joint Trades suggest several revisions to Section 6A(1) to clarify its language. She said the Joint Trades suggest deleting “over the life of the contract” in Section 6A(1)(a)(iii) to address a concern that the language could be interpreted as requiring an ongoing duty to the consumer. The Joint Trades also suggest adding “provided to the producer” to Section 6A(1)(a)(iii) to make it clear that producers can only evaluate the information they actually receive from a consumer. She said the Joint Trades suggest deleting the word “substantially” for consistency with other provisions in the revised model and changing “60” months to “36” months to bring the time frame closer in line to the current replacement requirements in most states.

The Working Group discussed the Joint Trades’ suggested revisions. Some Working Group members expressed concern with adding “provided by the consumer” because producers have an obligation to be aware of a consumer’s actual circumstances, not just what is included in the consumer profile information form, particularly in situations that could involve a vulnerable adult. With respect to the “over the life the contract” suggested revision, some Working Group members noted that the language was meant to address those consumers with long-term concerns and seeking to purchase an annuity for retirement purposes. Ms. Meyer said she believes the language requiring a producer or insurer to recommend a product that “effectively addresses the consumer’s financial situation, insurance needs and financial objectives” applies to both a consumer’s short-term and long-term concerns. Ms. O’Brien said the FACC has the same concerns with the language “over the life of the product.” Birny Birnbaum (Center for Economic Justice—CEJ) expressed concerns with the Joint Trades’ comments. Gary Sanders (NAIFA) suggested the Working Group consider adding the language “available to the producer” to Section 6A(1)(a)(iii) if the Working Group is uncomfortable with the Joint Trades’ suggested language. Jason Berkowitz (IRI) expressed support for Mr. Sanders’ suggested language. There was no Working Group support for the Joint Trades’ suggested revisions or Mr. Sanders’ suggested alternative language.

Ms. O’Brien discussed the FACC’s suggested revision to add a new provision to Section 6A(1) to require that a producer’s recommendation can be 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. She said that if this language is not included in the revised model, it makes the proposed best interest standard of conduct even more subjective and approaches a kind of strict liability depending on how state insurance regulators or the courts decide to enforce a best interest standard of conduct with ill-defined requirements. Ms. O’Brien also suggested revising Section 6A(1)(a)(iv) to require a producer to communicate “a reasonable summary of” the basis or bases of the recommendation. The Working Group discussed the FACC’s comments. There was no support for making the suggested revisions.

Mr. Bissett discussed the IIABA’s suggested revisions to Section 6A(1)(c) and (d). He said the IIABA suggests adding the word “annuity” to Section 6A(1)(c) to limit its scope to annuity products. The IIABA suggests adding the language “or relationship and only” to Section 6A(1)(d) for clarity. The Working Group discussed the IIABA’s suggested revision to Section 6A(1)(c). Some Working Group members expressed concern with adding the limiting language, particularly as to how it could affect replacement products. There was no support for making the suggested revision.

The Working Group discussed the IIABA’s suggested revision to Section 6A(1)(d). After discussion, the Working Group agreed to accept the suggested revision. The Working Group also discussed whether Section 6A(1)(d) is the appropriate place to add language to address an issue raised in the Joint Trades’ comments, which it previously discussed, concerning the possibility of consumers tying a recommendation to a particular outcome or performance. After discussion, the Working Group again deferred making a decision until the Joint Trades presented revised language.

Director Froment said the Working Group would begin its next conference call on Oct. 29 with discussing the comments received on Section 6A(2)—Disclosure Obligation.

Having no further business, the Annuity Suitability (A) Working Group adjourned.
The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Oct. 8, 2019. The following Working Group members participated: Jillian Froment, Chair (OH); Doug Ommen, Vice Chair (IA); Jodi Lerner (CA); Susan Jennette (DE); Dean L. Cameron (ID); Tate Flott (KS); Nour Benchaboun (MD); Renee Campbell (MI); Matt Holman (NE); Andrew Schallhorn (OK); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Rachel Jade-Rice (TN); and Richard Wicka (WI).

1. Discussed Comments Received on Proposed Revisions to Model #275

Director Froment reminded the Working Group of its goals for its June 20 meeting and its subsequent meetings, which was to develop a framework for revising the *Suitability in Annuity Transactions Model Regulation (#275)* to include a best interest standard of conduct that is more than the model’s current suitability standard, but not a fiduciary standard. She said that based on the developed framework and as discussed at the Working Group’s meeting at the Summer National Meeting, the Working Group’s technical drafting group met in September and developed a draft of proposed revisions to Model #275 (see *NAIC Proceedings – Fall 2019, Life Insurance and Annuities (A) Committee, Attachment Two-E1*). She said that during the Working Group’s Sept. 17 conference call, the Working Group developed a Working Group draft of proposed revisions to Model #275 (Attachment Two-D1) based on the technical drafting group’s draft and exposed it for a public comment period ending Sept. 30. She said the purpose of this conference call is to begin a section-by-section discussion of the comments received by the public comment deadline.

a. **Title**

Director Froment said the Independent Insurance Agents & Brokers of America (IIABA) submitted comments on Model #275’s title suggesting revising the title from “Suitability in Annuity Transactions Model Regulation” to “Suitability in Annuity Transactions Model Law.” Wes Bissett (IIABA) said the IIABA believes Model #275 should be a model law because the proposed revisions will require statutory authority for a state to adopt. Mr. Holman said it is a state-by-state decision whether to adopt the proposed revisions by regulation or by statute. After discussion, the Working Group decided not to accept the IIABA’s suggested revision.

b. **Section 1—Purpose**

Director Froment said the Joint Trades—in a joint comment 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), the National Association for Fixed Annuities (NAFA), the National Association of Insurance and Financial Advisers (NAIFA) and the Association for Advanced Life Underwriting (AALU)—the Fixed Annuity Consumer Choice Campaign (FACC) and the IIABA submitted comments on Section 1A—Purpose.

Pat Reeder (ACLI) said the Joint Trades suggest revising Section 1A to clarify that the required standard of conduct does not guarantee an outcome. He said similar language is included in New York’s Regulation 187, which establishes a best interest standard of conduct. After discussion of the suggested revisions, the Working Group decided not to accept it because of concerns about its appropriateness for this section.

Kim O’Brien (FACC) said the FACC suggests revising Section 1A to delete the reference to “best interest” because of its concerns with using an undefined and ambiguous term. Mr. Bissett asked the Working Group to defer the IIABA’s suggested revisions to Section 1A until the Working Group discusses Section 6—Duties of Insurers and Producers.

Director Cameron said any discussions related to whether to include a best interest standard of conduct in the Model #275 revisions should be deferred until the Working Group discusses Section 6—Duties of Insurers and Producers. Director Froment noted that all of the draft provisions are open until the Working Group completes its work and forwards the draft revisions to the Life Insurance and Annuities (A) Committee for its consideration. She reminded the Working Group that as it moves through the discussion of the comments, the Working Group’s goal is to see if it can reach general support and consensus to make any requested changes to the draft based on the comments received.
The Working Group discussed the IIABA’s suggestion to delete the proposed drafting note for Section 1B. The proposed drafting note states that for purposes of Section 989J of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), the revised Model #275 is a successor to the 2010 revisions, which added a suitability standard of conduct. Mr. Bissett explained that the purpose of Section 989J was to permit states to continue to regulate equity-indexed annuities if they adopted the NAIC’s 2010 amendments to Model #275. He said the current draft of proposed revisions to Model #275 will replace the suitability standard of conduct with a best interest standard of conduct. He said that for those states that do not want to adopt such a standard, there would be a question about their ability to continue to regulate equity-indexed annuities. The Working Group discussed the IIABA’s suggested revision. After additional discussion, the Working Group decided to defer making any decision on the suggested revision and asked NAIC staff to contact the NAIC Legal Division to research this issue.

c. **Section 2—Scope and Section 3—Authority**

Director Froment said the IIABA submitted comments on Section 2—Scope and Section 3—Authority consistent with its suggested revision to the title and Section 1 to change Model #275 to a model law. She said that based on the Working Group’s discussion of those suggested revisions, the Working Group will not accept the IIABA’s suggested revisions for those sections. The Working Group agreed. No other comments were received on Section 2 or Section 3.

d. **Section 4—Exemptions**

Director Froment said the Joint Trades submitted comments on Section 4A—Exemptions. Gary Sanders (NAIFA) said the Joint Trades suggest deleting language providing a specific exemption for certain direct response solicitations. He said that based on the on the proposed revisions to Model #275, the Joint Trades believe the revised model is intended to apply only to solicitations where there is a recommendation. Commissioner Ommen said Section 4A is an existing model provision. He said the proposed revision broadens the existing exemption. After discussion, the Working Group decided not to accept the suggested revision.

The Working Group next discussed the FACC’s suggested revisions to Section 4B. Ms. O’Brien said the FACC suggests adding the following language to the lead-in to Section 4B: “Contracts that are not individually solicited and are used to fund.” She said this proposed revision is intended to address a situation in the marketplace where consumers are being individually solicited to purchase an annuity for a plan described in Section 4B. Jason Berkowitz (IRI) said the Section 4 exemption language has been in Model #275 since its inception. He said federal law preempts the states from regulating the types of plans described in Section 4B. He also said another reason for the exemption is that federal law imposes a fiduciary duty on plan sponsors with respect to these types of plans. Ms. O’Brien said the FACC’s proposed revision was included in a previous draft of proposed revisions to Model #275. Mr. Berkowitz said the California Department of Insurance (DOI) offered that suggested revision to address specific concerns in their marketplace. He suggested that California’s concerns could be addressed in another way. After discussion, the Working Group decided not to accept the FACC’s suggested revision.

e. **Section 5—Definitions**

The Working Group discussed Section 5—Definitions. No comments were received on the definition of “annuity” in Section 5A or the definition of “cash compensation” in Section 5B.

Pam Heinrich (NAFA) said the Joint Trades suggest deleting Section 5C(3) and Section 5C(5) in the definition of “consumer profile information” because these provisions are duplicative of other language used in the definition. She said the Joint Trades also suggest deleting the language “including variability in premium, death benefit or fees” in paragraph (11) and substituting the proposed newly defined term “non-guaranteed elements.” She said the proposed definition of “non-guaranteed elements” encompasses the language the Joint Trades suggests deleting. She said the definition for “non-guaranteed elements” is taken from the *Annuity Disclosure Model Regulation* (#245).

Commissioner Ommen asked if Section 5C(3) and Section 5C(5) are deleted, then what would require a producer or an insurer to specifically review the consumer’s financial situation and needs or financial objectives. Ms. Heinrich said the requirement to review these specific elements is part of the producer’s or insurer’s general requirement under the proposed revisions to make recommendations that effectively address the consumer’s financial situation, insurance needs and financial objectives.
The Working Group discussed the suggested revisions. Director Cameron expressed support for retaining Section 5C(3) and Section 5C(5) because it is critical that the producer have this information as part of the consumer’s profile information when making a recommendation. After additional discussion, the Working Group decided to retain Section 5C(3) and Section 5C(5). Mr. Berkowitz requested the Working Group consider language that would clarify what is meant by the language “debts and obligations” in Section 5C(3). The Working Group agreed and asked Mr. Berkowitz to submit language for its review during its next conference call.

Birny Birnbaum (Center for Economic Justice—CEJ) asked the Working Group to consider adding “insurance needs” to the list of information required to be considered as part of the consumer’s consumer profile information. Superintendent Dwyer said she assumed “insurance needs” was incorporated in the list of information already in the definition of “consumer profile information,” but said she has no objection to specifically adding it to the list. After discussion, the Working Group agreed to add “insurance needs.”

The Working Group discussed whether to delete the language “including variability in premium, death benefit or fees” in Section 5C (11) and substitute the proposed new definition for the term “non-guaranteed elements.” Mr. Birnbaum suggested that the definition could be added without deleting the suggested language. After discussion, the Working Group agreed to accept the suggested revisions and to add the language “including, but not limited to” as Commissioner Ommen suggested.

No comments were received on the following definitions: 1) “continuing education credit” in Section 5D; 2) “continuing education provider” in Section 5E; 3) “FINRA” in Section 5F; 4) “insurer” in Section 5G; or 5) “intermediary” in Section 5H.

The Working Group discussed the Joint Trades’ suggested revisions to the definitions of “material conflict of interest” in Section 5I and “non-cash compensation” in Section 5J. Robbie Meyer (ACLI) said the Joint Trades are suggesting these revisions for clarity and to expressly exclude benefits from being considered “non-cash compensation.” She said the concern is that if these benefits are not expressly excluded, they would be considered non-cash compensation and producers would be prohibited from receiving these benefits in accordance with Section 6C(2)(h). The Working Group discussed the suggested revisions and decided to defer making a decision on the suggested revisions until it discusses Section 6—Duties of Insurers and Producers.

No comments were received on the definition of “producer” in Section 5K.

The Working Group discussed the Joint Trades’ suggested revision to the definition of “recommendation” in Section 5L. Mr. Berkowitz said the Joint Trades’ suggested revision is intended to make clear that a recommendation is advice given to the consumer regardless of whether the transaction is completed. The Working Group discussed the suggested revision and decided not to accept it because of concerns that the suggested revision narrowed the language.

The Working Group discussed the Joint Trades’ suggested revision to the definition of “replacement” in Section 5M. Mr. Berkowitz said the Joint Trades suggests these revisions for consistency with the definition of “annuity” in Section 5A. After discussion, the Working Group agreed to accept the suggested revisions.

No comments were received on the definition of “SEC” in Section 5N.

Director Froment said the Working Group would defer discussion of the remaining additional suggested definitions because those definitions involved the safe harbor provision in Section 6. She said the Working Group would discuss them as part of its discussion of that provision.

Having no further business, the Annuity Suitability (A) Working Group adjourned.
SUITABILITY IN ANNUITY TRANSACTIONS
MODEL REGULATION

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Section 1. Purpose

A. The purpose of this regulation is to require producers to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately effectively addressed.

B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

Drafting Note: The language of subsection B comes from the NAIC Unfair Trade Practices Act. If a State has adopted different language, it should be substituted for subsection B.

Drafting Note: 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.

Section 2. Scope

This regulation shall apply to any sale or recommendation to purchase, exchange or replace of an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.

Section 3. Authority

This regulation is issued under the authority of [insert reference to enabling legislation].

Drafting Note: States may wish to use the Unfair Trade Practices Act as enabling legislation or may pass a law with specific authority to adopt this regulation.

Section 4. Exemptions
Unless otherwise specifically included, this regulation shall not apply to transactions involving:

A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;

B. Contracts used to fund:
   
   (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
   
   (2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
   
   (3) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under section 457 of the IRC; or
   
   (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

C. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

D. Formal prepaid funeral contracts.

Section 5. Definitions

A. “Annuity” means an annuity that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.

B. “Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.

C. “Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs and financial objectives, including, at a minimum, the following:

   (1) Age;
   
   (2) Annual income;
   
   (3) Financial situation and needs, including debts and other obligations;
   
   (4) Financial experience;
   
   (5) Financial objectives;
   
   (6) Intended use of the annuity;
   
   (7) Financial time horizon;
   
   (8) Existing assets or financial products, including investment, annuity and insurance holdings;
   
   (9) Liquidity needs;
(10) Liquid net worth;

(11) Risk tolerance, including willingness to accept non-guaranteed elements in the annuity, including variability in premium, death benefit or fees;

(12) Financial resources used to fund the annuity; and

(13) Tax status.

BD. “Continuing education credit” or “CE credit” means one continuing education credit as defined in [insert reference in State law or regulations governing producer continuing education course approval].

CE. "Continuing education provider” or “CE provider” means an individual or entity that is approved to offer continuing education courses pursuant to [insert reference in State law or regulations governing producer continuing education course approval].

DF. “FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.

EG. “Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

F. “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

H. “Intermediary” means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer’s annuities by producers.

I. (1) “Material conflict of interest” 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.

(2) “Material conflict of interest” does not include cash compensation or non-cash compensation.

J. “Non-cash compensation” means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support and retirement benefits.

K. “Producer” means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. For purposes of this regulation, “producer” includes an insurer where no producer is involved.

GL. (1) “Recommendation” means advice provided by an insurance producer, or an insurer where no producer is involved, 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.

(2) 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.

NOTE: THE WORKING GROUP IS REQUESTING COMMENTS ON REVISING THE DEFINITION OF “RECOMMENDATION” TO ADDRESS IN-FORCE SALES BY ADDING LANGUAGE EXPANDING THE DEFINITION TO INCLUDE WHEN A MODIFICATION IS MADE OR THE CONSUMER ELECTS A CONTRACTUAL OPTION, WHICH GENERATES CASH OR NON-CASH COMPENSATION FOR THE PRODUCER PROVIDING THE ADVICE. THE WORKING GROUP ALSO REQUESTS COMMENTS ON WHETHER TO INCLUDE A TIME FRAME FOR A PRODUCER TO REVIEW A CONSUMER'S CONSUMER PROFILE INFORMATION. CURRENTLY FINRA REQUIRES A REVIEW OF SUCH INFORMATION AT LEAST EVERY 3 YEARS. THE WORKING GROUP IS ALSO REQUESTING COMMENTS ON WHETHER THE DRAFT SHOULD ADDRESS IN-FORCE SALES.
HM. “Replacement” means a transaction in which a new policy or contract annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is whether or not a producer is involved, that by reason of the transaction, an existing insurance policy or contract has been or is to be any of the following:

(1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
(2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
(3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
(4) Reissued with any reduction in cash value; or
(5) Used in a financed purchase.

Drafting Note: The definition of “replacement” above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation. If a State has a different definition for “replacement,” the State should either insert the text of that definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in State law or regulation.

I. “Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(1) Age;
(2) Annual income;
(3) Financial situation and needs, including the financial resources used for the funding of the annuity;
(4) Financial experience;
(5) Financial objectives;
(6) Intended use of the annuity;
(7) Financial time horizon;
(8) Existing assets, including investment and life insurance holdings;
(9) Liquidity needs;
(10) Liquid net worth;
(11) Risk tolerance; and
(12) Tax status.

N. “SEC” means the United States Securities and Exchange Commission.

Section 6. Duties of Insurers and of Insurance Producers

A. Best Interest Obligations. A producer, when making a recommendation of an annuity, shall act in the best
interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer’s or the insurer’s financial interest ahead of the consumer’s interest. A producer is deemed to comply with this subsection by satisfying the following obligations regarding care, disclosure, conflict of interest and documentation:

A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer’s suitability information, and that there is a reasonable basis to believe all of the following:

1. (a) Care Obligation. The producer, in making a recommendation shall exercise reasonable diligence, care and skill to:

   (i) Know the consumer’s financial situation, insurance needs and financial objectives;

   (ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;

   (iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and

   (iv) Communicate the basis or bases of the recommendation.

   (b) The requirements under subparagraph (a) of this paragraph include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

   (c) The requirements under subparagraph (a) of this paragraph require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer’s financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation.

   (d) The requirements under this subsection do not create a fiduciary obligation but create a regulatory obligation as established in this regulation.

   (e) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer’s financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

   (f) The requirements under subparagraph (a) of this paragraph include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.

   (g) The requirements under subparagraph (a) of this paragraph apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any.
(h) The requirements under subparagraph (a) of this paragraph do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

(i) The requirements under subparagraph (a) of this paragraph do not mean the producer has ongoing monitoring obligations under the care obligation under this paragraph, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.

(j) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:

(i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

(ii) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

(iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

(2) Disclosure obligation.

(a) Prior to or at the time of the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to the “Producer Relationship Disclosure Form” in Appendix A:

(i) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;

(ii) Any limitations the producer or the insurer has concerning the following:

(I) The type of products that the producer is authorized and licensed to recommend or sell; and

(II) Whether only products issued by a specific insurer or an otherwise limited range of annuity products may be offered;

(iii) A description of the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary or other producer or by fee as a result of a contract for advice or consulting services; and

(iv) A notice of the consumer’s right to request additional information regarding cash compensation described in subparagraph (b) of this paragraph;

Drafting Note: If a state approves forms, a state should add language to subparagraph (a) reflecting such approvals.

(b) Upon request, the producer shall disclose:
(i) A reasonable estimate of the amount of cash compensation, which may be stated as a range of amounts or percentages; and

(ii) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and

(c) Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risks.

Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) subparagraph (c) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

(2) The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;

(3) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and

(4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

   (a) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

   (b) The consumer would benefit from product enhancements and improvements; and

   (c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

(3) Conflict of interest obligation. A producer shall identify and avoid or otherwise reasonably manage material conflicts of interest, including material conflicts of interest related to an ownership interest.

(4) Documentation obligation. A producer shall at the time of recommendation or sale:
(a) Make a written record of any recommendation and the basis for the recommendation subject to this regulation;

(b) Obtain a customer signed statement on a form substantially similar to the “Consumer Refusal to Disclose All or Partial Consumer Profile Information” form in Appendix B documenting:

(i) A customer’s refusal to provide the consumer profile information, if any; and

(ii) A customer’s understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and

(c) Obtain a customer signed statement acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer’s recommendation.

Drafting Note: If a state approves forms, a state should add language to subparagraph (b) of this paragraph reflecting such approvals.

B. Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the customer’s suitability information.

C. Except as permitted under subsection D, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer’s suitability information.

NOTE: THE PROVISION BELOW IS STILL UNDER CONSIDERATION. THE WORKING GROUP IS REQUESTING COMMENT ON IT.

[? Any requirement applicable to a producer under this section shall apply to every producer who has materially participated in the making of a recommendation and received compensation as a result of the sales transaction, regardless of whether the producer has had any direct contact with the consumer, provided that product wholesaling or product support based on generic client information, or the provision of education or marketing material, does not constitute participating in the making of a recommendation.]

DB. Transactions not based on a recommendation.

(1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection A(1) or C related to any annuity transaction if:

(a) No recommendation is made;

(b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

(c) A consumer refuses to provide relevant suitability consumer profile information and the annuity transaction is not recommended; or

(d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.
(2) An insurer’s issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

C. Supervision system.

(1) Except as permitted under subsection B, an insurer may 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.

E. An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:

(1) Make a record of any recommendation subject to section 6A of this regulation;

(2) Obtain a customer signed statement documenting a customer’s refusal to provide suitability information, if any; and

(3) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer’s or insurer’s recommendation.

F. An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer’s and its insurance producers’ compliance with this regulation, including, but not limited to, the following:

(a) The insurer shall establish and maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;

(b) The insurer shall establish and maintain standards for insurance producer product training and shall establish and maintain reasonable procedures to require its insurance producers to comply with the requirements of section 7 of this regulation;

(c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

(d) The insurer shall establish and maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable the recommended annuity would effectively address the particular consumer’s financial situation, insurance needs and financial objectives. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(e) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not suitable in compliance with subsections A, B, D and E. This may include, but is not limited to, confirmation of the consumer’s suitability consumer profile information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability consumer profile information after issuance or delivery of the annuity; and
(f) The insurer shall establish and maintain reasonable procedures to assess, prior to or upon
issuance or delivery of an annuity, whether a producer has provided to the consumer the
information required to be provided under this section;

(g) The insurer shall establish and maintain reasonable procedures to identify and address
potentially suspicious consumer refusals to provide consumer profile information;

(h) The insurer shall establish and maintain reasonable procedures to identify and eliminate
any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the
sales of specific annuities or specific types of annuities within a limited period of time; and

(i) The insurer shall annually provide a written report to senior management, including to the
senior manager responsible for audit functions, which details a review, with appropriate
testing, reasonably designed to determine the effectiveness of the supervision system, the
exceptions found, and corrective action taken or recommended, if any.

(2)(3) (a) Nothing in this subsection restricts an insurer from contracting for performance of a
function (including maintenance of procedures) required under paragraph (1) this
subsection. An insurer is responsible for taking appropriate corrective action and may be
subject to sanctions and penalties pursuant to section 8 of this regulation regardless of
whether the insurer contracts for performance of a function and regardless of the insurer’s
compliance with subparagraph (b) of this paragraph.

(b) An insurer’s supervision system under paragraph (1) this subsection shall include
supervision of contractual performance under this subsection. This includes, but is not
limited to, the following:

(i) Monitoring and, as appropriate, conducting audits to assure that the contracted
function is properly performed; and

(ii) Annually obtaining a certification from a senior manager who has responsibility
for the contracted function that the manager has a reasonable basis to represent,
and does represent, that the function is properly performed.

(3)(4) An insurer is not required to include in its system of supervision an insurance producer’s
recommendations to consumers of products other than the annuities offered by the insurer.

GD. Prohibited Practices. Neither a producer nor an insurer shall An insurance producer shall not dissuade, or
attempt to dissuade, a consumer from:

(1) Truthfully responding to an insurer’s request for confirmation of the suitability consumer profile
information;

(2) Filing a complaint; or

(3) Cooperating with the investigation of a complaint.

HE. Safe harbor.

(1) Sales made in compliance with SEC regulations and applicable FINRA requirements pertaining
to suitability, best interest obligations and supervision of annuity transactions shall satisfy the
requirements under this regulation. This subsection applies to FINRA broker-dealer sales of
annuities if, in connection with the sale of an annuity, the broker-dealer and the producer, who also
is appropriately registered as a representative with FINRA, have complied with the business rules,
controls and procedures for securities transactions that are similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance
commissioner’s ability to investigate and enforce (including investigate) the provisions of this regulation.

Drafting Note: Non-compliance with SEC and FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.

(2) For paragraph (1) to apply, an insurer shall:

(a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer’s business; and

(b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

Section 7. Insurance Producer Training

A. An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer’s standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

B. (1) (a) An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.

(b) Insurance producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

(2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer.

(3) The training required under this subsection shall include information on the following topics:

(a) The types of annuities and various classifications of annuities;

(b) Identification of the parties to an annuity;

(c) How product specific annuity contract features affect consumers;

(d) The application of income taxation of qualified and non-qualified annuities;

(e) The primary uses of annuities; and

(f) Appropriate standard of conduct, sales practices, replacement and disclosure requirements.

(4) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer’s products. Additional topics may be offered in conjunction with and in addition to the required outline.

(5) A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to insurance producer
continuing education courses as set forth in [insert reference to State law or regulations governing producer continuing education course approval].

(6) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to State law or regulations governing producer continuing education course approval].

(7) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to State law or regulations governing to producer continuing education course approval].

(8) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.

(9) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.

(10) An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Section 8. Compliance Mitigation; Penalties

A. An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order:

(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this regulation by the insurer, an entity contracted to perform the insurer’s supervisory duties or by the insurance producer’s violation of this regulation.

(2) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer’s violation of this regulation; and

(3) Appropriate penalties and sanctions.

B. Any applicable penalty under [insert statutory citation] for a violation of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

_Drafting Note:_ Subsection B above is intended to be consistent with the commissioner’s discretionary authority to determine the appropriate penalty for a violation of this regulation. The language of subsection B is not intended to require that a commissioner impose a penalty on an insurer for a single violation of this regulation if the commissioner has determined that such a penalty is not appropriate.

_Drafting Note:_ A State that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, “shall” should be substituted for “may” in the same sentence. States should consider inserting a reference to the NAIC Unfair Trade Practices Act or the State’s statute that authorizes the commissioner to impose penalties and fines.

Section 9. [Optional] Recordkeeping

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A. Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions for [insert number] years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

**Drafting Note:** States should review their current record retention laws and specify a time period that is consistent with those laws. For some States this time period may be five (5) years.

B. Records required to be maintained by this regulation may be maintained in paper, photographic, micro-process, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

**Drafting Note:** This section may be unnecessary in States that have a comprehensive recordkeeping law or regulation.

**Section 10. Effective Date**

The amendments to this regulation shall take effect [six (6)X] months after the date the regulation is adopted or on [insert date], whichever is later.
APPENDIX A

PRODUCER RELATIONSHIP DISCLOSURE FORM

Date: _______________________

INSURANCE AGENT/PRODUCER INFORMATION (“Me”, “I”, “My”)

First Name: ______________________________ Last Name: __________________________

Firm Name: ______________________________ Website: _____________________________

Business Mailing Address:________________________________________________________

Business Telephone Number: ______________________________________________________

Email Address:__________________________________________________________________

Insurance License # ____________________________________________________________

CLIENT INFORMATION (“You”, “Your”)

First Name: ________________________________ Last Name: __________________________

INSURANCE AUTHORIZATION

I am licensed and authorized to sell insurance products, including annuities in [State] in accordance with state laws. I offer the following products:

☐ Fixed or Fixed Index Annuities ☐ Mutual Funds
☐ Variable Annuities ☐ Stocks/Bonds
☐ Options ☐ Certificates of Deposits
☐ Other Investments __________________________________________________________________

I am authorized and contracted or appointed or have access to offer:

☐ Products from ONLY ONE INSURER or Insurance Holding Company Group
☐ Products from Multiple Insurers
☐ Products from Multiple Insurers although I am primarily contracted with one insurer

NOTE: THE WORKING GROUP REQUESTS COMMENTS ON WHAT ADDITIONAL INFORMATION (OR BOXES), IF ANY, SHOULD BE ADDED BELOW TO REFLECT THE PROVISIONS OF SECTION 6A(2), THE DISCLOSURE OBLIGATION, TO DESCRIBE THE SCOPE AND TERMS OF THE RELATIONSHIP BETWEEN THE PRODUCER AND THE CONSUMER.

My Relationship with You:

☐ One-Time Transaction
☐ On-Going Relationship

My Compensation Structure:
☐ Commissioned Transaction
☐ An asset under management fee
☐ Other, please describe: ________________________________

I am likely to be compensated by the following sources for this relationship:
☐ Insurance Company
☐ The Consumer
☐ Third parties such as an Independent Marketing Organization (IMO) related to the Insurer

Other Sources ____________________________

ADDITIONAL INFORMATION

You may obtain further information regarding the cash compensation paid to me.

NOTE: THE WORKING GROUP REQUESTS COMMENTS ON WHETHER THE CONSUMER SHOULD SIGN AND ACKNOWLEDGE THIS FORM AND/OR SHOULD THIS FORM BE RETAINED BY THE PRODUCER OR GIVEN TO THE CONSUMER, OR BOTH.

____________________________________
Client Signature

____________________________________
Date
APPENDIX B

CONSUMER REFUSAL TO DISCLOSE ALL OR PARTIAL CONSUMER PROFILE INFORMATION FORM

I understand that should I decline to provide the requested information or should I provide inaccurate information, I am limiting the protection afforded me by the Insurance Code of this [state] regarding this purchase.

☐ I REFUSE to provide this information at this time.
☐ I have chosen to provide LIMITED information at this time.
☐ My annuity purchase IS NOT BASED on the recommendation of this producer or the insurer.

__________________________________
Client Signature

__________________________________
Date

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Annuity Suitability (A) Working Group
Conference Call
September 17, 2019

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Sept. 17, 2019. The following Working Group members participated: Jillian Froment, Chair (OH); Doug Ommen, Vice Chair (IA); Steve Ostlund (AL); Jodi Lerner (CA); Fleur McKendell (DE); Dean L. Cameron (ID); Tate Flott (KS); Nour Benchaaboun (MD); Renee Campbell (MI); Matt Holman (NE); Denise Lamy (NH); James Regalbuto (NY); Elizabeth Kelleher-Dwyer, Matt Gendron and Sarah Neil (RI); Lorrie Brouse and Rachel Jrade-Rice (TN); and Richard Wicka (WI).

1. Discussed and Exposed the Technical Group Draft of Proposed Revisions to Model #275

Director Froment reminded the Working Group of its goals for its June 20 meeting and its subsequent meetings, which was to develop a framework for revising the *Suitability in Annuity Transactions Model Regulation (#275)* to include a best interest standard of conduct that is more than the model’s current suitability standard, but not a fiduciary standard. She said that based on the developed framework and as discussed at the Working Group’s meeting at the Summer National Meeting, the Working Group’s technical drafting group met in September and developed a draft of proposed revisions to Model #275 (Attachment Two-E1). She said the purpose of this call is to allow the Working Group to review, comment and offer suggested revisions to the draft in order to develop a Working Group draft for exposure for public comment. She explained that although it is an open call, only Working Group members will be allowed to comment. She noted that all stakeholders would have sufficient time to comment on the draft during the public comment period and subsequent Working Group calls to review and discuss the comments received.

   a. Section 1—Purpose

Director Froment reviewed the proposed revisions to Section 1—Purpose. She said the revisions make it clear that Model #275’s purpose it is to require producers to act in the consumer’s best interest when making a recommendation of an annuity and require insurers to establish and maintain systems to supervise these recommendations. She requested comments from the Working Group. There were no comments.

   b. Section 2—Scope

Director Froment reviewed the proposed revisions to Section 2—Scope. Mr. Regalbuto asked if it is appropriate to discuss whether Model #275 should apply to in-force recommendations. After discussion, the Working Group decided to defer that discussion until the Working Group discusses the definition of “recommendation” in Section 5L. There were no additional Working Group comments on this section.

   c. Section 3—Authority

Director Froment said no revisions were made to Section 3—Authority. There were no comments from Working Group members on this section.

   d. Section 4—Exemptions

Director Froment said no revisions were made to Section 4—Exemptions. There were no comments from Working Group members on this section.

   e. Section 5—Definitions

Director Froment reviewed the proposed revisions to Section 5—Definitions. Mr. Wicka asked about the proposed revisions to the definition of “recommendation” in Section 5L. He said the proposed revisions adding the language “is intended to result” creates an element of intent, which must be proven in a hearing. He suggested striking the language and substituting “does result” in order to avoid having to prove intent. After additional discussion, the Working Group decided to revise the definition as follows: “was intended to result and does result.”
Mr. Regalbuto asked the Working Group to consider adding language to the definition of “recommendation” to have Model #275 apply to “in-force” sales when a modification is made to the in-force annuity contract or the consumer elects a contractual option, which generates cash or non-cash compensation for the producer providing the advice. The Working Group discussed Mr. Regalbuto’s suggestion. Some Working Group members expressed caution for including such language, and others expressed some hesitation to include such language in the draft until additional information and specific language is provided for the Working Group’s review. After additional discussion, the Working Group decided to defer making a decision until it could receive additional comments from stakeholders.

f. Section 6—Duties of Insurers and Producers

Director Froment reviewed the provisions of Section 6A—Duties of Insurers and Producers, Best Interest Obligations. She explained that Section 6A requires a producer to act in the consumer’s best interest in making a recommendation without placing the producer’s or the insurer’s financial interest ahead of the consumer’s interest and outlines how a producer or insurer would comply with this requirement by satisfying the care, disclosure, conflict of interest and documentation obligations. She asked the Working Group for comments. There were no comments.

Director Froment pointed out a potential provision for inclusion in Section 6A from New York, which would extend the model’s requirements to every producer who has materially participated in the making of a recommendation and received compensation as a result of the sales transaction regardless of whether the producer has had any direct contact with the consumer. Mr. Regalbuto explained his reasoning for suggesting the inclusion of this language. He said inclusion of this provision is particularly important with respect to new producers or recommendations involving complex products where another producer with more knowledge may be brought in to assist. Director Froment said the technical draft group discussed New York’s concerns and its reasoning for suggesting the language but struggled with whether this language was the way to address it or if there was another approach it should consider. Ms. Brouse suggested another approach could be to revise Model #275’s supervision provisions to address it. Commissioner Ommen suggested the Working Group receive additional comments on New York’s suggested language. The Working Group agreed.

Director Froment reviewed Section 6B, Transactions Not Based on a Recommendation. She asked the Working Group for comments. There were no comments.

Director Froment reviewed Section 6C, Supervision System. She asked the Working Group for comments. Ms. Lerner asked why Section 6C(2)(h) requires an insurer to establish and maintain “minimum” procedures. After discussion, the Working Group agreed to delete the word “minimum” for consistency with similar language in Section 6C.

g. Appendix A—Producer Relationship Disclosure Form

Director Froment reviewed Appendix A—Producer Relationship Disclosure Form. She asked for comments from the Working Group. With respect to the heading “Insurance Authorization,” Ms. Brouse discussed the issue of a producer being authorized to “sell” versus “offer” certain annuities. After discussion, the Working Group decided to add the language “or have access to offer.” The Working Group discussed the purpose of the form and whether it included all of the information that should be disclosed in accordance with Section 6A(2) with respect to the producer and consumer relationship. After additional discussion, the Working Group decided to request specific comments on the issue.

Mr. Benchaaboun asked if consumers should be required to sign the form and acknowledge receipt. After discussion, the Working Group decided to ask for specific comments on this issue.

h. Appendix B—Consumer Refusal to Disclose All or Partial Consumer Profile Information Form

Director Froment reviewed Appendix B—Consumer Refusal to Disclose All or Partial Consumer Profile Information Form. She asked the Working Group for comments. There were no comments.

Director Froment exposed the draft of proposed revisions to Model #275, as discussed during the conference call, for a 13-day public comment period ending Sept. 30.
2. Discussed the Working Group’s Next Steps

Director Froment discussed the Working Group’s next steps. She said the Working Group will discuss any comments received on the draft of proposed revisions to Model #275 via conference call beginning in early October through November. The Working Group’s goal is to present a draft to the Life Insurance and Annuities (A) Committee for its consideration prior to or at the Fall National Meeting.

Having no further business, the Annuity Suitability (A) Working Group adjourned.
SUITABILITY IN ANNUITY TRANSACTIONS
MODEL REGULATION

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Appendix A. Producer Relationship Disclosure Form
Appendix B. Consumer Refusal to Disclose All or Partial Consumer Profile Information

Section 1. Purpose

A. The purpose of this regulation is to require producers to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately effectively addressed.

B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

Drafting Note: The language of subsection B comes from the NAIC Unfair Trade Practices Act. If a State has adopted different language, it should be substituted for subsection B.

Drafting Note: 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.

Section 2. Scope

This regulation shall apply to any sale or recommendation to purchase, exchange or replace of an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.

Section 3. Authority

This regulation is issued under the authority of [insert reference to enabling legislation].

Drafting Note: States may wish to use the Unfair Trade Practices Act as enabling legislation or may pass a law with specific authority to adopt this regulation.

Section 4. Exemptions
Unless otherwise specifically included, this regulation shall not apply to transactions involving:

A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;

B. Contracts used to fund:
   (1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
   (2) A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
   (3) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under section 457 of the IRC; or
   (4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

C. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

D. Formal prepaid funeral contracts.

Section 5. Definitions

A. “Annuity” means an annuity that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.

B. “Cash compensation” means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.

C. “Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs and financial objectives, including, at a minimum, the following:
   (1) Age;
   (2) Annual income;
   (3) Financial situation and needs, including debts and other obligations;
   (4) Financial experience;
   (5) Financial objectives;
   (6) Intended use of the annuity;
   (7) Financial time horizon;
   (8) Existing assets or financial products, including investment, annuity and insurance holdings;
9 Liquidity needs;
10 Liquid net worth;
11 Risk tolerance, including willingness to accept non-guaranteed elements in the annuity, including variability in premium, death benefit or fees;
12 Financial resources used to fund the annuity; and
13 Tax status.

BD. “Continuing education credit” or “CE credit” means one continuing education credit as defined in [insert reference in State law or regulations governing producer continuing education course approval].

CE. “Continuing education provider” or “CE provider” means an individual or entity that is approved to offer continuing education courses pursuant to [insert reference in State law or regulations governing producer continuing education course approval].

DF. “FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.

EG. “Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

FI. “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

H. “Intermediary” means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer’s annuities by producers.

I. (1) “Material conflict of interest” 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.

(2) “Material conflict of interest” does not include cash compensation or non-cash compensation.

J. “Non-cash compensation” means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support and retirement benefits.

K. “Producer” means a person or entity required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. For purposes of this regulation, “producer” includes an insurer where no producer is involved.

GL. (1) “Recommendation” means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that is intended to result in a purchase, an exchange or a replacement of an annuity in accordance with that advice.

(2) 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.

HM. “Replacement” means a transaction in which a new policy or contract annuity is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is whether or not a producer is involved, that by reason of the transaction, an existing insurance policy or contract has been or is to be any of the following:
TECHNICAL DRAFTING GROUP DRAFT

(1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

(2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(4) Reissued with any reduction in cash value; or

(5) Used in a financed purchase.

Drafting Note: The definition of “replacement” above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation. If a State has a different definition for “replacement,” the State should either insert the text of that definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in State law or regulation.

I. “Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(1) Age;

(2) Annual income;

(3) Financial situation and needs, including the financial resources used for the funding of the annuity;

(4) Financial experience;

(5) Financial objectives;

(6) Intended use of the annuity;

(7) Financial time horizon;

(8) Existing assets, including investment and life insurance holdings;

(9) Liquidity needs;

(10) Liquid net worth;

(11) Risk tolerance; and

(12) Tax status.

N. “SEC” means the United States Securities and Exchange Commission.

Section 6. Duties of Insurers and of Insurance Producers

A. Best Interest Obligations. A producer, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the producer’s or the insurer’s financial interest ahead of the consumer’s interest. A producer is deemed to comply with this subsection by satisfying the following obligations regarding care, disclosure, conflict of interest and documentation:
A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer’s suitability information, and that there is a reasonable basis to believe all of the following:

1. (a) Care Obligation. The producer, in making a recommendation shall exercise reasonable diligence, care and skill to:
   
   (i) Know the consumer’s financial situation, insurance needs and financial objectives;

   (ii) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;

   (iii) Have a reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and

   (iv) Communicate the basis or bases of the recommendation.

(b) The requirements under subparagraph (a) of this paragraph include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

(c) The requirements under subparagraph (a) of this paragraph require a producer to consider the types of products the producer is authorized and licensed to recommend or sell that address the consumer’s financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation.

(d) The requirements under this subsection do not create a fiduciary obligation but create a regulatory obligation as established in this regulation.

(e) The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer’s financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

(f) The requirements under subparagraph (a) of this paragraph include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.

(g) The requirements under subparagraph (a) of this paragraph apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any.
(h) The requirements under subparagraph (a) of this paragraph do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

(i) The requirements under subparagraph (a) of this paragraph do not mean the producer has ongoing monitoring obligations under the care obligation under this paragraph, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.

(j) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:

(i) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

(ii) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

(iii) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

(2) Disclosure obligation.

(a) Prior to or at the time of the recommendation or sale of an annuity, the producer shall prominently disclose to the consumer on a form substantially similar to the “Producer Relationship Disclosure Form” in Appendix A:

(i) A description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction;

(ii) Any limitations the producer or the insurer has concerning the following:

(I) The type of products that the producer is authorized and licensed to recommend or sell; and

(II) Whether only products issued by a specific insurer or an otherwise limited range of annuity products may be offered;

(iii) A description of the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary or other producer or by fee as a result of a contract for advice or consulting services; and

(iv) A notice of the consumer’s right to request additional information regarding cash compensation described in subparagraph (b) of this paragraph;

Drafting Note: If a state approves forms, a state should add language to subparagraph (a) reflecting such approvals.

(b) Upon request, the producer shall disclose:
(i) A reasonable estimate of the amount of cash compensation, which may be stated as a range of amounts or percentages; and

(ii) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and

Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) subparagraph (c) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

(2) The consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization or death or living benefit;

(3) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and

(4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

(a) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

(b) The consumer would benefit from product enhancements and improvements; and

(c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

(3) Conflict of interest obligation. A producer shall identify and avoid or otherwise reasonably manage material conflicts of interest, including material conflicts of interest related to an ownership interest.

(4) Documentation obligation. A producer shall at the time of recommendation or sale:
(a) Make a written record of any recommendation and the basis for the recommendation subject to this regulation;

(b) Obtain a customer signed statement on a form substantially similar to the “Consumer Refusal to Disclose All or Partial Consumer Profile Information” form in Appendix B documenting:

   (i) A customer’s refusal to provide the consumer profile information, if any; and

   (ii) A customer’s understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and

(c) Obtain a customer signed statement acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer’s recommendation.

Drafting Note: If a state approves forms, a state should add language to subparagraph (b) of this paragraph reflecting such approvals.

B. Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer’s suitability information.

C. Except as permitted under subsection D, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer’s suitability information.

NOTE: THE PROVISION BELOW IS STILL UNDER CONSIDERATION. THE WORKING GROUP IS REQUESTING COMMENT ON IT.

[? Any requirement applicable to a producer under this section shall apply to every producer who has materially participated in the making of a recommendation and received compensation as a result of the sales transaction, regardless of whether the producer has had any direct contact with the consumer, provided that product wholesaling or product support based on generic client information, or the provision of education or marketing material, does not constitute participating in the making of a recommendation.]

ĐB. Transactions not based on a recommendation.

(1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection A(1) or C related to any annuity transaction if:

   (a) No recommendation is made;

   (b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

   (c) A consumer refuses to provide relevant suitability consumer profile information and the annuity transaction is not recommended; or

   (d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.
An insurer’s issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

C. Supervision system.

(1) Except as permitted under subsection B, an insurer may 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.

E. An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:

(1) Make a record of any recommendation subject to section 6A of this regulation;

(2) Obtain a customer signed statement documenting a customer’s refusal to provide suitability information, if any; and

(3) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer’s or insurer’s recommendation.

F. An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer’s and its insurance producers’ compliance with this regulation, including, but not limited to, the following:

(a) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;

(b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 7 of this regulation;

(c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

(d) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable the recommended annuity would effectively address the particular consumer’s financial situation, insurance needs and financial objectives. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(e) The insurer shall establish and maintain reasonable procedures to detect recommendations that are not suitable in compliance with subsections A, B, D and E. This may include, but is not limited to, confirmation of the consumer’s suitability consumer profile information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this...
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subparagraph by applying sampling procedures, or by confirming the suitability consumer profile information after issuance or delivery of the annuity; and

(f) The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this section;

(g) The insurer shall establish and maintain reasonable procedures to identify and address potentially suspicious consumer refusals to provide consumer profile information;

(h) The insurer shall establish and maintain minimum procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities or specific types of annuities within a limited period of time; and

(f)(i) The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(2)(3) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1) this subsection. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer’s compliance with subparagraph (b) of this paragraph.

(b) An insurer’s supervision system under paragraph (1) this subsection shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:

(i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(3)(4) An insurer is not required to include in its system of supervision an insurance producer’s recommendations to consumers of products other than the annuities offered by the insurer.

GD. Prohibited Practices. Neither a producer nor an insurer shall attempt to dissuade, or

(1) Truthfully responding to an insurer’s request for confirmation of the suitability consumer profile information;

(2) Filing a complaint; or

(3) Cooperating with the investigation of a complaint.

HE. Safe harbor.

(1) Sales made in compliance with SEC regulations and applicable FINRA requirements rules pertaining to suitability best interest obligations and supervision of annuity transactions shall satisfy the
requirements under this regulation. This subsection applies to FINRA broker-dealer sales of annuities if, in connection with the sale of an annuity, the broker-dealer and the producer, who also is appropriately registered as a representative with FINRA, have complied with the business rules, controls and procedures for securities transactions; the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner’s ability to investigate and enforce (including investigate) the provisions of this regulation.

Drafting Note: Non-compliance with SEC and FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.

(2) For paragraph (1) to apply, an insurer shall:

(a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

(b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

Section 7. Insurance Producer Training

A. An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer’s standards for product training. A producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

B. (1) (a) An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.

(b) Insurance producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

(2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer.

(3) The training required under this subsection shall include information on the following topics:

(a) The types of annuities and various classifications of annuities;

(b) Identification of the parties to an annuity;

(c) How product specific annuity contract features affect consumers;

(d) The application of income taxation of qualified and non-qualified annuities;

(e) The primary uses of annuities; and

(f) Appropriate standard of conduct, sales practices, replacement and disclosure requirements.
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(4) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer’s products. Additional topics may be offered in conjunction with and in addition to the required outline.

(5) A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to continuing education courses as set forth in [insert reference to State law or regulations governing producer continuing education course approval].

(6) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to State law or regulations governing producer continuing education course approval].

(7) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to State law or regulations governing producer continuing education course approval].

(8) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.

(9) The satisfaction of the components of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.

(9)(10) An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Section 8. Compliance Mitigation; Penalties

A. An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order:

(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by a failure to comply with this regulation by the insurer, its insurer’s supervisory duties or by its insurance producer, violation of this regulation by the producer;

(2) A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer’s violation of this regulation; and

(3) Appropriate penalties and sanctions.

B. Any applicable penalty under [insert statutory citation] for a violation of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

Drafting Note: Subsection B above is intended to be consistent with the commissioner’s discretionary authority to determine the appropriate penalty for a violation of this regulation. The language of subsection B is not intended to require that a
commissioner impose a penalty on an insurer for a single violation of this regulation if the commissioner has determined that such a penalty is not appropriate.

Drafting Note: A State that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, “shall” should be substituted for “may” in the same sentence. States should consider inserting a reference to the NAIC Unfair Trade Practices Act or the State’s statute that authorizes the commissioner to impose penalties and fines.

Section 9. [Optional] Recordkeeping

A. Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions for [insert number] years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

Drafting Note: States should review their current record retention laws and specify a time period that is consistent with those laws. For some States this time period may be five (5) years.

B. Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Drafting Note: This section may be unnecessary in States that have a comprehensive recordkeeping law or regulation.

Section 10. Effective Date

The amendments to this regulation shall take effect [six (6)X] months after the date the regulation is adopted or on [insert date], whichever is later.
APPENDIX A

PRODUCER RELATIONSHIP DISCLOSURE FORM

Date: ________________________

INSURANCE AGENT/PRODUCER INFORMATION (“Me”, “I”, “My”)
First Name: ______________________________ Last Name: __________________________
Firm Name: ______________________________ Website: _____________________________
Insurance License # ______________________

CLIENT INFORMATION (“You”, “Your”)
First Name: ________________________________ Last Name: __________________________

INSURANCE AUTHORIZATION
I am licensed and authorized to sell insurance products, including annuities in [State] in accordance with state laws. I offer the following products:

☐ Fixed or Fixed Index Annuities ☐ Mutual Funds
☐ Variable Annuities ☐ Stocks/Bonds
☐ Options ☐ Certificates of Deposits
☐ Other Investments ______________________________

I am authorized and contracted or appointed to sell:

☐ Products from ONLY ONE INSURER or Insurance Holding Company Group
☐ Products from Multiple Insurers

My Relationship with You:
☐ One-Time Commissioned Transaction
☐ On-Going Relationship with an asset under management fee
☐ Other Investments: ______________________________

I am likely to be compensated by the following sources for this relationship:

☐ Insurance Company
☐ The Consumer
☐ Third parties such as an Independent Marketing Organization (IMO) related to the Insurer

Other Sources ______________________________

ADDITIONAL INFORMATION
You may obtain further information regarding the cash compensation paid to me.
APPENDIX B

CONSUMER REFUSAL TO DISCLOSE ALL OR PARTIAL CONSUMER PROFILE INFORMATION FORM

I understand that should I decline to provide the requested information or should I provide inaccurate information, I am limiting the protection afforded me by the Insurance Code of this state laws regarding this purchase.

☐ I REFUSE to provide this information at this time.
☐ I have chosen to provide LIMITED information at this time.
☐ My annuity purchase IS NOT BASED on the recommendation of this producer or the insurer.

__________________________________
Client Signature

__________________________________
Date

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The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call July 29, 2019. The following Working Group members participated: Jillian Froment, Chair (OH); Doug Ommen, Vice Chair (IA); Steve Ostlund (AL); Jodi Lerner (CA); Dean L. Cameron (ID); Tate Flott and Shannon Lloyd (KS); Nour Benchaboun (MD); Renee Campbell (MI); Matt Holman (NE); Keith Nyhan (NH); Andrew Schallhorn (OK); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Lorrie Brouse (TN); and Richard Wicka (WI).

1. **Discussed “Parking Lot” Issues Related to Proposed Revisions to Model #275**

Director Froment reminded the Working Group of its goal from its July 23 conference call, which is to continue to discuss at a high level a framework for revising the *Suitability in Annuity Transactions Model Regulation (#275)* to include a best interest standard of conduct that is more than the model’s current suitability standard, but not a fiduciary standard. She reminded the Working Group that a series of questions involving some of the highlighted issues discussed during its June 20 meeting was distributed for comment during its July 23 call. She said the Working Group finished discussion of the questions related to the conflict of interest topic during its July 23 call. During this call, the Working Group would discuss the questions related to the care obligation.

The Working Group discussed whether the care obligation should include a requirement for the producer to exercise “prudence” in developing a recommendation. Ms. Lerner said she had submitted comments on this issue suggesting retaining the “prudence” requirement. Director Froment asked Ms. Lerner if her comment would change given that the Working Group is not looking to include a fiduciary standard in the Model #275 revisions. Ms. Lerner said she would still recommend retaining the requirement because the producer or insurer is dealing with a consumer’s retirement savings.

Commissioner Ommen discussed the Iowa Department of Insurance’s (DOI) reasoning for including “prudence” in its suggested revisions to Model #275 and why it recommends removing the requirement. He explained that the Iowa DOI included “prudence” in its suggested revisions because the U.S. Securities and Exchange Commission (SEC) included it in its proposed best interest regulation. However, the final best interest regulation removed it. Commissioner Ommen also explained that in Iowa, and most likely other states, “prudence” is tied to the “prudent investor rule,” which encourages the conservation of assets. He said its use creates a legal standard such that a producer or insurer could not recommend a variable annuity because a fixed annuity would be the prudent recommendation under the conservation of assets concept. The Working Group discussed the issue.

Birny Birnbaum (Center for Economic Justice—CEJ) encouraged the Working Group to include “prudence.” He said its use would elevate the model to a best interest standard. He suggested that the comments against including it concerned securities law and as such, this concern can be addressed by defining “prudence.” Mr. Gendron asked Mr. Birnbaum to provide an example that state insurance regulators could not prosecute if the word “prudence” is not included. Mr. Birnbaum said at this point, there is nothing in the proposed Model #275 revisions requiring a producer or insurer to make a recommendation in the consumer’s best interest without using the word “prudence.” Ms. Lerner asked Mr. Birnbaum for a definition of “prudence.” Mr. Birnbaum said he would provide this information in written comments later. Gary A. Sanders (National Association of Insurance and Financial Advisors—NAIFA) said NAIFA does not believe “prudence” should be included in Model #275.

The Working Group discussed the issue further, including a few scenarios and other potential revisions to Model #275, such as the use of the words “best suited,” as a potential language to address Mr. Birnbaum’s concern. Commissioner Ommen said as the proposed revisions to Model #275 reflect, there is more to the best interest obligation than the care obligation.

The Working Group discussed whether it is an appropriate standard to require a producer when making a recommendation, the recommendation be considered reasonable for an “ordinary” producer to make in a similar circumstance. Commissioner Ommen explained why the Iowa DOI included this language in its suggested revisions. Ms. Lerner said she believes an “ordinary” producer standard is too low. After additional discussion, the Working Group agreed not to include this suggested language in the next Model #275 draft revisions.
The Working Group discussed whether a producer should provide an oral or written description of the basis of the recommendation to the consumer or whether a producer should provide an oral and written description of the basis of the recommendation to the consumer. Ms. Lerner said the consumer should receive both an oral and written description of the producer’s basis of the recommendation. She said the written description should be understandable and expressed support for developing a form or template for producers to use to satisfy this requirement. Director Froment discussed the concerns some Working Group members expressed during the Working Group’s June 20 meeting with requiring a written description because a producer’s recommendation could be based on oral conversations with the consumer during initial client meetings. Commissioner Ommen also voiced potential difficulties with a written requirement. He expressed support for giving producers the option of oral or written. He also pointed out that there is a requirement for producers to provide a written documentation related to the recommendation under the documentation obligation. Director Cameron expressed support for giving producers the option.

The Working Group discussed the issue further, debating the challenges of requiring a producer to provide a written description of the basis of the recommendation as part of the producer’s communications with the consumer during initial client meetings, particularly in light of the requirement for the producer to document the basis of the recommendation under the documentation obligation. The Working Group also discussed the value of written documentation as compared to effective communication and the importance of effective communication, whether oral or written.

Having no further business, the Annuity Suitability (A) Working Group adjourned.
Annuity Suitability (A) Working Group
Conference Call
July 23, 2019

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call July 23, 2019. The following Working Group members participated: Jillian Froment, Chair, and Michelle Brugh Rafeld (OH); Doug Ommen, Vice Chair, Johanna Nagel and Lindsay Bates (IA); Steve Ostlund (AL); Jodi Lerner (CA); Dean L. Cameron and Geoff Baker (ID); Nour Benchaaboun, Tate Flott and Shannon Lloyd (KS); Nour Benchaaboun (MD); Randall Gregg (MI); Bob Harkins (NE); James Regalbuto (NY); Denise Lamy (NH); Andrew Schallhorn (OK); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Michael Humphreys and Lorrie Brouse (TN); and Richard Wicka (WI). Also participating were: Vincent Gosz (AZ); Chris Struk (FL); Mike Chrysler (IL); Robert Wake and Lindsay Laxon (ME); Daniel Morris (SC); Travis Jordan (SD); Melissa Gerachis (VA); and Scott Bird (WA).

1. Discussed “Parking Lot” Topics from July 10 Comments

Director Froment provided an overview of the discussion from the Working Group meeting held June 20 in Columbus, OH. She explained that, following the meeting, the Working Group received eight comment letters by the July 10 deadline on the two “parking lot” topics from that meeting, including “conflict of interest” and “care obligation,” and the questions posed under each topic.

Director Froment stated that the goal of the Working Group is to define “best interest.” She explained that “best interest” is something more than suitability and something less than fiduciary. She said that because there are parties that must comply with the U.S. Security and Exchange Commission’s (SEC) best interest regulation in addition to insurance law, the Working Group will need to harmonize the Suitability in Annuity Transactions Model Regulation (#275) with the SEC regulation.

Director Froment said that as the Working Group drafts further revisions, she wants to use, as a starting point, Iowa’s proposed draft revisions to Model #275, dated May 30, 2019, because they were drafted in an attempt to harmonize with the SEC best interest regulation.

2. Discussed the Conflict of Interest Topic

a. Question 1: What constitutes a material conflict of interest when recommending annuities?

Director Froment explained that, based on the comment letters, there are two situations in which there is a potential material conflict of interest: 1) a financial conflict, based on the producer’s fees, payment or commissions; and 2) a producer with ownership interest in a parent, subsidiary or affiliate of the insurer offering the annuity.

Commissioner Ommen suggested separating extraordinary compensation (including sales contests, quotas and bonuses) from typical compensation such as common commissions or fee structures.

Ms. Lerner said even typical compensation practices could be concerning. She said the higher the commission, the greater potential conflict.

Mr. Gregg agreed with Commissioner Ommen that compensation creates a per se conflict of interest.

Ms. Neil stated that Rhode Island is also concerned about the manner in which agents are paid. She asked, once the commission is paid, what incentivizes an agent to advise that a consumer hold an investment, rather than replace it in order to obtain another commission.

Director Froment explained that there might be conflicts the producer can control and some that only the insurer can the control.

Commissioner Ommen said insurers should be responsible for managing a producer’s conflicts and incentivizing them appropriately.
Ms. Brouse said the mere fact that an agent is being compensated does not necessarily create a conflict. But insurers need to have processes in place to determine whether producers are manipulating the program to the disadvantage of the consumers.

Director Cameron said producers rarely know what compensation is for a particular product. Therefore, the regulation should not penalize agents from being compensated for selling products that help consumers achieve retirement. He stated that everyone expects agents to be paid. He recommended including a section of the model prohibiting an agent from considering non-cash compensation when recommending a product.

Director Froment summarized the discussion by explaining that there are three levels of what could create a conflict of interest, but not all of them rise to the level of a material conflict of interest: 1) a producer’s basic fees and commissions; 2) sales, quotas, bonuses and non-cash compensation that incentivizes sales of a specific product within a certain time frame; and 3) a producer’s ownership interest.

Director Froment continued by explaining that, as part of the disclosure obligation, producers should disclose that they earn a commission. Further, the ownership interest rises to the material level and probably needs its own disclosure, although that conflict would not apply to many producers. Finally, carriers should be responsible for supervising and monitoring any potential conflicts related to non-cash compensation to ensure that the incentives are not causing conflicts.

Ms. Lerner expressed her belief that disclosure of compensation should be dealt with in the supervisory section. It should be up to the insurers to notify the agents and intermediaries as to what their duties and obligations are.

Commissioner Ommen said he does not want insurers to be obligated to sit down with other insurers to determine what the compensation structure should look like, but insurers should manage the incentives.

Mr. Gendron said he would like to narrow the issue of when sales quotas create a conflict and leave this to the carriers. Director Froment agreed that the Working Group should refine that issue, because it could include a number of things.

Director Cameron explained that carriers can have an increased role in supervising, but there needs to be a better understanding of how that would work. A carrier might have overlapping incentives occurring at once, for varying lengths of time. He said if a carrier is required to disclose the incentives, the agent would need to figure out a way to explain that to the consumer. The real issue, he said, is that consumers do not want to be directed to a product because the agent would make more money. He said it would be counterproductive to force an independent agent to find out what incentives each carrier is providing.

Commissioner Ommen clarified his position on sales quotas, explaining that if sales quotas are generalized, and not tied to a specific product, it would not hinder an agent’s ability to find the best product on their shelves, based on the consumer’s profile. The insurance company is in the best position to address this.

Director Froment summarized the discussion, explaining that a producer has only so much control over certain items and the insurer is the only party that can control specific commissions, quotas and sales. She noted the Working Group’s agreement that: 1) producers should disclose that they are receiving a commission; 2) the potential for conflict in the context of incentives, which she said is about insurer supervision; and 3) producers should disclose if they have an ownership interest in a company.

Director Froment then asked for comments from interested regulators.

Mr. Wake explained that the Working Group is working to craft a standard that is more than suitability but less than fiduciary. He said producers are salespeople who work for insurance companies and insurers are in the business of giving incentives to producers to sell their product. He said it would be unrealistic to demand that insurers and producers be disinterested, but there is a need for consumers to understand clearly why insurers and producers are not fiduciaries. He said some material conflicts of interest are abusive and some are “baked” into the system. He said just because something is permissible does not mean it is not in the category of a conflict that needs to be disclosed. Separately, insurers are going to incentivize producers to sell their products, so there needs to be standards for determining when this is inappropriate. The issues that need to be addressed are when to disclose and when to mitigate. Simple commissions are currently being called a conflict and prevent agents from being totally disinterested.

Director Froment then asked to hear from interested parties.
Jason Berkowitz (Insured Retirement Institute—IRI) said that with respect to the middle “bucket” (i.e., providing guidance on how insurers should supervise is helpful and asked that as Working Group members think about how to provide that guidance), the Working Group should keep in mind that there are producers selling products for multiple carriers. He stated his concern that the Working Group is sure not to impose supervisory responsibilities on one carrier that would extend to them supervising other carriers.

Gary Sanders (National Association of Insurance and Financial Advisors—NAIFA) agreed that regular commissions should be part of disclosure obligation. He explained that the way NAIFA members conduct business, there is a strong disincentive to go after the highest commission all the time. He said most agents are not transaction-based but relationship-based, so it is in their own best interest to look after their client’s best interest or they would lose that client relationship.

Birny Birnbaum (Center for Economic Justice—CEJ) said it is important to keep in mind that people are turning over their lifetime savings. Therefore, he said, any comparisons to auto insurance and other types of insurance are not applicable. He stated his disagreement with what he called an artificial demarcation between different types of compensation. He said the idea of focusing on bonuses or sales contests, rather than the fundamental commission structure, is misplaced. It is insurers and insurance marketing organizations (IMOs) that should have the responsibility for developing and deploying compensation structures that do not conflict with a best interest standard of care. He explained that if a producer must disclose this, it would have to be with information provided by the insurer or the IMO.

Commissioner Ommen stated that, regarding independent agents, one of the challenges is how a single carrier can manage different levels of compensation in that distribution structure.

Mr. Birnbaum answered that a carrier is responsible for developing its compensation arrangement with a particular producer. And if a producer uses several companies, that producer should get the same information from each company. It should not be the agent’s responsibility to disclose more than what the insurance company provides regarding the compensation they are receiving.

Director Froment asked Mr. Birnbaum to clarify his position on disclosure, as there is some confusion over whether the CEJ believes disclosure is helpful or a hinderance.

Mr. Birnbaum explained that there are situations where disclosure would empower a consumer and situations where it would not. He said annuities are extremely complex products that include illustrations. He said the CEJ’s concern is that adding another set of disclosures would not be effective. The disclosure should be simple and comparative between different products the producer offers. Mr. Birnbaum said there should be a requirement in the regulation that insurance companies or IMOs should employ a compensation scheme that does not undermine a best interest standard of care. Further, he stated that compensation schemes should be designed to avoid churning or unsuitable sales. And that compensation schemes should be designed to compensate or reward a producer for selling a product that stays in force to reflect the long-term investment nature of annuities.

Kim O’Brien (Fixed Annuity Consumer Choice—FACC) expressed her view that the Working Group should work on creating an objective standard and that the conversation has focused on subjective components. She said carriers and producers need to know what the standards are and what they are required to disclose, stating that a template would be helpful.

Director Froment agreed that there needs to be objective standards that both producers and insurers can comply with and regulators can enforce. She explained that the Working Group needs to coalesce around the broader ideas first and then it will drill down to the specifics.

Director Froment turned back to the Working Group, explaining that the Working Group has set forth the idea of three “buckets” that constitute the potential conflicts of interest. She explained that the first one, commissions, has been addressed in the disclosure obligation, noting that the Working Group still needs to determine if there is anything further to do under that area. Then, she explained that there is a second category, incentive compensation, which the Working Group has agreed is the insurer’s role under supervision. Finally, she explained that there is the ownership interest, which would require disclosure of the conflict so a consumer could decide whether to proceed with that producer.

Director Froment then asked whether any other regulators had thoughts on what else might constitute a material conflict of interest.
Ms. Lerner sought clarification as to whether it is the producer’s job or the insurer’s job to reveal fees, commissions and incentives. Director Froment said the disclosure obligation includes the scope and terms of the relationship; i.e., that the producer is paid when he or she sells a product. But that the producer has no ability to influence incentive compensation, so that obligation falls to insurer. Finally, she said the producer would need to disclose to the consumer if there is any ownership interest. Ms. Lerner then stated that she did not see it as the insurer’s obligation to disclose but the insurer should tell the agent what to reveal.

Commissioner Ommen agreed with Ms. Lerner that the suggestion that the middle “bucket” is a management, supervisory and structural responsibility of the insurer takes the producer off the hook for disclosure. He said the Working Group needs to look at what the producer’s disclosure should look like. He said the problem is incentives are tied to specific products. Director Froment said these would go under supervision. Commissioner Ommen agreed.

Director Froment asked whether there were any additional material conflicts of interest that do not fit into one of the three “buckets.”

Director Cameron said that some might perceive the ability for a carrier to provide office space as a potential conflict. He said he did not think office space fits in the compensation or bonus “bucket,” but it might be a subcomponent of incentives. He further explained that there are some property/casualty (P/C) carriers that incentivize their agents to sell life insurance and retirement products.

Ms. Lerner asked whether P/C carriers incentivize them with higher commissions. Director Cameron said it is part of their overall package. It might be a requirement that in order to qualify for a trip, a producer would have to sell a percentage of life and annuities.

Mr. Ostlund said it sounds like a quota system, as opposed to an incentive, and asked for clarification. Director Cameron said it depends on the company; some are quotas and some are incentives and some classifications have different commission structures. Mr. Ostlund said these would fit into the second category and he would prefer not having a fourth category. Director Cameron agreed.

Director Froment said that in following up from this call, she would like to take the broad category of conflicts and start identifying what is in the second “bucket.”

b. Question 2: When a material conflict of interest exists, how should an insurer and/or a producer avoid or otherwise reasonably manage the conflict?

Director Froment said that some of the discussion on the call included answering the second question under “Conflicts: When a material conflict of interest exists, how should an insurer and/or a producer avoid or otherwise reasonably manage the conflict?" But because she did not specifically ask the second question, she asked whether anyone in the Working Group had final comments on this question.

No one responded, so Director Froment concluded by saying she would circulate a chart and outline to members of the Working Group. She said the Working Group would look at questions under “Care Obligation” on the next call, which is scheduled for July 29.

Having no further business, the Annuity Suitability (A) Working Group adjourned.
Annuity Disclosure (A) Working Group
Conference Call
Sept. 19, 2019

The Annuity Disclosure (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Sept. 19, 2019. The following Working Group members participated: Mike Yanacheak, Chair, and Tracy Swalwell (IA); Chris Struk (FL); Craig Van Aalst (KS); Nour Benchaboun (MD); John Robinson (MN); Andrew Schallhorn (OK); Sarah Neil (RI); and Sandra Dodson and Lynn Pazdral (TX). Also participating were: Steve Ostlund and Jerry Workman (AL); Perry Kupferman (CA); Jason Lapham (CO); William Leung (MO); Bob Harkins (NE); Tom Kilcoyne (PA); and Lichiou Lee (WA).

1. Heard Opening Remarks

Mr. Yanacheak reminded the Working Group that it had last met July 29 via conference call, shortly before the Summer National Meeting. During that conference call, the Working Group considered outstanding issues remaining with revisions to the Annuity Disclosure Model Regulation (#245). Mr. Yanacheak summarized where the Working Group ended up on these issues. First, the Working Group settled on allowing the illustration of an index that has not been in existence for at least 15 years if certain criteria are met. Second, the Working Group agreed to require any algorithm or other method of combining the indices to be fixed from the creation of the index, without an exception for changes made pursuant to the index provider’s corporate governance rules and procedures. Third, the Working Group agreed that there should be visual differentiation between indexed returns that are based on historical performance prior to the existence of the index and indexed returns that are based on historical performance thereafter.

Mr. Yanacheak said there are two remaining issues that he would like the Working Group to discuss and resolve. The first issue is whether to allow the illustration of indices made up of only other indices, or to allow the illustration of indices made up of indices or “other financial instruments.” He explained that this issue was discussed during the Working Group’s July conference call, but because there was no working understanding of what was meant by “other financial instruments,” efforts to reach a real resolution were unsuccessful. Mr. Yanacheak explained that he had received feedback from state insurance regulators at the Summer National Meeting indicating that there needs to be a clear understanding of what is meant to be included in the index if it is more than an index made up of other indices. The second issue is whether the algorithm should be made available to the consumer for inspection, or is making it available to the insurance commissioner sufficient.

2. Discussed Availability of the Algorithm to Consumers

Mr. Yanacheak explained that over the past several years, there has been a discussion of the need for indices to be auditable. Many indices have straightforward rules that can be seen and understood and can be challenged if there is a disagreement as to what the closing value of an index is. He explained that some of the newer indices that this Working Group is charged with reviewing in the context of Model #245 are not widely used, and in some cases are only used in insurance products. He said this raises the question as to who has the ability to audit such an index and verify that the index is calculated correctly and the amount being credited to consumers is the correct amount. Mr. Yanacheak explained that he had received feedback from state insurance regulators that if an insurance company is seeing a match between its hedging and the increase that it is having to fund, the insurance company would be satisfied as long as that was within its tolerances and may not feel the need to do a routine audit. Therefore, someone else needs to have that ability. He said the initial suggestion was to make the algorithm available to the consumer for review to audit the index that is being published to make sure it is accurate. He said there was also the suggestion that the algorithm should be made available to the consumer upon request.

Mr. Struk said he supports making the algorithm available to the insurance commissioner. Mr. Benchaboun said Maryland also supports making the algorithm available to the insurance commissioner. He said Maryland has statutes and regulations that allow for the collection of documents in the context of market conduct exams, but he believes that in this context, it is important for the insurance commissioner to explicitly have access to this information for audit purposes. Robbie Meyer (American Council of Life Insurers—ACLI) said the ACLI supports making this information available to the insurance commissioner because, as Mr. Benchaboun stated, there are multiple avenues under existing authority whereby the insurance commissioner could obtain this information. She said the ACLI has concerns about making this information broadly available to consumers upon request. Ms. Meyer said that while some rule books for some indices are in the public domain, the vast majority of rule books for custom indices are not in the public domain, and insurers have entered into licensing agreements that prohibit or limit the distribution of rule books because often the rule books contain intellectual property of the index provider.
She said the ACLI fully supports consumers understanding what they are purchasing through meaningful disclosure of the features and benefits. She said consumers can obtain information that is more meaningful than the algorithm from disclosures already required under other sections of Model #245. She said the ACLI would like to eliminate the reference to making the algorithm available to the consumer upon request.

Birny Birnbaum (Center for Economic Justice—CEJ) noted the contradiction in the ACLI argument that consumers should have disclosures so that they understand the product, but not have the right to see how actual changes to the index that determine the value of their product are made. He said it is necessary and reasonable to have access to methodology by which the value of an index changes so they can verify that the account value is an accurate calculation of the changes in the index. He said the CEJ thinks it is unrealistic to expect state insurance regulators to monitor and audit algorithms for a variety of insurers and products on a routine and timely basis. He said that is pretense consumer protection, not real consumer protection. He said there is no reason for the use of complex proprietary algorithms in fixed indexed annuities. Mr. Birnbaum said there is plenty of reasons why companies may want to use hedging programs that involve a variety of complex algorithms, but there is no reason for their use in indexes for fixed indexed annuities. He said the concept of using volatility-controlled indexes in a product that is structurally designed by itself to be a volatility-controlled device does not make sense. He said the idea that a licensing agreement somehow prevents disclosure to consumers is completely false. He said licensing agreements prevent use of the information for commercial purposes; they do not prevent the disclosure to a consumer to understand how the value of their product is determined. One example of the broader problem is allowing these data mined indexes to be used based on obscure and complex algorithms. This is destined to be a huge scandal for the industry and problem for state insurance regulators.

Ms. Neil said she shares some of Mr. Birnbaum’s concerns. She said a history that only exists within a particular illustration is different from something public like the S&P 500, which can be researched. She said she is not convinced that consumers can understand an algorithm, and she does not want to disclose trade secrets, but the only choice for consumers should not be to take a company’s word for it. She said it is important that consumers are able to independently verify information.

Ms. Meyer said the ACLI struggles with the breadth of this particular provision, which requires that “any algorithm or other method that is supporting such an index and is included in the illustration shall be made available ….” She said it is important for consumers to understand, but we need to be sure that disclosure is legal and that the information disclosed is meaningful. She said she supports retaining Section 6G(4)(b)(ii)(IV), which states that “[t]he consumer may request further explanation of the algorithm used to determine the weights.” She said there are other existing requirements in Model #245 that also allow the consumer to get more detailed information about the product, including the disclosure document and the Buyer’s Guide.

Mr. Birnbaum said a fundamental selling point for these products is their ability to accumulate assets over time. He said it is illogical not to share the method by which the accumulated value is calculated. He said it is inadequate disclosure to tell a consumer that a proprietary methodology is used and that it will periodically change. He said it is a false argument to assert that a licensing agreement prohibits insurers from providing basic information about a product to a consumer. Mr. Robinson proposed making the algorithm available to consumers if it is readily available. He explained that the reason is because if consumers ask to see the algorithm, and it is unavailable, that will factor into their purchasing decision. Consumers may decide if it cannot be explained to them, then they will not buy it. Mr. Struk said he likens purchasing this product to buying a mutual fund. He said a mutual fund may use an algorithm, but he would not share it with consumers because it is a proprietary investment method. Mr. Birnbaum said there is a difference between buying a security or a managed product where there is no guarantee, floor, cap or limit. He said buying an insurance product is different because there are guarantees made based on references to a specific index or indexes. Mr. Struk said he sees a similarity between the algorithm and the fund manager, which both react to changes in the market and take it outside the passive investment arena.

Mr. Yanacheak said his concern is that if the hedging is working out for the insurance company, but the consumer has a question because his or her account value is not increasing as expected, is there a way to challenge the calculation. He said, in his mind the insurance commissioner has to be able to, at a minimum, intervene to explain. He said this is not an issue with a public index that is used more than just in an insurance product. Mr. Yanacheak said where there is no use case for the index, it becomes problematic. Mr. Birnbaum said changes to the disclosure requirements will change insurer behavior. He said if the algorithms must be disclosed to consumers, insurers will respond with products that are more transparent and that will better meet consumer needs. He said this is the result of manipulating historical experience to create a fabulous illustration. He said this creates an unusually large disconnect between past experience and future performance because the past is a product of data mining, and there is no way that will work on a going forward basis. Ms. Meyer pointed out that Model #245 already requires a disclosure that states that past performance is not an indication of future performance.
Mr. Struk suggested including a drafting note suggesting that states may want to consider making the algorithm available to consumers upon request. Mr. Benchaaboun noted that algorithms are not required to be filed during the product approval process. Mr. Yanacheak asked Working Group members how they want to handle this issue. Florida, Kansas, Maryland and Minnesota said they would like the algorithm to be made available to the insurance commissioner only, with a drafting note stating that states may want to consider making the algorithm available to consumers upon request. Rhode Island and Texas indicated they would like the algorithm to be made available to the insurance commissioner and to consumers upon request. Mr. Yanacheak said the next draft would have the algorithm available to the insurance commissioner, with a drafting note to the states.

3. Discussed How to Describe What Is Meant by “a Combination of Indices or Other Financial Instruments”

Mr. Yanacheak said he would like to discuss what the Working Group thinks should and should not be allowed to be illustrated, whether that is called “indices” or “other financial instruments.” Ms. Meyer suggested allowing the illustration of indices or other financial instruments, each of which has its own verifiable and published performance history and has been in existence for 15 years. Mr. Birnbaum suggested a minimum requirement that a daily value is published. Mr. Yanacheak gave some examples of financial reference points used in certain products to see whether the Working Group thought it should be allowed to illustrate. He said there are products that have used the closing price on gold or other commodities, like oil. He said other products use currency or a blend of currency exchange rates. He said exchange-traded fund (ETF) closing prices are also used and wondered whether they should be allowed. He said he is not sure any of these could be considered indices. Pat Reeder (ACLI) said he could take this issue back to the ACLI membership.

Mr. Robinson said there are lots of financial instruments that can be used as a referent to come up with a credited rate. He said the question is whether anything should be disallowed from an illustration perspective. Mr. Robinson pointed out that the indices or financial instruments used are not totally random; they are limited by what hedges are available. Mr. Yanacheak said a revised draft based on the Working Group’s recent discussions would be distributed to Working Group members, interested state insurance regulators and interested parties and posted on the Working Group’s web page. He requested comments and suggestions on the issue of how to bring clarity to what indices or other financial instruments should be allowed to be illustrated.

Having no further business, the Annuity Disclosure (A) Working Group adjourned.
The Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee met in Austin, TX, Dec. 8, 2019. The following Working Group members participated: Robert H. Muriel, Chair, Mike Chrysler, Patrick Hyde and Bruce Sartain (IL); Grace Arnold, Vice Chair, and Fred Andersen (MN); Doug Ommen and Mike Yanacheak (IA); Rich Piazza (LA); Cynthia Amann (MO); Chris Aufenthie (ND); Matt Holman and Rhonda Ahrens (NE); Mark Hamlin (OH); Sarah Neil (RI); and Mark Afable, Rickard Wicka and Lauren Van Buren (WI). Also participating were: Steve Ostlund (AL); Cuc Nguyen (OK); Michael Humphreys (PA); and Rachel Hemphill (TX).

1. **Adopted its Oct. 2 Minutes**

Director Muriel said the Working Group met Oct. 2. During this meeting, the Working Group developed a work plan for completing its charge by the 2020 Fall National Meeting.

Ms. Amann made a motion, seconded by Commissioner Ommen, to adopt the Working Group’s Oct. 2 minutes (Attachment Four-A). The motion passed unanimously.

2. **Heard a Presentation on Accelerated Underwriting in Life Insurance**

Patrick Brockett (The University of Texas at Austin) gave a presentation on accelerated underwriting in life insurance. He explained that life insurance is based on three concepts: 1) pooling many similar risk exposures into a relatively homogeneous group; 2) accumulating a fund through contributions (premiums) from the members of the group; and 3) paying from this fund for the losses of those who die each year. He said that life insurance underwriting is the process of deciding which life insurance applicants to accept, how to group them, and how to charge them appropriate premiums for their risk class. He explained that this traditionally involves assessing a person’s physical health, usually by blood work, urine analysis, doctor’s notes, physical exams, etc.

Mr. Brockett explained that the premium that an insurance company charges reflects more than just the risk class of the insured. He said the premium actually charged by the insurer takes into account multiple factors, including the probability that a person will die during the year, the face value of the policy, projected losses, commissions and administrative expenses, risk charge, taxes, and any investment income on premiums.

Mr. Brockett explained that accelerated underwriting is a fully underwritten life insurance program that allows some applicants to forgo having a medical or paramedical exam and providing fluids if they meet certain requirements and/or meet a certain pre-determined threshold, as is stated in the Klein & Rudolph, June 2019 SOA Report. He said that accelerated underwriting generally makes use of new data together with algorithmic tools and modeling techniques to risk-group applicants quickly without the necessity of bodily fluids, physician’s notes, etc. For those who qualify, the use of available digital data can reduce the underwriting decision time from two to 12 weeks down to no more than 48 hours.

Mr. Brockett explained that accelerated underwriting is used by many companies, and it is most commonly used to issue term life insurance policies. He said policyholders usually pay the same rate as standard underwritten policies, but the underwriting decision is made much more quickly. He said if an applicant is in very good shape and could qualify for preferred rate pricing, standard underwriting might结果 in a lower priced product. He said accelerated underwritten insurance is not a guaranteed issue, and it differs from simplified issue insurance, which is insurance with no requirement for a physical exam. He explained that with accelerated underwriting, there is an assessment of physical fitness obtained from digital data. He said simplified issue premiums are expected to be more expensive than if the applicant had undergone a full underwriting process. He said accelerated underwriting premiums are equivalent to standard rates through regular underwriting.

Mr. Brockett said accelerated underwriting replaces the use of bodily fluids and doctor’s notes with the use of algorithms and data sources, such as prescription histories, motor vehicle records (MVRs), Medical Information Bureau (MIB) information, applications, interviews, consumer data, and credit scores. He said certain non-health factors, such as certain non-health factors
are considered, they and vary by insurer. He said some insurers require no history of bankruptcy in the last five to 10 years, no history of driving recklessly or driving while intoxicated (DWI) within five years, no more than two moving violations in the past three years, and no felony charges or convictions. He said the minimum benefit amount is usually around $100,000, and the maximum benefit amount is usually around $1,000,000. He said that applicants may still need to go through regular underwriting if certain risk factors show up in accelerated underwriting.

Mr. Brockett listed some of the advantages of accelerated underwriting as opposed to regular underwriting: 1) it allows for faster decisions; 2) it is less costly to insurer, less invasive, easier way of doing business, standard or better underwriting, easier to file data, possibly more accurate underwriting, attracts younger clients, and eliminates personal bias. Conversely, he said there are limitations to be considered, like the differing state laws governing insurance and procurement data make it difficult to streamline underwriting practices. He said increased digitalization opens insurers up to new data for underwriting use, but also possibly more fraud. He said careful attention will have to be given to data privacy and security concerns. He said care must be taken when using machine learning and artificial intelligence (AI) techniques to avoid “learned” statistical biases. He said models will have to be continuously updated to maintain accuracy.

Professor Brockett also pointed out some potential areas of controversy. He said the use of complicated underwriting algorithms raises the possibility of unknown or unrecognized proxy discrimination and makes underwriting decisions more difficult to explain to clients and regulators. He said social data is more susceptible to high variances and heteroskedasticity in estimated model weights. He said another concern may be adverse selection against applicants that forego certain fluid testing.

Professor Brockett spoke about the use of credit history and other financial data in life insurance. He said credit scores are widely accepted in the P&C industry, and certain aspects of financial history have long been used in life insurance (e.g., the applicant will have to justify if the amount of insurance desired is very much more than their income level). Nevertheless, he said, because better credit scores correlate with a longer life, it may be a useful predictor. He said other uses of credit history variables in life insurance may require further study to show independent predictive value. He said a credit-mortality score can be created just like a credit insurance claim score was created for auto insurance.

Mr. Brockett said the Society of Actuaries (SOA) hired Milliman to conduct a survey of the accelerated underwriting practices of direct insurers and reinsurers. The Klein & Rudolph, June 2019 SOA Report presenting preliminary results of the survey is available on the SOA website. 27 life companies and five reinsurers responded to the survey on their accelerated underwriting programs related to data between Jan. 1, 2017, to Sept. 30, 2018.

Commissioner Ommen asked Mr. Brockett what kind of information is included in “consumer data” and what the data sources are used for. Mr. Brockett said consumer data includes credit data and data from social media platforms. He said social media data is currently used in claims verification. He said he did not think scanner data from grocery stores was being used, but it may be in the future. As far as the extent to which this kind of data is being used, he said he got his information from the preliminary data in the Klein & Rudolph, June 2019 SOA Report. He said more information will be available in the final report.

Ms. Hemphill asked Mr. Brockett how accelerated underwriting reduced bias. Mr. Brockett said that people have cognitive biases and may focus on one thing and reach different decisions with identical facts, while modeling and algorithms will always reach the same decision with the same data. He said that there may be some bias because machines are trained to emulate humans, but people can also train machines to remove human biases. Ms. Hemphill said there are some states that do not allow the use of credit scores in underwriting. Mr. Brockett agreed that there are states that prohibit the use of credit scoring in underwriting; there was a 2005 study in Texas that looked at credit score and race and concluded that credit scoring could not be used to accurately predict race.

Binny Birnbaum (Center for Economic Justice—CEJ) questioned whether someone rejected under the accelerated underwriting process could credibly expect to be accepted through the regular underwriting process. He also disagreed with Mr. Brockett with respect to the use of credit scores as a proxy for race, and he said there is a disparate impact on people of color when credit scoring is used in underwriting. He said he is also concerned about the use of facial analytics in underwriting, which has been shown to have disproportionately high error rates for women and people of color. Mr. Brockett said facial analytics can be useful in estimating life expectancy. Brendan Bridgeland (Center for Insurance Research—CIR) said using facial analytics to track aging makes sense, but the technology is not ready yet. He also asked why bankruptcy would be an automatic denial. He said he suspected that it was because there may be medical bills or risky behavior in financial aspects of one’s life, suggesting risky behavior in other aspects of life. In that case, it is duplicative of credit scoring.
Mr. Sartin asked whether reinsurers used their own underwriting algorithms and which company’s algorithms apply if there is a conflict with a ceding insurer. Donna Megregian (SOA) said that reinsurers do not re-underwrite; they accept the ceding insurers conclusions.

3. **Discussed Next Steps**

Director Muriel reminded the Working Group that the work plan contemplates three phases to its work. He said that Mr. Brockett’s presentation initiated the first phase—information gathering. He asked Working Group members, interested state insurance regulators, and interested parties to email any articles or presentation suggestions to Jennifer Cook (NAIC) at jcook@naic.org. He said the Working Group plans to meet via conference call during the third week of January 2020.

Having no further business, the Accelerated Underwriting (A) Working Group adjourned.
The Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Oct. 2, 2019. The following Working Group members participated: Robert H. Muriel, Chair, Mike Chrysler, Vincent Tsang and Bruce Sartain (IL); Grace Arnold, Vice Chair, and John Robinson (MN); Jason Lapham (CO); Doug Ommen, Russ Gibson and Lindsay Bates (IA); Rich Piazza (LA); Cynthia Amann and Camille Anderson-Weddle (MO); Matt Holman (NE); Ross Hartley and Chris Aufenthie (ND); Jillian Froment and Peter Weber (OH); Elizabeth Kelleher Dwyer and Sarah Neil (RI); Scott Bird (WA); and Jerry DeArmand, Mary Kay Rodriguez, Sue Ezalarab and Lauren Van Buren (WI). Also participating were: Steve Ostlund and Gina Hunt (AL); Jacob Lauten (AK); Ted Chang (CA); Manny Hidalgo (CT); Teresa Winer (GA); Karl Knable (IN); Barbara Torkelson and Tate Flott (KS); Nour Benchaaboun (MD); Kendall Cotton (MT); Denise Lamy, and Karen McCallister (NH); Seong-min Eom (NJ); Annette James (NV); Peter Dumar and Bill Carmello (NY); Brian Hoffmeister and Lorrie Brouse (TN); Mike Boerner (TX); Tomasz Serbinowski (UT); and James Young (VA).

1. Discussed its Draft Work Plan

The Working Group members introduced themselves. There were a variety of divisions within the departments represented, as well as varying areas of expertise, years of service and levels of familiarity with the topics of accelerated underwriting and big data. Director Muriel explained that the Working Group received its charge “to 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, drafting guidance for the states” from the Life Insurance and Annuities (A) Committee at the Summer National Meeting in response to a referral from the Big Data (EX) Working Group. He explained that the Big Data (EX) Working Group looked at how the use of data models for life insurance underwriting has become more common and identified a couple of issues initially, such as: 1) whether state insurance regulators should be examining vendors that are supplying data to insurers; and 2) whether vendors are supplying similar data and models to multiple insurers. He said that the Life Actuarial (A) Task Force is also focusing on the actuarial soundness of the new data being used and potential long-term solvency issues.

Director Muriel said the draft work plan sets an ambitious schedule for the Accelerated Underwriting (A) Working Group to complete its charge by the 2020 Fall National Meeting. He explained that the work plan starts with the Working Group spending the time between the 2019 Fall National Meeting and the 2020 Spring National Meeting gathering information. He said this phase is critical to ensuring that everyone participating in the process has a certain level of understanding, especially given the make-up of this Working Group. He said the Working Group will start with hearing a presentation at the Fall National Meeting from Patrick L. Brockett (The University of Texas at Austin), an accomplished academic in this area. Following this initial meeting in Texas, Director Muriel said he anticipated hearing additional presentations offering different perspectives, such as actuarial, industry, consumer and also other states. He suggested reaching out to Jennifer Cook (NAIC) with any suggestions for presenters. Director Muriel said the second phase of the work plan, between the 2020 Spring National Meeting and 2020 Summer National Meeting, has the Working Group identifying issues and discussing whether or what issues need to be addressed and the best ways to address them, whether that is a white paper, model bulletin, model law or something else. He said the last phase of the work plan envisions the Working Group developing a work product to bring to the Life Insurance and Annuities (A) Committee by the 2020 Fall National Meeting.

Director Muriel referenced the comment letter on the work plan submitted by Birny Birnbaum (Center for Economic Justice—CEJ), which raised the concern that the work plan contemplates spending too much time gathering information and revisiting issues that have been the subject of presentations and discussions at other NAIC groups over the past several years. Director Muriel said he appreciates Mr. Birnbaum’s comments and said the timing contemplated in the work plan is flexible and can be adjusted if, for example, the information gathering phase progresses more quickly. Additionally, Director Muriel offered to have Ms. Cook post on the Working Group’s web page materials from other groups that have spent time working on this issue, such as the Big Data (EX) Working Group and the Life Actuarial (A) Task Force.

Mr. Crofton said this Working Group should coordinate with the Artificial Intelligence (EX) Working Group in case there are areas of overlap. Ms. Amann said she participated in an InsurTech conference where there were presentations from a number of start-up companies and suggested working with Denise Matthews (NAIC) to obtain some of the presentations that were particularly informative. Leonard Mangini (American Academy of Actuaries—Academy) said the Working Group should be
aware of activities going on in other NAIC groups that touch on accelerated underwriting, such as APF 2018-17, which was added to the *Valuation Manual* and says when aggregating mortality experience, that experience must be based on the same or similar underwriting processes. Mr. Robinson asked whether the Working Group anticipates developing a work product in conjunction with the Life Actuarial (A) Task Force since the Working Group’s charge talks about coordination with the ongoing work of the Life Actuarial (A) Task Force.

Mr. Birnbaum explained his background and said that he has been involved in the myriad efforts at the NAIC in this area over the past several years. He asked the Working Group to consider moving more quickly than the time frames set out in the work plan. He said the Working Group should be able to gather sufficient information to get up to speed on these issues in a short amount of time because the practice of accelerated underwriting and the consumer issues implicated by the practice are well-known. He encouraged state insurance regulators to review the materials from the other NAIC groups that have been looking at these issues and move towards taking regulatory action as soon as possible.

Commissioner Ommen explained that this Working Group’s charge is explicitly mindful of the fact that there are other NAIC groups working on this issue. He said this Working Group’s charge has less to do with solvency, which is the purview of the Life Actuarial (A) Task Force, and more to do with equity and focusing beyond the responsibilities of the actuaries to evaluate whether consumers are being treated fairly. Commissioner Ommen said this Working Group has an important task, but he cautioned the group to do things correctly rather than just focus on moving quickly.

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

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Life Insurance Illustration Issues (A) Working Group  
Conference Call  
October 21, 2019

The Life Insurance Illustration Issues (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Oct. 21, 2019. The following Working Group members participated: Richard Wicka, Chair, and Barbara Belling (WI); Perry Kupferman (CA); Chris Struk (FL); Teresa Winer (GA); Mike Yanacheak and Russ Gibson (IA); Mary Mealer (MO); Bob Harkins (NE); Brian Hoffmeister (TN); and Deanna Osmonson and John Carter (TX). Also participating were: Tate Flott (KS); Gary Jones (PA); and David Hippen (WA).

1. **Reviewed its Charge and Work Plan**

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.” He 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 the approach it had been working on by revising just 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 explained that the purpose of this conference call is to continue the discussions regarding the May 20 draft revisions to Model #580 (See Attachment Seven-A) from its Sept. 3 conference call.

2. **Discussed the May 20 Draft of Model #580**

   a. **Subparagraph 5A(2)(e)(iv) and Subparagraph (v)**

The Working Group continued to discuss Section 5A(2)(e) “‘Policy Information’ which shall include the following information, as applicable.” The Working Group discussed the suggestion that Birny Birnbaum (Center for Economic Justice—CEJ) submitted to combine 5A(2)(e)(iv) and (v), which both provide information about the death benefit. The Working Group agreed to the following revision:

   (iv) A yes or no indication of whether the death benefit can change, and if yes, a description of the reasons and timing for a change in the death benefit;

b. **Section 5A(2)(e)(vi)**

The Working Group agreed to delete Section 5A(2)(e)(vi) “policy effective date” because the information is not available pre-underwriting, and the information is readily available elsewhere post-underwriting.

c. **Section 5A(2)(f)**

The Working Group discussed revising the “additional policy benefits” listed under Section 5A(2)(f)(i) – (ix) into “yes or no” questions. The Working Group also discussed relocating (vii) “option to lower benefits to reduce premiums” to Section 5A(2)(d), which is the section on costs. The Working Group agreed to move (viii) and to revise Section 5A(2)(f) as follows:

   (f) “Additional Policy Benefits” which shall include the following information, as applicable:

   (i) A yes or no indication whether a waiver of premium or deductions option is available;

   (ii) A yes or no indication of whether policy conversion options exist and, if yes, a brief description of conversion options available;
(iii) A yes or no indication of options to extend the term of the coverage;

(iii) A yes or no indication of any available optional riders as requested by the insured, and if yes, an indication if there is an additional cost;

(vi) A yes or no indication of any living benefit option(s);

(vii) A yes or no indication as to whether the policy can accumulate cash value;

(viii) A yes or no indication of whether there are guaranteed interest rates on fixed accounts and any indexed account options as requested by the insured.

3. Discussed its Next Steps

Mr. Wicka said that a revised draft would be posted and that he would take additional comments on the structure and wording. He said he thinks it would be easier to consider those comments once the agreed upon revisions are incorporated into a revised draft.

Mr. Wicka said he plans to ask the Life Insurance and Annuities (A) Committee to provide guidance to the Working Group on the issue of timing for the delivery of the policy overview. He asked for comments to be sent via email to Jennifer Cook (NAIC) by Nov. 15 to give sufficient time to review them prior to the Fall National Meeting. Mr. Wicka asked for comments to express a preference for one of the following timing options: 1) keep the timing in the current draft – delivery of the policy overview at the same time as the Buyer’s Guide, which is before the purchase of a policy, or if there is a “free look period,” at the same time or prior to delivery of the policy; 2) change the timing for the delivery of the policy overview and the Buyer’s Guide – both delivered before the purchase of a policy; or 3) separate timing requirements for the policy overview and the Buyer’s Guide – keep the same timing for the Buyer’s Guide and require delivery of the policy overview prior to purchase of a policy. He said comments on whether the policy overview should be a stand-alone document or a cover page could be included. Mr. Wicka said the comments will inform the Working Group report to the Life Insurance and Annuities (A) Committee.

Michael Lovendusky (American Council of Life Insurers—ACLI) said the ACLI will plan to submit a comprehensive comment letter. He said the ACLI has reviewed the entire work effort of the Life Insurance and Illustration Issues (A) Working Group and concluded that it has fulfilled its charge to “explore” how the narrative and policy summary can be enhanced. He said any further work with respect to the larger issue of timing is beyond the scope of the current charge. Ms. Winer said that it may be possible to untether the policy overview from the Buyer’s Guide, but it needs to remain connected to the illustration. Mr. Birnbaum said the Working Group charge refers to the narrative summary required by Section 7B of Model #582 and the policy summary required by Section 5A(2) of Model #580. He said the narrative summary is tied to the illustration, but the policy overview serves a different purpose; it is a review of the basic features of the policy. He said the narrative summary explains the illustration, and illustrations are provided before purchase, so it should not be a stretch to provide a policy overview before purchase, especially since one of its purposes is to help consumers shop for insurance.

Having no further business, the Life Insurance Illustration Issues (A) Working Group adjourned.
Life Insurance Illustration Issues (A) Working Group  
Conference Call  
September 17, 2019

The Life Insurance Illustration Issues (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Sept. 17, 2019. The following Working Group members participated: Richard Wicka, Chair (WI); Jodi Lerner (CA); Chris Struk (FL); Teresa Winer (GA); Mike Yanacheak (IA); Mary Mealer (MO); Bob Harkins (NE); Brian Hoffmeister (TN); and Doug Danzeiser (TX). Also participating were: Tate Flott (KS); Denise Lamy (NH); Tom Kilcoyne (PA); Tanji Northrup (UT); James Young (VA); and David Hippen (WA).

1. **Reviewed its Charge and Work Plan**

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.” He 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 the approach it had been working on by revising just 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 explained that the purpose of this conference call is to continue the discussions about the May 20 draft revisions to Model #580 (See Attachment Seven-A) from its last conference call on Sept. 3.

2. **Discussed May 20 Draft of Model #580**

a. **Revising the “Cost Information” Definition**

Mr. Wicka said that following the Working Group’s Sept. 3 conference call, he suggests the following revisions to Section 5A(2)(d):

(d) “Cost Information” which shall include the following information, as applicable:

(i) Initial premium or estimated premium at the time of application and premium mode selected;

(ii) A short statement describing yes or no indication if the premium varies after the first year, and, if so, a statement as to where the insured can find information a brief explanation as to how the premium will be determined after the first year;

(iii) Available options for premium funding such as policy payment periods, any dividend options or lump sum payments options;

He explained that the revision to (i) allows for flexibility in the information included in the Policy Summary in case it were to be delivered prior to underwriting. Birny Birnbaum (Center for Economic Justice—CEJ) agreed with this revision and suggested adding language saying the premium is based on initial information and is subject to change. Mr. Wicka said the suggested revision to (ii) is to simplify the requirement, and the suggestion to delete (iii) was made in several comments. The Working Group agreed to make these revisions.

b. **Moving the Reference to “Waiver of Premium or Deductions Option” from “Cost Information” to “Additional Policy Benefits”**

The Working Group discussed whether the information required in Section 5A(2)(d)(iv)—“A yes or no indication whether a waiver of premium or deductions option is available”—would better fit in the information required under Section 5A(2)(f) “Additional Policy Benefits, which shall include the following information, as applicable.” The Working Group agreed that it made sense to relocate (iv) to Section 5A(2)(f).
c. **Rewording Section 5A(2)(d)(v)**

The Working Group discussed streamlining (v) to a yes or no indication of whether there are surrender charges, which is consistent with the formatting elsewhere. The Working Group discussed whether in this instance, yes or no provides enough information. Mr. Birnbaum said the goal is to provide key information for comparison purposes and suggested providing a schedule of charges. Ms. Winer said that disclosure is helpful, but only if it is meaningful. She said that providing too much information is confusing and not helpful. Brian Lessing (AXA Equitable) said surrender charges are complicated and are based on a formula that can differ based on premiums paid. Mr. Wicka said he would like consumers to be aware that there are surrender charges, but he said is not convinced that there needs to be a high level of detail included. Ms. Lerner said it is important for consumers to know what the surrender charges are before they purchase a product and suggested a basic summary of the surrender charge, how long it lasts and when it is highest, like in the first five years. Ms. Mealer suggested perhaps the yes or no question and how long are there surrender charges, and then direct them to the policy for details. Mr. Birnbaum said he is concerned that consumers need this information before purchasing the policy. Ms. Lerner agreed to provide the Working Group with an example of a disclosure of this information.

The Working Group agreed to make the following change to Section 5A(2)(d)(v):

(v) A description of yes or no indication of whether there are surrender charges and, if so, the period of time that surrender charges apply;

d. **Revising the “Cost of Insurance” Information**

The Working Group discussed Section 5A(2)(d)(vi): “A narrative description of the cost of insurance and other fees needed to keep the policy in force and how those fees may change over time.” Ms. Winer expressed concern that the information included would be overwhelming to consumers and would defeat the purpose of having a summary. She said the purpose of the summary is to alert consumers to information so they can know to look deeper, not to provide exhaustive detail. Mr. Wicka agreed that the intent is for consumers to understand how they are going to be charged, short of putting everything in the summary. Mr. Birnbaum said he wants more explicit disclosure of the charges and fees. He said he would like to see an itemization like one included in the discussion about Actuarial Guideline XLIX—The Application of the Life Illustrations Model Regulation to Policies with Index-Based Interest (AG 49). He said it would be easy to include this information here: What is the cost of insurance? How much is it? Can it change? How much can it change? Ms. Mealer agreed with Mr. Birnbaum on this point.

Michael Lovendusky (American Council of Life Insurers—ACLI) said that the Life Actuarial (A) Task Force’s work on indexed universal life and AG 49 is at the other end of the spectrum from this discussion about a Policy Summary. He said that this is a simple “front porch” document and that cost of insurance fees in policies are hotly litigated. He said the idea that the Policy Summary could tease out the elemental pieces of the cost of insurance will lead to useless information at best or so much information it would not be helpful. Mr. Lovendusky suggested including a statement that the cost of insurance exists and that there is a cap beyond which it cannot exceed and leave it at that. Ms. Winer said cost of insurance depends on cash value and multipliers and is complicated. Mr. Birnbaum said there is no need to get too caught up in the details; he said just include enough information that a consumer could compare one policy to another and say, for example: The cost of insurance is between 1% of cash value up to 3% of cash value. Mr. Lovendusky suggested including what the cost of insurance is and how high it can go up, but get no more granular. Mr. Wicka suggested including three elements: 1) cost of insurance charge; 2) net amount at risk; and 3) maximum allowable charge. The Working Group agreed to the following revision to Section 5A(2)(d)(vi):

(vi) If applicable, A narrative explanation of the cost of insurance fee, a narrative explanation of the net amount of risk to which the fee will apply, and other fees needed to keep the policy in force and how those fees may change over time the maximum allowable cost of insurance fee allowed under the policy.

e. **Deleting “Product Type (Including Single or Joint Policy)”**

Mr. Wicka said the CEJ suggested removing the requirement for indicating “product type (including single or joint policy)” in Section 5A(2)(e)(i). Ms. Lerner said the information should be included, although she said she does not have a preference about location. The Working Group observed that this information was included at the top of the sample policy overview and agreed to look at it again when reviewing the sample.

f. **Deleting “Form Number”**
Mr. Wicka said the ACLI suggested, and the Working Group agreed, to the following revision to Section 5A(2)(e)(ii) because the form number is not necessary information for a consumer:

(ii) Product name and form number

g. Clarifying “Coverage Period Description”

The Working Group discussed what information is intended to be included. Mr. Yanacheak said this is intended to capture how long a policy’s term is—a term of years or for life. Mr. Birnbaum said it is intended to answer the question: If I pay my premium, this policy will cover x amount of time. Mr. Yanacheak asked whether this encompasses a term policy that is annually renewable for a much higher cost after the initial term. He said this could be how the policy is worded or available through a rider. Mr. Yanacheak said the final language just needs to be clear. Mr. Wicka suggested, and the Working Group agreed, to the following revised language to Section 5A(2)(e)(iii):

(iii) Indicate whether it is a term or permanent policy. If it is a term policy, indicate the length of the initial term.

3. Discussed its Next Steps

Mr. Wicka said the Working Group will review a revised draft and consider the suggestions of Mr. Birnbaum to put the data elements in a different order during its next conference call.

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

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The Life Insurance Illustration Issues (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call July 30, 2019. The following Working Group members participated: Richard Wicka, Chair, and Justine Bellamy (WI); Jodi Lerner (CA); Chris Struk (FL); Teresa Winer (GA); Mike Yanacheak and Russ Gibson (IA); Mary Mealer (MO); Robert E. Harkins (NE); Jana Jarrett (OH); Rachel Jrade-Rice (TN); and John Carter and Doug Danzeiser (TX). Also participating were: Steve Oslund (AL); Mike Chrysler (IL); Tate Flott (KS); Denise Lamy (NH); James Young (VA); and David Hippen (WA).

1. Reviewed its Charge and Work Plan

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.” He 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 the approach it had been working on by revising just 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 explained that the purpose of this conference call is to continue the discussions about the May 20 draft revisions to Model #580 (Attachment Eight-A) started during its last call on July 30.

Michael Lovendusky (American Council of Life Insurers—ACLI) said the ACLI had submitted comments on the general direction of the Working Group. He said the ACLI was happy to continue with developing the policy overview for the three types of life insurance policies, but he observed that it would be challenging to finish by the Fall National Meeting. He said moving the timeframe for delivery of the policy overview to before the time when personal information has been gathered and underwriting has occurred defeats the purpose of the document. He said the ACLI suggests that, if the time frame for delivery is going to be changed, rather than continue developing a policy overview, the Working Group should align this effort with the Life Insurance Online Guide (A) Working Group that is currently working on an online buyer’s guide for consumers.

2. Discussed May 20 Draft of Model #580 and May 16 Sample Overview Form

a. Discussed “Illustration” Definition

The May 20 draft includes the following definition:

“Illustration” means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years that is subject to [insert state equivalent to Model #582].

Mr. Lovendusky said the ACLI made two alternative recommendations for revising the definition of “Illustration” in Model #580. The first suggestion was to simplify the definition so that it points to the state law equivalent to Model #582: “‘Illustration’ means a presentation or depiction of a policy of life insurance that is subject to [insert state equivalent to Model #582].” He said an alternative suggestion is for the definition to exactly duplicate the definition in Model #582. Birny Birnbaum (Center for Economic Justice—CEJ) said referencing the state law equivalent to Model #582 would only work if a state has adopted something exactly like the model. He suggested adding a reference to guaranteed elements in addition to non-guaranteed elements because Model #582 provides that illustrations include guaranteed and non-guaranteed elements.

Mr. Wicka said the definition in the May 20 draft is the exact language from Model #582, without the description of the three types of illustrations. The Working Group agreed to keep the language from the May 20 draft.
b. Discussed “Policy Overview” Definition.

The May 20 draft includes the following definition:

“Policy Overview” means a brief summary of the policy prepared in accordance with this regulation, and an example may be found in Appendix A.

Mr. Birnbaum suggested revising this definition to include language mirroring the purpose of the model and requiring that a policy overview is substantially similar to the sample documents being developed, as follows:

“Policy Overview” means a document describing the basic features of the policy presented in a manner to facilitate the purposes of this model, containing the elements required in section 5.A., and substantially similar to the model forms found in Appendix A.

Mr. Birnbaum said the narrative and policy summaries created by the insurance companies to comply with the requirements in Model #580 and Model #582 were wildly different from each other, and the substantially similar language is needed in order to not end up with the same problem that led to the charge of the Working Group. Mr. Wicka reminded the Working Group that the intention from the beginning was to develop sample templates for policy overviews that would not be required. He asked the Working Group if there was a desire to revisit this issue. Ms. Mealer said she preferred having the templates serve as examples, not be a required form. Ms. Lerner said she would like for the samples to be mandatory because there should be a way for consumers to compare policies easily. Mr. Lovendusky said assisting consumers to compare products is outside the scope of the Working Group’s charge, and it would limit innovation and harm consumers. Mr. Birnbaum said the Working Group’s charge specifically includes how the summaries are “designed, formatted and accessed” by consumers, and the stated purpose of Model #580 is to “require insurers to deliver to purchasers of life insurance information that will improve the buyer’s ability to select the most appropriate plan of life insurance for the buyer’s needs.” The Working group agreed to keep the language from the May 20 draft.

c. Discussed Allowing Insurers to Combine the Guaranteed Premium and Benefit Patterns Summary with the Policy Overview When There is No Illustration

Mr. Wicka said the ACLI comment letter and the Pacific Life comment letter both suggested allowing an insurer to combine the “Policy Overview” with the “Guaranteed Premium and Benefit Patterns Summary” when a policy will not be marketed with an illustration. The comment letters suggested the following definition:

“Guaranteed Premium and Benefit Patterns Summary” is a separate document that accompanies the Policy Overview where the insurer has identified the policy as one that will not be marketed with an illustration. The insurer may combine the Guaranteed Premium and Benefit Patterns Summary and Policy Overview into a single document.

Mr. Wicka explained the evolution of the Policy Overview document from a cover page to the policy and narrative summaries to a stand-alone document to be delivered at the same time as the Buyer’s Guide. Ms. Mealer said she is not opposed unless there is an identifiable harm to combining the documents. Ms. Lerner said she was hesitant to do anything that would make documents longer, and therefore, less consumer friendly. Mr. Danzeiser said he does not object to combining the documents.

Mr. Birnbaum said this proposal would recreate the problems that gave rise to the need for the charge. He said the initial proposal of a one-to-two-page cover document that explains the key features of the policy is not the same as the proposal to allow insurers to combine these two documents. He said allowing insurers to combine the documents is counter-productive to the goals of the Working Group to improve consumers’ ability to compare products. Mr. Lovendusky said it was never the goal of the Working Group to have a template to help consumers compare policies. Mr. Birnbaum said the format will change if the two documents are combined, and there is no evidence that combining the documents will make them any shorter or easier to understand. He said it is more likely that they will be less consumer friendly. Ms. Lerner said the Working Group’s charges are to promote consumer readability and understandability through consideration of how they are designed, formatted and accessed by consumers. She said the way it is set out in the May 20 draft promotes consumer understandability through a consistent format.
Ms. Mealer made motion, seconded by Mr. Harkins, to replace the definition of “Guaranteed Premium and Benefit Patterns Summary” in the May 20 draft with the language proposed by the ACLI. Missouri and Texas voted in favor of the motion. California, Iowa, Nebraska and Tennessee opposed the motion. The motion failed. The definition of “Guaranteed Premium and Benefit Patterns Summary” will not change from the May 20 draft.

d. Discussed Timing for Delivery of Policy Overview

Mr. Wicka explained that Section 5A(1) requires insurers to provide a Buyer’s Guide to all prospective purchasers, prior to accepting the applicant’s initial premium or premium deposit, except when there is a “free look” period of at least 10 days, in which case, the Buyer’s Guide may be delivered with the policy or prior to delivery of the policy. Section 5A(2) requires that the Policy Overview is delivered at the same time as the Buyer’s Guide. Ms. Lerner said she would like to see the Buyer’s Guide and the Policy Overview delivered at the time of application. She said if the Buyer’s Guide and Policy Overview are intended to help people understand the type of insurance they would like to purchase, getting it at the time of policy delivery is too late. She said if either of these documents are to be meaningful, consumers need them earlier. Mr. Struck said it would be preferable for people to get information to help them understand what they are purchasing, rather than what they have already purchased.

Mr. Lovendusky said a change in the timing for providing the Buyer’s Guide would create a substantial change in operations for insurers, and it is beyond the scope of what the Working Group should be trying to achieve. He said if the delivery requirements are changed, the Policy Overview cannot include some of the detailed consumer-specific information contemplated. Mr. Wicka reiterated that the Working Group’s charge specifically contemplates how summaries are “designed, formatted and accessed” by consumers, which encompasses the delivery requirement. Ms. Winer said information is largely, if not exclusively, online, so it may be time to revisit the delivery timing requirements.

Mr. Wicka said another option is to separate the Buyer’s Guide delivery requirements from the Policy Overview. Mr. Birnbaum said they could be separated, but it makes sense to deliver them at the same time. He said with respect to the Buyer’s Guide, it is a static document that can be easily delivered electronically. He said the Policy Overview should also be delivered before consumers have paid their premium. He said industry’s position ensures that consumers cannot shop before they apply.

Randy Foster (American International Group—AIG) said it would be extremely burdensome to have to provide the Policy Overview at the time of application. He said there is no policy at the time of application and consumers may end up with something completely different after underwriting. He said while much is unknown at the time of application, at the time of policy delivery, things are set, and consumers have the free look period to assess the details. He said if something is provided earlier in the process, it will be more difficult to prove up compliance.

Mr. Wicka said the Working Group needs to have additional discussion before changing the timing requirements for delivery of the Policy Overview. The Working Group agreed.

Having no further business, the Life Insurance Illustration Issues (A) Working Group adjourned.
1. **Reviewed its Charge and Work Plan**

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.” He 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 the approach it had been working on by revising just 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 explained that the purpose of this conference call is to discuss the May 20 draft revisions to Model #580 (Attachment Eight-A) that was exposed for a public comment period ending June 21. He said comments were posted on the Annuity Disclosure (A) Working Group web page.

2. **Discussed the May 20 Draft of Model #580 and May 16 Sample Overview Form**

   a. **Discussed the “Illustration” Definition**

The May 20 draft includes the following definition: “Illustration” means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years that is subject to [insert state equivalent to Life Insurance Illustrations Model Regulation].

Michael Lovendusky (American Council of Life Insurers—ACLI) said the ACLI made two alternative recommendations for revising the definition of “illustration” in Model #580. The first suggestion was to simplify the definition so it points to the state law equivalent to Model #582: “Illustration means a presentation or depiction of a policy of life insurance that is subject to [insert state equivalent to Life Insurance Illustration Model Regulation.” He said an alternative suggestion is for the definition to exactly duplicate the definition in Model #582. Birny Birnbaum (Center for Economic Justice—CEJ) said referencing the state law equivalent to Model #582 would only work if a state has adopted something exactly like the model. Mr. Birnbaum suggested adding a reference to guaranteed elements in addition to nonguaranteed elements because Model #582 provides that illustrations include guaranteed and nonguaranteed elements.

Mr. Wicka said that the definition in the May 20 draft is the exact language from Model #582, without the description of the three types of illustrations. The Working Group agreed to keep the language from the May 20 draft.

   b. **Discussed “Policy Overview” Definition**

The May 20 draft includes the following definition: “‘Policy Overview’ means a brief summary of the policy prepared in accordance with this regulation, and an example may be found in Appendix A.”

Mr. Birnbaum suggested revising this definition to include language mirroring the purpose of the model and to require that a policy overview is substantially similar to the sample documents being developed, as follows: “‘Policy overview’ means a document describing the basic features of the policy presented in a manner to facilitate the purposes of this model, containing the elements required in section 5.A. and substantially similar to the model forms found in Appendix A.”
Mr. Birnbaum said the narrative and policy summaries created by the insurance companies to comply with the requirements in Model #580 and Model #582 were wildly different from each other and that substantially similar language is needed in order to not end up with the same problem that led to the charge of the Working Group. Mr. Wicka reminded the Working Group that the intention from the beginning was to develop sample templates for policy overviews that would not be required. He asked the Working Group if there was a desire to revisit this issue. Ms. Mealer said she prefers having the templates serve as examples and not be a required form. Ms. Lerner said she would like for the samples to be mandatory because there should be a way for consumers to compare policies easily. Mr. Lovendusky said assisting consumers to compare products is outside the scope of the Working Group’s charge and would limit innovation and harm consumers. Mr. Birnbaum said the Working Group’s charge specifically includes how the summaries are “designed, formatted and accessed” by consumers, and the stated purpose of Model #580 is to “require insurers to deliver to purchasers of life insurance information that will improve the buyer’s ability to select the most appropriate plan of life insurance for the buyer’s needs.” The Working group agreed to keep the language from the May 20 draft.

c. Discussed Allowing Insurers to Combine the Guaranteed Premium and Benefit Patterns Summary with the Policy Overview When There Is No Illustration

Mr. Wicka said the ACLI comment letter and the Pacific Life comment letter both suggested allowing an insurer to combine the “Policy Overview” with the “Guaranteed Premium and Benefit Patterns Summary” when a policy will not be marketed with an illustration. They suggested the following definition: “‘Guaranteed Premium and Benefit Patterns Summary’ is a separate document that accompanies the Policy Overview where the insurer has identified the policy as one that will not be marketed with an illustration. The insurer may combine the Guaranteed Premium and Benefit Patterns Summary and Policy Overview into a single document.”

Mr. Wicka explained the evolution of the Policy Overview document from a cover page to the policy and narrative summaries to a stand-alone document to be delivered at the same time as the Buyer’s Guide. Ms. Mealer said she is not opposed unless there is an identifiable harm to combining the documents. Ms. Lerner said she is hesitant to do anything that would make documents longer and, therefore, less consumer-friendly. Mr. Danzeiser said he does not object to combining the documents.

Mr. Birnbaum said this proposal would recreate the problems that gave rise to the need for the charge. He said the initial proposal of a one- to two-page cover document that explains the key features of the policy is not the same as the proposal to allow insurers to combine these two documents. He said allowing insurers to combine the documents is counter-productive to the goals of the Working Group to improve consumers’ ability to compare products. Mr. Lovendusky said it was never the goal of the Working Group to have a template to help consumers compare policies. Mr. Birnbaum said the format will change if the two documents are combined, and there is no evidence that combining the document will make them any shorter or easier to understand. He said it is more likely they will be less consumer-friendly. Ms. Lerner said the Working Group’s charges are to promote consumer readability and understandability through consideration of how they are designed, formatted and accessed by consumers. She said the way it is set out in the May 20 draft promotes consumer understandability through a consistent format.

Ms. Mealer made motion, seconded by Mr. Harkins, to replace the definition of “Guaranteed Premium and Benefit Pattern Summary” in the May 20 draft with the language proposed by the ACLI. Missouri and Texas voted in favor of the motion. California, Iowa, Nebraska and Tennessee opposed. The motion failed. The definition of “Guaranteed Premium and Benefit Pattern Summary” does not change from the May 20 draft

d. Discussed Timing for Delivery of the Policy Overview

Mr. Wicka explained that Section 5A(1) requires insurers to provide a Buyer’s Guide to all prospective purchasers, prior to accepting the applicant’s initial premium or premium deposit, except when there is a “free look” period of at least 10 days. In that case, the Buyer’s Guide may be delivered with the policy or prior to delivery of the policy. Section 5A(2) requires that the Policy Overview is delivered at the same time as the Buyer’s Guide. Ms. Lerner said that she would like to see the Buyer’s Guide and the Policy Overview delivered at the time of application. She said if the Buyer’s Guide and Policy Overview are intended to help people understand the type of insurance they would like to purchase, getting it at the time of policy delivery is too late. She said if either of these documents are to be meaningful, consumers need them earlier. Mr. Struck said it would be preferable for people to get information to help them to understand what they are purchasing, rather than what they have already purchased.
Mr. Lovendusky said a change in the timing would create a substantial change in operations for insurers and is beyond the scope of what the Working Group should be trying to achieve. He said changes to the timing for the Buyer’s Guide are beyond the scope of the Working Group’s charge. He said if the delivery requirements are changed, the Policy Overview cannot include some of the detailed consumer-specific information contemplated. Mr. Wicka reiterated that the Working Group’s charge specifically contemplates how summaries are “designed, formatted and accessed” by consumers, which encompasses the delivery requirement. Ms. Winer said information is largely, if not exclusively, online, so it may be time to revisit the delivery timing requirements.

Mr. Wicka said another option is to separate the Buyer’s Guide delivery requirements from the Policy Overview. Mr. Birnbaum said they could be separated but that it makes sense to deliver them at the same time. He also said, with respect to the Buyer’s Guide, it is a static document that can be easily delivered electronically. He said the Policy Overview should also be delivered before consumers have paid their premium. He said industry’s position ensures that consumers cannot shop before they apply.

Randy Foster (AIG) said it would be extremely burdensome to have to provide the Policy Overview at the time of application. He said there is no policy at the time of application, and consumers may end up with something completely different after underwriting. He said while much is unknown at the time of application, at the time of policy delivery, things are set and consumers have the free look period to assess the details. He said if something is provided earlier in the process, it will be more difficult to prove up compliance.

Mr. Wicka said the Working Group needs to have additional discussion before changing the timing requirements for delivery of the Policy Overview. The Working Group agreed.

Having no further business, the Life Insurance Illustration Issues (A) Working Group adjourned.
LIFE INSURANCE DISCLOSURE MODEL REGULATION

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Section 1. Authority

This rule is adopted and promulgated by the commissioner of insurance pursuant to [insert state equivalent to Section 4A(1) of the Unfair Trade Practices Act] of the Insurance Code.

Drafting Note: Insert title of chief insurance regulatory official wherever the term "commissioner" appears.

Section 2. Purpose

A. The purpose of this regulation is to require insurers to deliver to purchasers of life insurance information that will improve the buyer’s ability to select the most appropriate plan of life insurance for the buyer’s needs and improve the buyer’s understanding of the basic features of the policy that has been purchased or is under consideration.

B. This regulation does not prohibit the use of additional material that is not a violation of this regulation or any other [state] statute or regulation.

Section 3. Scope

A. Except for the exemptions specified in Section 3B, this regulation shall apply to any solicitation, negotiation or procurement of life insurance occurring within this state. Section 5B shall apply only to an existing nonexempt policy held by a policyowner residing in this state. This regulation shall apply to any issuer of life insurance contracts including fraternal benefit societies.

B. This regulation shall not apply to:

(1) Individual and group annuity contracts;

(2) Credit life insurance;

(3) Group life insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy);

(4) Life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Section 1001 et seq. as amended; or

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Section 4. Definitions

For the purposes of this regulation, the following definitions shall apply:

A. “Buyer’s Guide” means the current Life Insurance Buyer’s Guide adopted by the National Association of Insurance Commissioners (NAIC) or language approved by the commissioner.

B. “Current scale of nonguaranteed elements” means a formula or other mechanism that produces values for an illustration as if there is no change in the basis of those values after the time of illustration.

C. “Generic name” means a short title that is descriptive of the premium and benefit patterns of a policy or a rider.

D. “Illustration” means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years that is subject to [insert state equivalent to Life Insurance Illustrations Model Regulation].

E. “Nonguaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

F. “Policy data” means a display or schedule of numerical values, both guaranteed and nonguaranteed for each policy year or a series of designated policy years of the following information: illustrated annual, other periodic, and terminal dividends; premiums; death benefits; cash surrender values and endowment benefits.

G. “Policy summary Overview” means a written statement describing the elements of the policy, including, but not limited to brief summary of the policy prepared in accordance with this regulation and an example may be found in Appendix A.

H. “Guaranteed Premium and Benefit Patterns Summary” is a separate document that accompanies the Policy Overview where the insurer has identified the policy as one that will not be marketed with an illustration.

G. “Preneed funeral contract or prearrangement” means an agreement by or for an individual before that individual’s death relating to the purchase or provision of specific funeral or cemetery merchandise or services.

Section 5. Duties of Insurers

A. Requirements Applicable Generally

(1) The insurer shall provide a Buyer’s Guide to all prospective purchasers, prior to accepting the applicant’s initial premium or premium deposit. However, if the policy for which application is made contains an unconditional refund provision of at least ten (10) days, the Buyer’s Guide may be delivered with the policy or prior to delivery of the policy.

(2) The insurer shall provide a Policy Overview to all prospective purchasers. Delivery of the Policy Overview shall be consistent with the time for delivery of the Buyer’s Guide as specified in Paragraph (1). Insurers should endeavor to limit the length of the Policy Overview to the minimum length necessary to reasonably inform consumers of the information required to be included in the Policy Overview. The Policy Overview is not required to be in a specific format beyond the requirements of the Section. The Policy Overview must be prepared in language and in a format that would be understood by a typical person within the segment of the public to which the policy is addressed.
A sample Policy Overview that meets the requirements of this Section is provided in Appendix A. A Policy Overview shall include the following sections labeled with the following headings:

(a) An introductory section containing the following language: “This document lists this product’s key features, benefits and costs. 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].”

(b) The name and address of the insurance agent or, if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the Policy Overview. The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written.

(c) “Information about the Insured” which shall include the following information, as applicable:

(i) Gender of insured or insureds;

(ii) Issue age of insured or insureds;

(iii) Risk class with a statement as to where the insured can find additional information regarding risk classes;

(iv) The following statement: “In the course of considering an insured’s application, an insurer may request or collect health information about the insured in variety of ways.” The statement shall indicate whether a physical examination or questionnaire will be required.

(d) “Cost Information” which shall include the following information, as applicable:

(i) Initial premium and premium mode;

(ii) A short statement describing if the premium varies after the first year, and, if so, a statement as to where the insured can find information as to how the premium will be determined after the first year;

(iii) Available options for premium funding such as policy payment periods, any dividend options or lump sum payments options;

(iv) A yes or no indication whether a waiver of premium or deductions option is available;

(v) A description of surrender charges and the period of time that surrender charges apply;

(vi) A narrative description of the cost of insurance and other fees needed to keep the policy in force and how those fees may change over time.

(e) “Policy Information” which shall include the following information, as applicable:

(i) Product type (Including single or joint policy);
(ii) Product name and form number;

(iii) Coverage period description;

(iv) Initial death benefit and a yes or no indication as to whether the death benefit can change;

(v) Death benefit option;

(vi) Policy effective date;

(vii) State of issue;

(viii) Policy loan option and applicable charges;

(f) “Additional Policy Benefits” which shall include the following information, as applicable:

(i) Eligibility for a dividend;

(ii) Conversion options that may be exercised;

(iii) Options to extend the term of the coverage;

(iv) Any available optional riders as requested by the insured, and an indication if there is an additional cost;

(v) Living benefit option(s);

(vi) Option to lower benefits to reduce premium;

(vii) A yes or no indication as to whether the policy can accumulate cash value;

(ix) Guaranteed interest rates on fixed accounts and any indexed account options as requested by the insured.

(2)(3) The insurer shall provide a policy summary Guaranteed Premium and Benefits Patterns Summary to prospective purchasers where the insurer identified the policy form as one that will not be marketed with an illustration. Delivery of the Guaranteed Premium and Benefits Patterns Summary shall be consistent with the time for delivery of the Buyer’s Guide as specified in Paragraph (1). The policy summary Guaranteed Premium and Benefits Pattern Summary shall show guarantees only. It shall consist of a separate document with and include all required information set out in a manner that does not minimize or render any portion of the summary obscure. Any amounts that remain level for two (2) or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in Section 4F(5) shall be listed in total, not on a per thousand or per unit basis. If more than one insured is covered under one policy or rider, death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as a blank space. Delivery of the policy summary shall be consistent with the time for delivery of the Buyer’s Guide as specified in Paragraph (1). The following amounts, where applicable, for the first five (5) policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns: including at least one age from sixty (60) through sixty-five (65) and policy maturity:

(a) The annual premium for the basic policy;
(b) The annual premium for each optional rider;

(c) The amount payable upon death at the beginning of the policy year regardless of the cause of death, other than suicide or other specifically enumerated exclusions, that is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately;

(d) The total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider;

(e) Any endowment amounts payable under the policy that are not included under cash surrender values above;

(f) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is adjustable, the Guaranteed Premium and Benefits Patterns Summary shall also indicate that the annual percentage rate will be determined by the company in accordance with the provisions of the policy and the applicable law.

B. Requirements Applicable to Existing Policies.

(1) Upon request by the policyowner, the insurer shall furnish either policy data or an in force illustration as follows:

(a) For policies issued prior to the effective date of [insert state equivalent to Life Insurance Illustrations Model Regulation], the insurer shall furnish policy data, or, at its option, an in force illustration meeting the requirements of [insert state equivalent to Life Insurance Illustrations Model Regulation].

(b) For policies issued after the effective date of the illustration regulation that were declared not to be used with an illustration, the insurer shall furnish policy data, limited to guaranteed values, if it has chosen not to furnish an in force illustration meeting the requirements of the regulation.

(c) If the policy was issued after the effective date of the illustration regulation and declared to be used with an illustration, an in force illustration shall be provided.

(d) Unless otherwise requested, the policy data shall be provided for twenty (20) consecutive years beginning with the previous policy anniversary. The statement of policy data shall include nonguaranteed elements according to the current scale, the amount of outstanding policy loans, and the current policy loan interest rate. Policy values shown shall be based on the current application of nonguaranteed elements in effect at the time of the request. The insurer may charge a reasonable fee, not to exceed $[insert amount], for the preparation of the statement.

(2) If a life insurance company changes its method of determining scales of nonguaranteed elements on existing policies; it shall, no later than when the first payment is made on the new basis, advise each affected policy owner residing in this state of this change and of its implication on affected policies. This requirement shall not apply to policies for which the amount payable upon death under the basic policy as of the date when advice would otherwise be required does not exceed $5,000.

(3) If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor; it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this state.
Section 6. Preneed Funeral Contracts or Prearrangements

The following information shall be adequately disclosed at the time an application is made, prior to accepting the applicant’s initial premium or deposit; for a preneed funeral contract or prearrangement that is funded or to be funded by a life insurance policy:

A. The fact that a life insurance policy is involved or being used to fund a prearrangement;

B. The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator and any other person;

C. The relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement;

D. The impact on the prearrangement:
   (1) Of any changes in the life insurance policy including but not limited to, changes in the assignment, beneficiary designation or use of the proceeds;
   (2) Of any penalties to be incurred by the policyholder as a result of failure to make premium payments;
   (3) Of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy;

E. A list of the merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

F. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the prearrangement;

G. Any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the prearrangement guarantee; and

Drafting Note: States should consider whether the insurance regulator has the authority to enforce the provisions of Subsections E, F and G.

H. If so, the fact that a sales commission or other form of compensation is being paid and the identity of the individuals or entities to whom it is paid.

Section 7. General Rules

A. Each insurer shall maintain, at its home office or principal office, a complete file containing one copy of each document authorized and used by the insurer pursuant to this regulation. The file shall contain one copy of each authorized form for a period of three (3) years following the date of its last authorized use unless otherwise provided by this regulation.

B. An agent shall inform the prospective purchaser, prior to commencing a life insurance sales presentation, that he or she is acting as a life insurance agent and inform the prospective purchaser of the full name of the insurance company which the agent is representing to the buyer. In sales situations in which an agent is not involved, the insurer shall identify its full name.

C. An insurance producer shall not use terms such as “financial planner,” “investment advisor,” “financial consultant,” or “financial counseling” in such a way as to imply that he or she is primarily engaged in an advisory business in which compensation is unrelated to sales unless that is actually the case. This provision
is not intended to preclude persons who hold some form of formal recognized financial planning or consultant designation from using this designation even when they are only selling insurance. This provision also is not intended to preclude persons who are members of a recognized trade or professional association having such terms as part of its name from citing membership, providing that a person citing membership, if authorized only to sell insurance products, shall disclose that fact. This provision does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.

D. Any reference to nonguaranteed elements shall include a statement that the item is not guaranteed and is based on the company’s current scale of nonguaranteed elements (use appropriate special term such as “current dividend” or “current rate” scale.) If a nonguaranteed element would be reduced by the existence of a policy loan, a statement to that effect shall be included in any reference to nonguaranteed elements. A presentation or depiction of a policy issued after the effective date of the [insert citation to state equivalent to Life Insurance Illustrations Model Regulation] that includes nonguaranteed elements over a period of years shall be governed by that regulation.

Section 8. Failure to Comply

Failure of an insurer to provide or deliver a Buyer’s Guide, an in force illustration, a policy summary or policy data as provided in Section 5 shall constitute an omission that misrepresents the benefits, advantages, conditions or terms of an insurance policy.

Section 9. Separability

If any provisions of this rule be held invalid, the remainder shall not be affected.

Section 10. Effective Date

This rule shall become effective [insert a date at least 6 months following adoption by the regulatory authority].
Retirement Security (A) Working Group
Conference Call
November 13, 2019

The Retirement Security (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Nov. 13, 2019. The following Working Group members participated: Stephen C. Taylor, Chair (DC); Doug Ommen represented by Sonya Sellmeyer (IA); Al Redmer Jr. represented by Joy Hatchette (MD); Steve Kelley represented by Fred Andersen (MN); Linda A. Lacewell represented by Peter Thaisz (NY); and Elizabeth Kelleher Dwyer represented by Sarah Neil (RI). Also participating were: Bruce Sartain (IL); Tate Flott (KS); Denise Lamy (NH); Cuc Nguyen (OK); Deanna Osmonson (TX); and Janelle Dvorak (WI).

1. Heard Presentations on Retirement Security Education

a. NFEC

Commissioner Taylor explained the purpose and goals of the Working Group. He said the Working Group’s goal is to examine ways to promote retirement security consistent with the NAIC’s continuing “Retirement Security Initiative.” He said the Working Group would be discussing education issues, consumer protection and product innovation.

Commissioner Taylor recapped the last conference call of the Working Group and then introduced Vince Shorb (National Financial Educators Council—NFEC) to open the discussion. Mr. Shorb discussed how the financial problems in the country are at an epidemic level. He said retirement security affects more than the pocketbook; it also affects the personal life. He discussed employee wellness programs with the focus on preparation for the future.

Mr. Shorb said it is important to understand the past in order to understand the future. He said children pick up the habits of parents. He said if children see how their parents act and react to money and finances, they are more than likely to adopt those practices. He also said the old adage of “keeping up with the Joneses” has morphed into today’s social media infusion and celebrity endorsements and influences. He said there is no counteracting to that type of assault.

Mr. Shorb said some states are tackling early education, such as Utah, but most kids are leaving home, such as to college, behind the proverbial “8-ball.” He said too many parents and educators are looking at the short-term and not the long-term. He said all the time, one hears the basic calls for saving more and if you borrow you need to repay. He said the focus should be on financial behavior, sentiments and systems.

Mr. Shorb said that financial behavior means more than just telling people to save more. People need to understand what that means for the long-term and how to adapt behavior to the understanding. He said that sentiments mean understanding and knowing the hope and confidence for the future. He said the less hope and confidence people have about the future; the less likely people will work toward an end goal of financial security. He also said the fear of understanding money and how to use money properly prevents working toward that end goal. He said systems are meant to help with the earlier points of behavior and sentiments. He said an example would be auto-save programs.

Mr. Shorb offered five tips to aid in financial literacy and retirement security: 1) quality educators; 2) segmentation of the audience; 3) time; 4) multiple methods of instruction; and 5) objectives. He said too many educators lack the educational methodology, utilizing mostly lectures and power point presentations. He said more sophisticated methodologies and practices are needed to address behavior and sentiment.

Mr. Shorb explained that segmentation of the audience means that a financial literacy program or class needs to be tailored to the audience. For example, he said the socio-economic status is a factor to consider. He said that the warehouse worker who works at a lower hourly salary is different than the higher salary office worker. He said how financial literacy or retirement security is explained needs to be focused on retaining the interest of the employee and if a course is talking about options that are beyond the employee, the interest, if any, is lost.

Mr. Shorb explained the trans-theoretical model where one gauges the interest level of each employee and then tailor classes or information to that interest level. He gave an example of a simple survey, and depending on the answer, one can help
determine the level of interest of that employee in retirement security. He said if an employee wants to learn, they will; if they do not, then develop the material to raise the level of interest.

Mr. Shorb said more time is needed than the typical courses currently offered. He said standard courses can help, especially if they can offer the tools to aid the employee to help themselves. He said multiple methods of instruction is key to educating employees and utilizing the best methods to those employees. He said other methods than the usual live lecture or an online course would be useful. He said employers or educators need to understand what the objectives are with a retirement security or financial literacy program. For example, he asked what the objectives are to help employees reduce their debt or encourage employees to learn and utilize the company’s retirement programs.

Mr. Shorb said educators should also pay attention to their audience. He said sometimes you see that aha moment in someone’s eyes, and they get the importance of planning for their future. He said it is also important to motivate those that do not have that aha moment and import the need for long-term thinking when it comes to one’s financial retirement security. He said the earlier one starts educating, the better for the future of the person, and they can see results down the line.

Commissioner Taylor asked Mr. Shorb how early such education should start. Mr. Shorb said that a Brown University study showed that habits are formed as early as at the age of nine, and kids will pick up the habits of their parents. He said if parents are frivolous or spend-thrifty, it will be picked up by children. He said the earlier one starts educating about financial security and literacy, the better. He said this is especially important with the massive influence of social media in conjunction with mass consumption. He said reaching kids before high school is probably best. Commissioner Taylor asked if schools can play a role. Mr. Shorb said schooling, historically, was meant to educate on self-sufficiency and being prepared for the future. He said schools can play an important role.

Ms. Neil asked if educating the parents will help the kids down the line. Mr. Shorb said the more a parent can improve their own socio-economic position, the better for the children, and the children can and will learn from their parents’ work to improve themselves. He said, statistically, kids will remain in the same socio-economic status as their parents.

Commissioner Taylor asked for an elaboration on segmentation. Mr. Shorb said simple, direct questions are best. He suggested asking a general question if the employee has interest in financial security and a more direct question if the employee has any interest in personal finances. Survey questions of that nature can help segment employees into levels of interest and then lead to the development of the right program. Commissioner Taylor asked what to do about those showing no interest. Mr. Shorb suggested helping those reluctant to focus on the topic as it could apply to them. For example, he said not to provide assignments, but provide case studies and ask what advice they would give to the subject in the case study. He said people are more inclined to give advice if it does not personally involve them. He said for many of those reluctant employees, case studies get them thinking about their own situation without feeling that they are being lectured.

Commissioner Taylor asked what size businesses the NFEC works with. Mr. Shorb said all sizes. He said the NFEC develops programs to scale and meet the needs of that specific business. Karrol Kitt (The University of Texas at Austin) said she wanted to thank Mr. Shorb and the chair for this resonation. She said, as an educator, she was very pleased to hear about teachable moments and the importance of education.

Commissioner Taylor asked the Working Group if anyone had any comments on the work plan he developed and had sent out prior to the conference call. Birny Birnbaum (Center for Economic Justice—CEJ) asked what role state insurance regulators and the NAIC have in the first three points under the education section of the work plan. He said there are other entities and groups that have more expertise and are working in this area. He asked what value is added in the NAIC and state insurance regulators examining this area. Commissioner Taylor replied that insurance has a large role to play and is part of an overall retirement security plan, and he believes the NAIC has and can play a role in helping Americans in their financial literacy and retirement security. He asked Mr. Birnbaum to submit any edits or suggestions to the work plan.

Commissioner Taylor asked the Working Group to submit any comments or edits to the work plan to David Torian (NAIC) by close of business (COB) Dec. 4.

Having no further business, the Retirement Security (A) Working Group adjourned.

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The Retirement Security (A) Working Group met via conference call Oct. 23, 2019. The following Working Group members participated: Stephen C. Taylor, Chair (DC); Doug Ommen represented by Sonya Sellmeyer (IA); Al Redmer Jr. represented by Joy Hatchette (MD); Steve Kelley represented by Fred Andersen (MN); Linda A. Lacewell represented by Peter Thaisz (NY); Elizabeth Kelleher Dwyer represented by Sarah Neil (RI); and Todd E. Kiser represented by Tanji Northrup (UT). Also participating were: Bruce Sartain (IL); Tate Flott (KS); Annette James (NV); Cuc Nguyen (OK); and Doug Danzeiser (TX).

1. **Heard Presentations on Retirement Security Education**
   
a. **AARP**

Commissioner Taylor explained the purpose and goals of this Working Group. He said the Working Group’s goal is to examine ways to promote retirement security consistent with the NAIC’s continuing “Retirement Security Initiative.” He said the Working Group would be discussing education issues, consumer protection and product innovation.

Commissioner Taylor asked Joe Valenti (AARP) and Sarah Mysiewicz Gill (AARP) to open the discussion. Mr. Valenti discussed two programs that AARP promotes: 1) the Saving for Retirement campaign; and 2) the Work and Save campaign. He said one of the keys to effective retirement security education is to reach people before key moments in their lives. He pointed out that just providing people with calculations tends to scare them off but providing guidance and comprehensive information is more helpful.

Mr. Valenti said that four out of 10 heads of households, age 55 to 64, have no savings. He said the median savings is $120,000. Most believe they will simply work longer, but they do not take into account events that may prevent them to work longer. He said the Saving for Retirement campaign focuses on getting people into the conversation. He said the campaign offers a quick and easy retirement planning resource that enables users to chat with a friendly digital retirement coach to get their personalized action plan.

Ms. Gill said she works with the states and their legislatures. She said nearly 55 million workers do not have a way to save through their work. She said small business retirement plans cost much more than those available to larger employers. She said AARP has been working on a public/private partnership, similar to a 529 college savings plan. She said it is a contract with the private sector but administered by the state.

Ms. Gill said this design allows small businesses to offer simple, low-cost retirement savings plans to their employees, enabling more workers to provide for themselves rather than rely on taxpayer-paid services. Workers in businesses with fewer than 100 workers were much less likely to have access to a plan than workers in firms with more workers. She said some 30 states are considering retirement savings plans for small business employees, and seven states are already implementing them. She said the data shows that nearly 30 million workers are new savers.

Mr. Valenti said it is important to get people to think about lifetime income. He mentioned three bucket of funds and said people should look at money for now, such as for emergencies, periodic managed payouts and look at their longevity.

Commissioner Taylor asked if this partnership is voluntary to states and businesses. Ms. Gill said it is and said the programs are tailored to individual states. She said some states have businesses go through the private sector rather than a state plan.

Ms. Hatchette asked if there are target audiences or age groups. Ms. Gill said there is no specific targeting of any particular age group but said that millennials are a focus.

Commissioner Taylor asked about the costs of the partnership. Ms. Gill said there are costs upfront, but eventually it becomes self-sustaining and there is no cost to the business.

Mr. Thaisz noted that AARP discussed three buckets of funds for the decumulations stage, with the first one being emergency funds. He asked if AARP promotes saving for emergency funds during the accumulation phase of saving for retirement. Mr. Valenti responded that AARP does support and promote saving up an emergency fund as part of financial wellness.
referenced recent studies that indicate a significant percentage of U.S. households would be unable to handle an unexpected $400 expense out of savings. He said that AARP believes everyone should save for an emergency fund.

b. IRI

Commissioner Taylor asked Chelsea Crucitti (Insured Retirement Institute—IRI) and Frank O’Connor (IRI) to give their presentations. Ms. Crucitti said there are two retirement crises: 1) a funding crisis; and 2) an income crisis. She said 79 baby boomers are near retirement. She said longevity is one of the reasons for the crisis. She said workers tend to overestimate how long they will work, and many retire sooner than they expected.

Ms. Crucitti said a retiree needs 85% of their income for 20 years for retirement. People do not take into account the cost of living in retirement, such as health care and long-term care (LTC). She said most Americans do not have a grasp on the costs of health care and LTC. She said most workers with 401(k) accounts do not have the knowledge on how to use their money. She said six in 10 baby boomers do not take any action or even review their 401(k) accounts. She said that many respond to the amounts in their 401(k) similar to big lottery winners and that without education and guidance, they tend to spend it all.

Ms. Crucitti said more information does not necessarily mean there will be a better outcome. She said education is needed in every stage of life. She said industry tries to be innovative on the type of products that can help the consumer toward planning for and living through retirement. She pointed out a regulatory barrier where nearly 45% do not have access to a traditional 401(k) account. She said consumers need the right educational tools.

Ms. Crucitti also said there should be agent education and said IRI is partnering with the National Council on Aging (NCOA) to help educate agents on retirement and how to discuss retirement with consumers. She said the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 (H.R. 1994) is an important legislative tool to help Americans. The Act would allow, among many provisions, more part-time workers to have the opportunity to participate in a 401(k) plan and would allow for multi-employer 401(k) plans. It would also require benefit statements provided to defined contribution plan participants to include a lifetime income disclosure at least once during any 12-month period.

Mr. O’Connor said people cannot overstate the need for education. He said IRI’s research shows that collectively all people know they have to save for the future, but they do not know what to do to get there nor what to do when they get there.

Mr. O’Connor cited research on millennials. He said 72% of millennials believe they will be set for retirement, whereas only 18% are concerned about retirement. However, 50% of those who are confident about the future are not saving and say they plan to do it later. Sixty-five percent are confident that they can save enough of their own income, and 55% said Social Security will provide enough along with savings.

Commissioner Taylor asked when retirement education should start. Mr. O’Connor said basic financial literacy should begin in high school or entry into college. He said additional education is needed, such as at a first job. He said first-time employees need more than just being handed a 401(k) without some education about how it works and how to use it best for their needs.

Mr. O’Connor gave an example of a person who is moving from a large employer to a small employer and what to do with the 401(k) with the large employer. He said without proper education, that person may not know that it may be better to keep the 401(k) with the large employer.

Commissioner Taylor asked about producer education. Mr. O’Connor said not all agents or producers work in annuities, and conversely annuities are not right for everyone. He said producers need to be well-versed in all products for the right client. Ms. Sellmeyer asked when the IRI research will be available. Mr. O’Connor said it should be published next month.

Mr. Thaisz asked about the research on the hesitation by Americans of converting lump sums into annual income. Mr. O’Connor said their research shows there is some psychological barrier with retirees about taking their lump sum amount of money that they have saved and converting it into long-term annual income. He said there is no quick fix and that it is unclear how to change this barrier.

Jason Berkowitz (IRI) pointed out that the SECURE Act could help with that hesitation. He said this legislation would expand and preserve opportunities to save for retirement and help savers make more informed decisions about their retirement finances.
Brenda J. Cude (University of Georgia) said it is important for the Working Group to look at what is happening now in the area of education. She said that in order to move forward, it is important to know and understand what is being done currently. Karrol Kitt (The University of Texas at Austin) said she would like to participate in that discussion.

Having no further business, the Retirement Security (A) Working Group adjourned.