

LIFE INSURANCE AND ANNUITIES (A) COMMITTEE

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Draft: 7/27/20

Life Insurance and Annuities (A) Committee
Conference Call
July 10, 2020

The Life Insurance and Annuities (A) Committee met via conference call July 10, 2020. The following Committee members participated: Jillian Froment, Chair, Tynesia Dorsey and Peter Weber (OH); Marlene Caride, Vice Chair (NJ); Jim L. Ridling, Yada Horace and Steve Ostlund (AL); Alan McClain represented by Vincent Gosz and Vanessa Darrah (AR); Doug Ommen, Mike Yanacheak, Lindsay Bates and Kevin Clark (IA); Dean L. Cameron and Michele Mackenzie (ID); Vicki Schmidt represented by Julie Holmes, Tate Flott, Nicole Boyd, Craig Van Aalst, Barbara Torkelson and Brenda Johnson (KS); James J. Donelon represented by Rich Piazza, Frank Opelka and Tom Travis (LA); Jon Godfread (ND); Bruce R. Ramge and Martin Swanson (NE); Chris Nicolopoulos represented by Roni Karnis (NH); Barbara D. Richardson (NV); Linda A. Lacewell represented by Mark McLeod, Victor Agbu and Bill Carmello (NY); and Mark Afable (WI). Also participating were: Russ Galbraith (AR); Jodi Lerner, and Perry Kupferman (CA); Eric Unger and Rolf Kaumann (CO); David Altmaier, Chris Struk and Carolyn Diggs (FL); Fred Andersen and John Robinson (MN); Cynthia Amann and Marjorie Thompson (MO); Steve Boston (PA); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Mike Boerner, Rachel Hemphill Raja Malkani and David McElroy (TX); Tanji Northrup and Tomasz Serbinowski (UT); Craig Chupp (VA); and Lichiou Lee and John Haworth (WA).

1. Adopted its Dec. 30, 2019, and 2019 Fall National Meeting Minutes

Commissioner Ridling made a motion, seconded by Commissioner Caride, to adopt the Committee's Dec. 8, 2019 (*see NAIC Proceedings – Fall 2019, Life Insurance and Annuities (A) Committee*) and Dec. 30, 2019 (Attachment One-A) minutes. The motion passed unanimously.

Director Froment said since the adoption of the *Suitability in Annuity Transactions Model Regulation* (#275) via conference call Dec. 30, 2019, questions have come up in the states regarding implementation of the model. She explained that given the second part of the Annuity Suitability (A) Working Group's charge to "[c]onsider how to promote greater uniformity across NAIC-member jurisdictions" and after speaking with Commissioner Ommen, they agreed that it would be helpful for the Working Group to continue to try to develop guidance for the states as they implement the revised model. Director Froment said Commissioner Ommen has graciously agreed to chair this effort. Director Froment said the Working Group is scheduled to meet on July 29 as part of the virtual NAIC Summer National Meeting.

Director Ramge said the Market Conduct Examination Standards (D) Working Group plans to revise the *Market Regulation Handbook* in accordance with the revised Model #275. He asked whether the Working Group should postpone its work until after the Annuity Suitability (A) Working Group finishes its guidance. Commissioner Ommen agreed that it makes sense for the Market Conduct Examination Standards (D) Working Group to hold off for just a few months.

2. Approved the Request for NAIC Model Law Development for Model #805

Mr. Boerner explained that the Request for NAIC Model Law Development for the *Standard Nonforfeiture Law for Individual Deferred Annuities* (#805) arises out of concern with the 1% minimum nonforfeiture accumulation rate, which may be difficult for insurers to achieve in the current very low interest rate environment. He said this Request for NAIC Model Law Development is to revise Model #805 to address this minimum nonforfeiture rate.

Mr. Carmello said he would like to expand the Request for NAIC Model Law Development to address the current cap in Model #805. He explained that while this is not an issue at the moment, during a high interest rate environment in the future, the 3% cap currently in Model #805 could become a problem. He said it makes sense to address both of these issues at this time.

Mr. Gendron said he would like for Life Actuarial (A) Task Force to consider whether the minimum nonforfeiture rate should be something other than 0%, like 0.5%. Mr. Boerner said under the Request for NAIC Model Law Development, the Task Force could also consider other alternatives between 0% and 1%. He clarified that the move to 0% does not mean a company is prohibited from guaranteeing more than that.

Director Froment suggested that the Committee vote on the current Request for NAIC Model Law Development, which is responding to the current situation in the marketplace. She suggested that the Task Force discuss the additional issues raised by Mr. Carmello and Mr. Serbinowski and report back to the Committee with any suggestions regarding additional modifications to Model #805. Brian Bayerle (American Council of Life Insurers—ACLI) said the ACLI would be supportive of having the Task Force look at the cap, but the current Request for NAIC Model Law Development is responding to an urgent need and the cap is not likely to be an issue in the near term. Liz Pujolas (Insured Retirement Institute—IRI) agreed with Mr. Bayerle that revisiting the cap could occur down the road.

Commissioner Richardson made a motion, seconded by Commissioner Caride, to approve the Request for Model Law Development with respect to Model #805. The motion passed unanimously.

3. Adopted Technical Revisions to AG 48

Mr. Boerner said a couple of edits were made to *Actuarial Guideline XLVIII—Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation (Model 830)* (AG 48) that were already made to the *Term and Universal Life Insurance Reserve Financing Model Regulation (#787)*. He said one was a reference change to the *Credit for Reinsurance Model Law (#785)* and another was a reference change to the *Credit for Reinsurance Model Regulation (#786)*. He said AG 48 needs to remain similar to Model #787, as there are situations in which both are needed for some period of time to cover their portion of XXX financing arrangements.

Mr. Ostlund made a motion, seconded by Director Ramge, to adopt technical revisions to AG 48 (*see NAIC Proceedings – Summer 2020, Executive (EX) Committee and Plenary – Attachment Three*) The motion passed unanimously.

4. Adopted Valuation Manual Amendments

Mr. Boerner said there were seven *Valuation Manual* amendments for the Committee to consider. He said they are primarily technical in nature. He said one example involves a reference to the London Interbank Offered Rate (LIBOR), which is scheduled to go away in 2021. He said *Valuation Manual* amendment 2020-06 revises the *Valuation Manual* to be with when LIBOR is scheduled to go away. He said another example is *Valuation Manual* amendment 2020-07, which replaces the 4% floor for the minimum nonforfeiture interest rates with a reference to Internal Revenue Service (IRS) §7702 with which it was originally intended to coordinate. Director Ramge asked if there are any references to LIBOR in any of the NAIC models. Mr. Boerner said he does not know, but the question could be researched.

Commissioner Ommen made a motion, seconded by Commissioner Caride, to adopt the *Valuation Manual* amendments (*see NAIC Proceedings – Summer 2020, Executive (EX) Committee and Plenary – Attachment Four*). The motion passed unanimously.

5. Adopted AG 49-A

Mr. Andersen explained the background behind the development of AG 49-A, which starts with the *Life Insurance Illustrations Model Regulation (#582)*. Model #582 specifies the requirements for life insurance illustrations. Mr. Andersen said insurance companies favor illustrations because they allow the demonstration to consumers of both guaranteed and non-guaranteed elements of life insurance policies. He said an example of a non-guaranteed element is the credited rate on a policy's account value in a given year. He said, for some policies in some products, this credited interest rate is determined at the beginning of a policy year, dependent on the market interest rate and market factors at that time. He said for indexed universal life (IUL) insurance policies, the credited interest rate plays out during a policy year. He said in many cases, it depends on the movement of a stock market index during that year. He explained that if Standard & Poor's 500 index (S&P 500) has a good year, there will be a higher credited interest rate; but if the S&P 500 has a bad year, the credited interest rate might be zero. He said the account might not lose money due to that movement, but it does not gain money in a bad stock market scenario either. He said the question is how these credited interest rates should be illustrated.

Mr. Andersen explained that the Model #582 contemplates constraints on illustrations based on what has recently happened. He said for indexed products, there were concerning practices taking place involving illustrations of what has recently happened, which led to *Actuarial Guideline XLIX—The Application of the Life Illustrations Model Regulation to Policies with Index-Based Interest* (AG 49) being developed in 2015. He said an extreme example of what AG 49 was trying to prevent is risky international stock funds that had a good five-year run being the baseline for an illustration that projects the next 30 years.

He said AG 49 requires that indexed product illustrations show no higher credited rate than is reflected in the S&P 500 over an average of 25-year histories. He said this is to eliminate the cherry picking of a rare risky fund that had a good run for a few years. He said AG 49 also requires side by side, an equally prominent illustration with a more conservative credited rate, so the consumer viewing the illustration sees a good scenario and a worse scenario side by side.

Mr. Andersen explained that in 2018, commissioners became aware of product innovations that were leading to the illustration of even higher credited rates than was contemplated when AG 49 was being developed. The biggest innovation was the multiplier. He said the multiplier results in more downside and more upside than related indexed products seen before. He said in 2018, the Committee charged the Life Actuarial (A) Task Force, which formed the IUL Illustration (A) Subgroup, to address any concerns with these products. Throughout 2019, there were a number of open in-person meetings and conference calls, and key decisions were made. Mr. Andersen said the first decision by the Task Force was to reject a proposal from a coalition of active IUL writers suggesting that adding disclosures would be a sufficient way to address the charge. The Task Force instead decided to take a more conservative approach and place additional constraints on the illustrated credited rates. The second decision by the Task Force was to reject a proposal by a large contingency of companies that suggested that products with multipliers should illustrate more favorably than products without multipliers. The Task Force instead decided to allow products with multipliers to illustrate no more favorably than products without multipliers. The third decision was to add more conservatism in the illustration of policy loans, cutting in half the illustrated benefit of borrowing at a certain rate and illustrating at a rate that was up to 1% higher and under Task Force adoption would now be 0.5% higher.

Mr. Andersen said the general concept behind these issues is selecting a point on the spectrum of allowing innovation on one side preventing loopholes on the other side. He acknowledged that on the Task Force, there were many differing opinions about where on the spectrum of allowing innovation versus preventing loopholes the Task Force should land. He said AG 49-A lands somewhere in the middle, but it is significantly more conservative than AG 49.

Commissioner Ommen spoke in support of AG 49-A. He said this project is critically needed at this time and reflects the knowledge and diligence of the Task Force members. He said AG 49-A is a big step forward for consumers.

Scott R. Harrison (IUL Coalition) said the outcome, while not perfect, does successfully resolve the concerns raised by state insurance regulators. He said that the IUL Coalition still supports disclosures, and there is opportunity to work on enhanced disclosures for innovative products. Mr. Bayerle is supportive of AG 49-A. He said it addresses the issues at hand without stifling innovation. He said that while not perfect, it will be a positive outcome for consumers.

Birny Birnbaum (Center for Economic Justice—CEJ) cautioned the Committee to keep in mind that the purpose of this effort is to reign in unrealistic and deceptive IUL illustrations and prevent insurers from using product designs to juice accumulation values with no real benefits to consumers. He said these are faux innovations. He said this has been an ongoing effort since 2014 when a Kansas survey identified absurdly high crediting rates for IUL products. He said while he appreciates the efforts of the Task Force, he urges the Committee to reject AG 49-A and send it back to the Task Force with clear instructions.

Mr. Birnbaum said AG 49-A was developed under a flawed process orchestrated by industry. He said AG 49-A reflects policy decisions that are fundamentally anti-consumer, and they should have been made by the Committee instead of the Task Force actuaries. He said a high-level task force should be created to address the inherent deceptiveness and over-complexity of current illustrations. He said AG 49-A is too complex to permit any accountability of insurers to consumers or state insurance regulators, and it still creates opportunities to game the guideline.

Mr. Birnbaum identified four major areas of concern:

- 1) The flawed process used to develop AG 49-A was the result of an inappropriate request by the Task Force for the ACLI to coordinate industry to come up with a proposal, effectively giving ownership of the AG 49 rewrite to the very insurers whose practices were causing the problems the Task Force was charged with stopping. Mr. Birnbaum said this resulted in an approach to setting maximum crediting rates that is overly complex, untethered to reality and virtually impossible for regulatory or consumer accountability.
- 2) The Task Force should be directed to work with the Independent Proposal, which was drafted by independent experts who have expertise in the design and sale of IUL and other life insurance products, who have no financial interest in the outcome. Mr. Birnbaum said the Independent Proposal establishes a simpler, more effective and more accountable approach to establishing crediting rates for IUL illustrations.

- 3) The application of any revised protections should apply to all illustrations whether for new policies or for new illustrations on in-force policies regardless of date of issue. Mr. Birnbaum said if the purpose for revising AG 49 is to stop unrealistic illustrations and provide consumers with better information and expectations about how the IUL product will operate and perform, logic dictates that the consumer protections in a revised AG 49 should be available to all consumers.
- 4) The revised AG 49-A must eliminate loan arbitrage that permits illustrations to show premium and finance policy loans as a risk-free way to make money. Mr. Birnbaum said the current AG 49 and proposed AG 49-A permit policy loans to be illustrated with a policy loan interest rate less than the crediting rate for illustrating account value accumulation. He said this is an example of illustrating riskless arbitrage—the consumer can borrow money at one rate and earn a higher rate of return without any risk. He said this allows IUL illustrations to present future loans on the policy as cash disbursements that never need to be paid back because the policy is continuing to earn the constant better-than-loan-interest-rate returns.

Bonnie Burns (California Health Advocates) said she was shocked by the complexity of the illustration that Mr. Birnbaum attached to his comment letter. She said that a person would need to take a class to be able to understand this document.

Director Froment said she has been actively engaged with Mr. Boerner and Mr. Andersen throughout the development of AG 49-A. She said it is clear to her that they have made incredible progress that will have an immediate positive impact on consumers. She said the longer action is delayed, the longer these illustrations will continue the way that they are. She said she recognizes that there is a broader question, and she would like to discuss at the Summer National Meeting the possibility of a new charge to thoroughly review the design and regulation of illustrations and determine what changes, if any, might be needed and what group might be best able to handle the charge.

Mr. Carmello said New York would support taking a fresh look. Commissioner Ommen said he supports moving forward with AG 49-A because there is a need for immediate action. However, he recognizes that a state insurance regulator's work is never done, and he would support further review of illustrations broadly and the Task Force's consideration of aspects of the Independent Proposal, to the extent that they were not considered before.

Commissioner Ommen made a motion, seconded by Commissioner Ridling, to adopt AG 49-A amendments (*see NAIC Proceedings – Summer 2020, Executive (EX) Committee and Plenary – Attachment Five*). The motion passed unanimously.

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

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Draft: 1/6/20

Life Insurance and Annuities (A) Committee
Conference Call
December 30, 2019

The Life Insurance and Annuities (A) Committee met via conference call Dec. 30, 2019. The following Committee members participated: Doug Ommen, Chair, (IA); Stephen C. Taylor, Vice Chair (DC); Jim L. Ridling represented by Steve Ostlund (AL); Keith Schraad represented by Vincent Gosz (AZ); Trinidad Navarro represented by Fleur McKendell (DE); Dean L. Cameron (ID); James J. Donelon (LA); Bruce R. Ramge (NE); Barbara R. Richardson (NV); Linda A. Lacewell represented by Mark McLeod (NY); Jillian Froment (OH); Hodgen Mainda represented by Brian Hoffmeister and Rachel Jade-Rice (TN); and Mark Afable represented by Richard Wicka (WI). Also participating were: Jodi Lerner and Perry Kupferman (CA); Jason Lapham (CO); Jim Walker (FL); Teresa Winer (GA); Amy Beard (IN); Tate Flott and Julie Holmes (KS); Al DeRemigis (MD); Lindsay Laxon (ME); Renee Campbell (MI); Cynthia Amann (MO); Keith Nyhan and Denise Lamy (NH); Jeffrey Rohaly (PA); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Andrew Dvorine (SC); Mike Boerner, Doug Danzeiser and Phil Reyna (TX); Tomasz Serbinowski (UT); and Michael Gerachis (VA).

1. Adopted Revisions to Model #275

Commissioner Ommen explained that during the Committee's meeting at the Fall National Meeting, the Committee directed the Annuity Suitability (A) Working Group to review and consider revisions to the proposed draft appendices to the *Suitability in Annuity Transactions Model Regulation* (#275). He said the Working Group met Dec. 19 via conference call and during that meeting made revisions to the draft appendices (*see NAIC Proceedings – Spring 2020, Life Insurance and Annuities (A) Committee, Attachment ?*). Commissioner Ommen said that prior to this conference call, NAIC staff distributed a draft of proposed revisions to Model #275 reflecting the Working Group's revisions to the appendices during its Dec. 19 call and additional revisions he is suggesting as Committee chair. He suggested that the Committee walk through the draft and discuss his suggested revisions. There was no objection.

Commissioner Ommen discussed the suggested revisions to Section 6A(2)—Disclosure Obligation. He explained that the suggested revisions are being made for consistency with the proposed language for Appendix A. He requested comments. There were no comments.

Commissioner Ommen discussed the suggested revisions to Section 6A(4)—Documentation Obligation. He explained that the suggested revisions to this provision reflect the discussion during the Working Group's Dec. 19 conference call to add an Appendix C.

Commissioner Ommen explained the suggested revision to Section 6A(5)—Application of the Best Interest Obligation to add the word "direct" for clarity. He said that during its discussions of the proposed revisions to Model #275, the Working Group extensively discussed Section 6A(5) and its intent to apply the proposed best interest standard of conduct to any producer who exercises material control or influence in the making of a recommendation and who receives direct compensation as a result of the recommendation or sale. He requested comments. There were no comments.

Commissioner Ommen next discussed the proposed drafting note for Section 6C(2)(h)—Supervision System. He explained that the Utah Department of Insurance (DOI) suggested the drafting note to clarify the intent of Section 6C(2)(h). Director Cameron asked about the provision's intent. Commissioner Ommen explained that Section 6C(2)(h) is intended to require insurers to eliminate certain types of incentives targeted at specific annuities within a limited period. He said Section 6C(2)(h) does not prohibit general incentives regarding sales of a company's products with no emphasis on any particular product. He said the proposed drafting note is consistent with this intent. Gary Sanders (National Association of Insurance and Financial Advisors—NAIFA) suggested the Committee consider amending the drafting note to more closely track the language in Section 6C(2)(h) by deleting the words "that promote" and replacing those words with "based on." Mr. Serbinowski said the Utah DOI has no objection to the suggested revision. After discussion, the Committee accepted Mr. Sanders' suggested revision.

Commissioner Ommen next discussed the suggested revisions for Section 6E—Safe Harbor. He said the suggested revisions to Section 6E are the result, in part, of his discussions with NAIC staff and the U.S. Department of Labor (DOL) staff, particularly with respect to language in Section 6E concerning fiduciaries. He explained that the suggested revision to Section 6E(1) clarifies the general scope of the safe harbor. He said the suggested revisions to Section 6E(4)(b) clarify the scope of the safe harbor with respect to investment adviser representatives. He said the suggested revision to Section 6E(4)(c) to change the

statutory citation from Section 4975(f)(8)(J)(i) of the Internal Revenue Code (IRC) to Section 4975(e)(3) of the IRC also is clarifying. He explained that the initial IRC citation was not wrong, but, as explained by the DOL staff, it was not broad enough to be consistent with Section 3(21) of the federal Employee Retirement Income Security Act of 1974 (ERISA). Director Ramage suggesting adding the language “and any amendments or successor statutes thereto” to Section 6E(4)(c) for consistency with the language in Section 6E(5)(c). There was no objection to his suggestion.

Commissioner Ommen discussed the suggested revisions to the drafting note for Section 6E(5)(b). He said the suggested revisions are clarifying. There was no objection to the suggested revisions. He discussed the suggested revisions to Section 6E(5)(c), which also are a result of his discussion with the DOL staff. He explained that under some provisions in federal law describing fiduciaries, a fiduciary may not have fiduciary duties. He said the suggested revisions address this issue. There was no objection to the suggested revisions.

The Committee next discussed proposed Appendix A—Agent (Producer) Disclosure for Annuities. Commissioner Ommen said Appendix A is based on and was developed by the Working Group to provide guidance on the information to be provided to consumers in accordance with Section 6A(2)—Disclosure Obligation. Director Froment acknowledged and expressed appreciation for the comments received on Appendix A. She said that in reading the comments, she believes many of the suggested revisions have already been extensively discussed, and many are outside the scope of the proposed revisions to Model #275. She reiterated that the Working Group developed the appendices to provide guidance and clarity of expectations for producers. She said the appendices were not meant to be buyer’s guides for consumers.

Commissioner Ommen walked the Committee through the provisions of Appendix A, beginning with its proposed title. Director Froment said she could support the Fixed Annuity Consumer Choice Campaign’s (FACC) suggestion to add the word “insurance” to the title for consistency with the next section in the appendix. There was no objection to her suggestion.

Commissioner Ommen next discussed the next section in the appendix describing the information the insurance producer is to provide in the form. He explained that the Working Group’s revisions to Appendix A included an “Additional Information” section, which required the inclusion of the producer’s National Producer Number (NPN). He said that as part of the Committee chair’s suggested revisions to Appendix A, he has deleted the “Additional Information” section because the information that was to be provided under that section was outside the scope of the proposed revisions to Model #275. He suggested including the NPN in this section. There was no objection to his suggestion.

Commissioner Ommen next discussed the “What Types of Products Can I Sell You?” section. Director Froment said the Working Group extensively discussed this section. She said the purpose of this section is to provide meaningful information to consumers without overwhelming them with too much information and making it lose its meaning. She said she believes the proposed language for this section strikes a good balance. Commissioner Taylor and Commissioner Donelon expressed support for Director Froment’s comments. No revisions were made to this section.

Commissioner Ommen next discussed the section “How I’m Paid for My Work.” He said he is suggesting alternative language to what the Working Group developed for this section, which he believes is more consumer friendly. He asked for comments. Director Froment expressed support for Commissioner Ommen’s alternative language with some minor revisions. There was no objection to substituting Commissioner Ommen’s alternative language for this section for the Working Group’s language. Director Froment suggested deleting “or third parties such as independent marketing organizations” and replacing it with “other sources” and requiring the producer to further describe the other sources of compensation. She said she suggests this revision because consumers typically will not know what an “independent marketing organization” is. She also suggested deleting the word “cash” in the box and replacing it with “above” for clarity. There was no objection to her suggested revisions.

Commissioner Ommen reiterated his reasons for deleting the “Additional Information” section because the information to be included in this section was outside the scope of the proposed revisions to Model #275. There was no objection to deleting the section.

The Committee next discussed proposed Appendix B—Consumer Refusal to Provide Information. No changes were made to this appendix.

The Committee next discussed proposed Appendix C—Consumer Decision to Purchase an Annuity NOT Based on a Recommendation. Director Froment explained that during the Working Group’s Dec. 19 conference call, the Working Group decided it was appropriate to split Appendix B into two appendices with Appendix C being the second appendix because the appendices address the two different situations described in Section 6A(4)—Documentation Obligation.

Commissioner Ommen asked for comments from the Committee on the appendices. Commissioner Richardson asked if it was the Working Group's intent to restrict the appendices, if possible, to one page. Commissioner Ommen said for Appendix A, he believes it could be one page, but there was no specific intent to make it one page. Commissioner Richardson explained that she has seen issues with forms having the acknowledgement and signature on a separate page removed from the substantive language in the form. She suggested adding a drafting note above the acknowledgement and signature lines to instruct insurers that the acknowledgement and signature should be in immediate proximity to the disclosure language. There was no objection to her suggestion.

Director Froment made a motion, seconded by Commissioner Taylor, to adopt the revisions to Model #275 (*see NAIC Proceedings – Summer 2020, Executive and Plenary, Attachment Two*). The motion passed. Alabama, Arizona, Delaware, District of Columbia, Iowa, Louisiana, Nebraska, Nevada, Ohio, Tennessee and Wisconsin voted in favor of the motion. New York voted against the motion.

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

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Draft: 8/14/20

Accelerated Underwriting (A) Working Group
Virtual Summer National Meeting
July 31, 2020

The Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee met July 31, 2020. The following Working Group members participated: Robert H. Muriel, Chair, Bruce Sartain, Vincent Tsang, Litza Mavrothalasitis and Jeff Varga (IL); Grace Arnold, Vice Chair (MN); Jason Lapham (CO); Doug Ommen, Russ Gibson, Lindsay Bates, and Mike Yanacheak (IA); Rich Piazza (LA); Cynthia Amann (MO); Chris Aufenthie, John Arnold and Ross Hartley (ND); Bruce R. Ramge, Rhonda Ahrens and Laura Arp (NE); Lori Barron (OH); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Lichiou Lee (WA); and Mark Afable and Diane Dambach (WI). Also participating were: Katherina Hrouda, Lucy Jabourian, Ted Chang, and Camilo Pizarro (CA); Michele Mackenzie, (ID); Malinda Shepherd (KY); Robert Wake and Sandra Darby (ME); Karen Dennis, Kevin Dyke and Renee Campbell (MI); Bill Carmello, Michael Cebula, Marshal Bozzo, Matt Homer, My Chi To, Seema Shah, Sumit Sud and Avani Shah (NY); Cuc Nguyen (OK); Glenda Villamar (OR); and Doug Slape (TX).

1. Adopted its March 12, Feb. 20, Feb. 6, Jan. 23, and 2019 Fall National Meeting Minutes

Ms. Arnold made a motion, seconded by Commissioner Afable, to adopt the Working Group's March 12 (Attachment Two-A), Feb. 20 (Attachment Two-B), Feb. 6 (Attachment Two-C), Jan. 23 (Attachment Two-D), and Dec. 8, 2019, (*see NAIC Proceedings – Fall 2019, Life Insurance and Annuities (A) Committee, Attachment One*) minutes. The motion passed unanimously.

2. Heard an Update Presentation on the Work of the Working Group

Director Muriel said the rest of this meeting is going to be an update presentation on the progress of the Working Group. He said he is going to review the process the Working Group is following, and Mr. Tsang will review some of the highlights of the information shared with the Working Group.

Director Muriel explained that the Working Group was formed by the Life Insurance and Annuities (A) Committee at the 2019 Summer National Meeting. He said the Working Group was charged to “[c]onsider 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.” He said there are 12 members on the Working Group: himself as chair, Ms. Arnold as vice chair, Colorado, Iowa, Louisiana, Missouri, Nebraska, North Dakota, Ohio, Rhode Island, Washington, and Wisconsin.

Director Muriel said the Working Group held its first coordinating conference call Oct. 2, 2019, and it developed a three-phase work plan. He explained that the first phase is information gathering, the second phase will focus on identifying the issues and deciding on a work product, and the last phase will focus on putting pen to paper. He said the Working Group hopes to have a first draft of its work product by the end of this year, with a final product to the Life Insurance and Annuities (A) Committee by the 2021 Summer National Meeting.

Director Muriel said the Working Group has met 16 times, including its current meeting. He said six of those meetings were in regulator-only sessions held in accordance with the NAIC's Policy Statement on Open Meetings when requests were made to share information involving particular companies or company-specific proprietary intellectual property. He said the Working Group's goal is to maintain as open a process as possible, and it even held both open and regulator-only sessions with the same presenters. He said the Working Group heard presentations from: 1) insurance companies about their accelerated underwriting programs and practices; 2) consulting firms about their experience in assisting companies to build and review accelerated underwriting programs (Deloitte, Risk & Regulatory Consulting LLC, and Milliman); 3) a consumer advocate about consumer concerns regarding the use of accelerated underwriting from a fairness perspective (Center for Economic Justice—CEJ); 4) the American Academy of Actuaries (Academy) about accelerated underwriting from an actuarial perspective; 5) lawyers from two Illinois law firms about data collection and privacy from a legal standpoint (Foley & Lardner LLP and Edelson PC); and 6) a machine learning assurance company about its experience in assisting companies to establish controls and audits for artificial intelligence (AI) (Monitaur).

Director Muriel explained the next steps that the Working Group plans to follow. He said the Working Group plans to form two ad hoc subgroups. He said one is called the Ad Hoc Liaison Subgroup, which will focus on coordinating with the all the other NAIC groups that are looking at related issues; and the other is called the Ad Hoc Drafting Subgroup, which will focus on synthesizing information and making a recommendation to the Working Group on a work product

Director Muriel said he expects that the Working Group will grapple with the answers to at least three questions: 1) whether consumers understand what information can be collected about them and how it can be used; 2) how accelerated underwriting fits into the narrative of avoiding the unfair discrimination of protected classes; and 3) whether the results of accelerated underwriting are transparent to consumers. He said the Working Group plans to have a few more presentations over the next month or so and have a first draft to expose for comment by the end of December. He said a final product should be ready for the Life Insurance and Annuities (A) Committee by the 2021 Summer National Meeting.

Mr. Tsang explained that accelerated underwriting is an emerging platform; and traditional underwriting is still the norm for most applications. He said companies are pursuing accelerated underwriting because it offers many attractive business incentives, such as the potential to save on underwriting expenses, especially for low premium policies like term life insurance where it can take companies several years to break even. Accelerated underwriting is also attractive to companies because when underwriting takes less time, companies can underwrite more policies. Life insurance applicants also benefit from accelerated underwriting because the process can be accomplished entirely online without any invasive blood tests. Mr. Tsang mentioned that companies may give up important medical information in using accelerated underwriting, which may lead to higher mortality risk. He said, unlike traditional underwriting, which is based on the current underwriting manual, accelerated underwriting relies on the reasonableness of its algorithm. He said accelerated underwriting also requires companies to implement additional controls and documentation responsibilities, including disclosures to applicants who receive an adverse underwriting decision.

Mr. Tsang said the use of accelerated underwriting is increasing. He said currently, companies limit which products are eligible for accelerated underwriting; usually term policies with smaller death benefits and younger issue ages are eligible. He said applications outside these limits go through normal underwriting procedures. He said as more companies use accelerated underwriting, there is the expectation that they will also relax their current accelerated underwriting eligibility limitations and allow more applications to go through accelerated underwriting.

Mr. Tsang said with respect to the data used in accelerated underwriting, insurers have the sole responsibility to collect, scrutinize and analyze the input data to ensure that it is accurate. He said some companies, with the help of reinsurers, use third parties to collect data and provide an initial risk analysis. He said some accelerated underwriting programs “triage” applications into separate groups. He explained that under some accelerated underwriting programs, when an applicant is triaged as someone who should go through the remaining accelerated underwriting steps, the algorithm then assigns the applicant a risk score and recommends a risk class. He said a human underwriter reviews that recommendation and may request a blood or urine test even when the accelerated underwriting program recommends otherwise.

Mr. Tsang said the data collected for accelerated underwriting is normally a subset of traditional underwriting data, and it includes a mix of medical and behavioral data, such as: 1) data provided in the life application; 2) an attending physician statement; 3) prescription drug history; and 4) Medical Information Bureau (MIB) info. He said it is important to note that accelerated underwriting programs and its algorithms are assisting, not replacing, human underwriters by collecting data and performing an initial risk analysis.

Mr. Tsang explained that traditional underwriting is considered the gold standard, and each company expects its accelerated underwriting program to replicate the gold standard via back-testing. He said the interactions between the accelerated underwriting program and the human underwriter enable the algorithm to learn from its mistakes and improve via the machine learning process. He explained that back-testing may also identify isolated prior underwriting errors and provide valuable feedback to the human underwriter.

Mr. Tsang explained that accelerated underwriting algorithms are not static. He said most are on their second- or third-generation algorithm, and they continue to change through machine learning processes. He said insurers develop controls and documentation for the first-generation algorithms, but they sometimes place less emphasis on the controls and documentations for later generations. He said it is important that companies continue to perform the checks and balances on all generations of their accelerated underwriting programs.

Besides medical data, some companies believe that behavioral data can also provide important information about an individual's risk profile, especially for younger people. Some examples of the behavioral data collected are gym membership, profession, marital status, family size, shopping habits, wearables and credit scores. Mr. Tsang said if behavioral data is not properly scrutinized, association may be confused with causation and lead to unfair adverse underwriting decisions. For example, a high-income individual is perceived as someone who has excellent medical care. However, a high-income individual may also have the resources for illegal drug use, or a healthy young couple may not have the dispensable income to join a gym but exercise on their own. In that case, lack of a gym membership should not indicate an increased mortality risk. Mr. Tsang cautioned that behavioral data could lead to incorrect conclusions or unintended discrimination.

Mr. Tsang said the Working Group has spoken with only a few major life insurers about their current accelerated underwriting practices, so its findings are not conclusive. He said generally, larger companies have resources to develop their own accelerated underwriting programs. Accelerated underwriting programs require plenty of resources, and they can be expensive. Mr. Tsang said compliance with laws and regulations is the responsibility of a company's chief risk officer (CRO), general counsel, and enterprise risk management committee. Smaller companies may not have the required resources to develop their own programs and rely on external consulting firms to monitor and build controls for their accelerated underwriting programs.

Mr. Tsang said insurers have high expectations for accelerated underwriting programs because of their potential to reduce human errors in data processing and allow human underwriters to spend more time on high value activities. He said the potential for savings is significant for low premium products, such as term insurance. The companies expect that the expense savings, along with the ability to issue more policies, compensates for the potentially higher mortality cost.

Mr. Tsang said based on a 2019 Society of Actuaries (SOA) "Accelerated Underwriting Practices Survey," companies rely mostly on data in the application form and other medical-related data. Some companies also rely on other data such as motor vehicle records, criminal history, credit scores and financial data. Very few companies use data such as electronic health records, wearables, and social media usage. Mr. Tsang said companies are currently using back-testing, random holdouts, post-issue monitoring, and other techniques to examine the accuracy of accelerated underwriting programs. He said peer reviews are also used to test a program's compliance with applicable laws and regulations.

Mr. Tsang said there are several federal laws that may affect accelerated underwriting programs, such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which protects medical data privacy. There is the Fair Credit Reporting Act (FCRA), which protects credit data privacy and prohibits illegal use of credit data. Most recently, at the state level, there is the NY Circular Letter No. 1 issued in January 2019, which outlines the key compliance issues for accelerated underwriting; i.e., integrity of input data, transparency of algorithm, and adequate disclosure). There is also Florida House Bill 1189, which is the first state law that prohibits insurers from using genetic data for underwriting and pricing of life, disability and retirement products.

Mr. Tsang said credit data is not widely used in accelerated underwriting programs today, but that is likely to change over the next decade. He said credit data is popular among the companies that use it, like employers and banks, because it covers most Americans and the data is updated frequently. A few life insurers currently use credit data as an input item for their AU programs. Mr. Tsang said those companies have performed actuarial studies to justify its soundness, actuarially. He said a typical credit report contains about 800 attributes, which include a consumer's employment history, mortgage payment history and rental payment history, among other things. Insurers only use about 50 out of the 800 attributes because many of these attributes are correlated with one another.

Mr. Tsang said using credit score data is controversial, as the distributions of credit scores are quite different among ethnic groups and there is not a lot of information on how companies document their monitoring and control processes for unlawful discrimination. He said the selected attributes are perceived as variables that explain the consumer's behavior. He said the mortality hypothesis is that individuals with high credit scores are expected to have lower mortality risk profiles; but the correlation between mortality and credit score is not absolute. For example, having a high credit score does not shield a person from illness. Mr. Tsang said it is easy to confuse association with causation. He said two items that behave in similar patterns does not mean that one is causing the other. He said while some companies consider credit score as a valuable input to explain mortality risk, some groups challenge this view due to the potential confusion of association with causation. He said credit scores should not be used in isolation, and checks and balances must be employed to minimize the occurrence of unintended discrimination against protected classes. He suggested that one possibility is to use credit data as a supplemental data point rather than a key input variable in order to use it as a check for a negative rather than a check for a positive.

Mr. Tsang said the FCRA protects consumers from illegal uses of their credit scores, and it allows consumers to see their data and challenge the data's validity; but the scope of FCRA is limited, and it does not cover personal information such as credit card purchases, social media usage, and wearables. Consumers do not have an avenue to challenge the validity of non-FCRA data or any adverse decisions that may arise as a consequence. Currently, very few companies use non-FCRA data, but this may change over time. Mr. Tsang highlighted a few questions that state insurance regulators may want to consider, such as whether insurance regulations should be updated to disallow the use of non-FCRA covered data or to provide avenues for customers to challenge the validity of non-FCRA data and its adverse effects.

Mr. Tsang said Birny Birnbaum (CEJ) gave a presentation where he raised a number of concerns regarding the potential for adverse underwriting decisions to unfairly affect minorities. Mr. Birnbaum said: 1) the regulatory framework has failed to keep pace with the market in terms of using big data and AI; 2) the input data used by insurers may have inherited biases, which should be removed or controlled; 3) regulations should promote fairness, and underwriting decisions should not be justified solely on actuarial soundness; and 4) the life industry should promote availability and affordability of insurance products to protected classes and curtail any unlawful discrimination. Mr. Tsang said Mr. Birnbaum also provided some other suggestions, including requiring companies using accelerated underwriting to file their accelerated underwriting programs with state insurance regulators for review, which is consistent with the accelerated underwriting programs for auto and property insurance. Mr. Birnbaum also suggested extending FCRA-type protections to all input data for accelerated underwriting.

Ms. Shepherd asked whether companies are using accelerated underwriting currently. Mr. Tsang said yes, there are large companies developing and using their own accelerated underwriting programs, and smaller companies are working with consultants or reinsurers to develop a template to modify and use. He said right now, about 10% of applications go through accelerated underwriting, but he expects that to increase to around 40% within the next decade. Mr. Birnbaum asked about how the Ad Hoc Liaison Subgroup and the Ad Hoc Drafting Subgroup would be formed and report their work. Director Muriel said the membership for the subgroups is just getting established, but he assured Mr. Birnbaum that the subgroups would hold open meetings to discuss how to develop and report their work to the Committee.

Peter Kochenburger (University of Connecticut School of Law) asked how important it is for accelerated underwriting modelers to be able to plausibly provide a causation analysis as well as a correlation. Mr. Tsang said it is very important that there be some reasoning and rationale provided for why one variable would be causing another, above and beyond observing a pattern or correlation between two variables.

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

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Draft: 5/26/20

Accelerated Underwriting (A) Working Group
Conference Call
March 12, 2020

The Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call March 12, 2020. The following Working Group members participated: Robert H. Muriel, Chair, Mike Chrysler, Bruce Sartain, Fred Moore, Vincent Tsang and Litza Mavrothalasitis (IL); Grace Arnold, Vice Chair, Fred Andersen and John Robinson (MN); Jason Lapham (CO); Russ Gibson and Lindsay Bates (IA); Rich Piazza (LA); Chris Aufenthie and Ross Hartley (ND); Sarah Neil (RI); Lichiou Lee and David Hippen (WA); and Mark Afable, Barbara Belling, Susan Ezalarab, Diane Dambach, Rebecca Rebholz, Mary Kay Rodriguez, Renee Fabry and Richard Wicka (WI). Also participating were: Katherina Hrouda, Perry Kupferman and Pam O'Connell (CA); Wanchin Chou (CT); Jo McGill (ID); Karl Knable (IN) Brenda Johnson and Barbara Torkelson (KS); Renee Campbell (MI); Denise Lamy, Roni Karnis and Karen McCallister (NH); Peter Dumar and Todd Cafarelli (NY); Rachel Hemphill (TX); and Tomasz Serbinowski (UT).

1. Discussed Next Steps

Director Muriel reminded the Working Group and interested parties that the Spring National Meeting is cancelled and plans for having meetings via conference call are underway. He said he has been considering the best way for the Working Group to commence with the next phases of its work plan. He said one idea is to create two subgroups. One subgroup would be a drafting subgroup and another an NAIC Liaison Subgroup. He explained that the drafting subgroup would focus on synthesizing the information received in the presentations and making a recommendation to this Working Group about the type of work product to develop. He said the drafting subgroup could also propose a process for accomplishing the work product. He said the NAIC Liaison Subgroup could focus on ensuring that this Working Group is aware of the work undertaken by all other NAIC groups, past and present, that might be useful. He asked that people with feedback on the subgroups or interest in participating in either subgroup email Jennifer R. Cook (NAIC).

2. Heard Presentations

a. Accelerated Underwriting: Potential Data Collection Methods and Concerns

Director Muriel said the Working Group heard presentations from representatives from two Illinois law firms: Edelson PC and Foley & Lardner LLP. He introduced Shawn Davis (Edelson PC) as the Director of Digital Forensics with Edelson PC and an Adjunct Industry Professor with the Illinois Institute of Technology. Mr. Davis said he was going to focus his presentation on: 1) how consumer data is collected and users are tracked online; 2) issues that may be of concern with accelerated underwriting going forward; and 3) suggestions for possible guidelines or regulations.

Mr. Davis said there are two main types of data collection mechanisms: active data collection and passive data collection. He said active data collection occurs when a consumer knowingly gives information, usually filling out a survey, web registration forms, or social media postings. Passive data collection is running in the background, and it tracks consumers' activity through the use of cookies, IP addresses or MAC addresses, geolocation, browsers, and http headers. Mr. Davis said every time you click on a website, there are third parties that are automatically notified. He explained that his firm uses a network interception proxy to see background network traffic. He gave an example where, in 2018, he went to four websites and clicked on one link on each website, and 192 third parties were contacted by clicking on one link on four sites. He conducted this same test two and a half years later, and 347 third parties were notified.

There is a lot of information being collected and transmitted to third parties in which consumers have no idea. Almost all websites have third-party software code built in, like Google code, Facebook code or Adobe code. Each website will place a cookie on your computer to identify you, or it will read that cookie to see if it is you when you are looking at a site. Whatever pages you click on, the third parties know based on the cookies. Companies also track geolocation, and they are able to do so with a great deal of specificity so they can tell where you are and what you have looked at. This is collected from an app. Geolocation is also collected from people's devices. For example, if you turn on Google maps, Google sees everywhere you have gone. Apple phones also track geolocation, but they do not send the information back to Apple. Facebook also collects information, which is personally linked to you. Educational platforms also collect massive amounts of information in order to implement adaptive learning programs. Health information is another category of information that is collected and shared with third parties. For example, GoodRx provides discounts for prescription drugs, and it sends names of drugs selected for coupons

to Facebook. Mr. Davis said some telehealth apps also disclose medical information to third parties. Financial data is another category of data that is collected. Data is collected every time you swipe your credit card or use a mobile payment application. Then, there are financial transaction data aggregators like Yodlee and Mint. Mr. Davis said these companies provide a service that allows consumers to log on to their accounts and pull transactional data into a single application. Yodlee then sends “de-identified” data to clients to determine risk.

Mr. Davis explained that consumers cannot always trust that their data has been truly de-identified, and he explained that there is a difference between “de-identified” data and “anonymized” data. He explained that data can often easily be “re-identified.” He explained that there are direct identifiers, like name, social security number, driver’s license number, phone number, or email address. There are also indirect identifiers that do not identify someone on their own, but they may when combined; i.e., zip code, age and race. If data has been de-identified, all direct and indirect identifiers are removed from the data, but it contains a unique identifier. The original data collector has a link between the identifier and the identity of the people. The data purchaser does not have the link, and it cannot re-identify people. On the other hand, data is anonymized when all direct and indirect identifiers are removed, and there is no way for either the collector or the buyer to re-identify it. Mr. Davis said there is a false narrative that once information is “de-identified,” it cannot be used to identify people; but companies often remove direct identifiers, and indirect identifiers may remain. He said 87% of people in the U.S can be re-identified with only date of birth, gender, and zip code. He said re-identification of 90% of the people in the U.S. is possible with only four transactional data points from purchases, and both passive and active collectors often collect passive information, such as geolocation. He said an address can be determined from geolocation and a person can be identified.

Mr. Davis said the data is collected by data brokers, and Acxiom is the largest data broker. As of 2018, Acxiom collects over 5,000 data points across 700 million consumers worldwide. Mr. Davis shared some examples of the data points collected: socioeconomic status, economic stability, one of nearly 200 ethnic codes, religion, health interests, alcohol and tobacco interests, casino gaming and lottery interests, details about someone’s home, planning to have a baby, details about banking and insurance policies, media usage, credit card purchases, activities, relationship status, age, gender, education, employment, and number of children.

Mr. Davis said life insurers are starting to look at using data from data brokers to identify risky clients. He said insurers are starting to test mined data from shopping history, social media and magazine subscriptions to identify risky clients. He showed a slide used by a consulting company illustrating how marketing data can be used by life insurers to indicate eligibility for a preferred policy as opposed to additional underwriting. According to the consulting company’s infographic titled, “Can Marketing Data Predict Life Span?,” a sample potential customer “Sarah” is profiled. Sarah reads travel magazines, has good finances, bikes and runs, eats healthy food, and does not watch a whole lot of TV. Based on this profile, Sarah should be actively pursued for new business and retention, and the insurer should quickly issue her a preferred policy without additional underwriting. In contrast, a sample potential customer “Beth” is also profiled. Beth has a long commute, has had a bankruptcy, frequently eats at McDonalds, bought a treadmill, and watches a lot of TV. Based on this information, the recommendation is not to send Beth any offers, not to pursue aggressive retention efforts, and to collect more information to review before offering Beth a policy. Mr. Davis said another area is mailing lists. Mailing lists can be bought based on specific information. A purchaser can sort for information, like religion, ethnicity and income level to generate a leads list.

Mr. Davis discussed potential concerns with using this data. He explained that there is the Fair Credit Reporting Act (FCRA) that has jurisdiction over consumer reporting agencies’ (CRA’s) use of data. CRAs are companies whose primary purpose is to collect info and provide consumer reports. Under the FCRA, people have the right to be told if information in a consumer report is used against them in order to deny an application for insurance. Under the FCRA, consumers have the ability to request the data that a CRA possesses, including credit reports, and it provides consumers with the ability to dispute incorrect information. Under the FCRA, consumers are able to see everyone that has accessed their credit report. The FCRA has jurisdiction over 400+ CRAs, including credit bureaus and companies that screen tenants. However, the FCRA requirements do not apply to companies that are not CRAs. The new types of data that insurance companies are looking to use in accelerated underwriting, such as purchase data, web history data, geolocation from mobile apps, driver data from apps, facial and behavioral analytics, social media data, fitness data from wearables, electronic health records, and genetic data are not covered under the FCRA. Consumers do not have the right to be advised of any adverse action taken in reliance on this data, nor is there a mechanism to dispute potential inaccuracies. Mr. Davis said it is very difficult for insurance companies to know if this data is accurate. He gave several examples of the potential for non-FCRA data to be inaccurate. For example, he said an individual who purchases alcohol for clients in a sales job could incorrectly be added to an “alcoholic” profile in a data broker list. Another example is facial analytics that scans people faces to detect medical conditions or whether someone might be a smoker. Facial analytics may not detect plastic surgery, which could improve approvals for wealthy individuals or the facial analytics algorithm may incorrectly categorize a person as a smoker due to crow’s feet and under eye bags when they may be stressed or tired.

Wearable devices may inaccurately sense heart rate or oxygen levels and falsely categorize someone as a potential heart attack risk. Web use inaccuracies may result from search data or social media. Mr. Davis gave the example of a wife researching her husband's cancer or joining a network cancer group, resulting in the wife being added to a data broker cancer risk profile. Another example is mobile applications flagging an individual who frequently drives near medical offices as a risk due to mobile app geolocation data. Another example is posting a happy hour on Facebook and getting flagged as a potential alcohol abuser.

Mr. Davis said another concern is discrimination. He explained that insurance by nature discriminates based on things like health, age and gender. However, insurance should not discriminate based on an individual's race, religion or beliefs, national origin, employer, sexual orientation, geography or disability. It is possible that algorithms may inadvertently be causing additional medical underwriting at a higher rate for protected classes of people. Artificial intelligence (AI) and machine learning may make unintended decisions or adapt models without an insurance company realizing. Some examples of this include an algorithm that may inadvertently evaluate skin tone during facial analytics and flag race or an algorithm may flag minorities or LGBTQ persons due to the types of magazines read or TV shows and movies watched. An algorithm might also flag individuals as a risk due to geolocation data for an area that is tied predominantly to a particular race or national origin.

Based on the potential for inaccurate conclusions and inadvertent discrimination to be based on non-FCRA data, Mr. Davis suggests that state insurance regulators consider guidance or regulations for: 1) transparency of risk algorithms used to departments of insurance (DOIs); 2) prohibiting the use of non-FCRA data or requiring similar adverse action reports as required under the FCRA; 3) transparency to consumers when non-FCRA data is used; 4) auditing or evaluating new technologies, such as facial analytics and wearables, for accuracy; 5) ensuring that re-identification methods are not used for purchased data where consumers were originally told data was de-identified or anonymized.

b. Changing Legal Landscape: Privacy Developments

Jennifer Urban Rathburn (Foley & Lardner LLP) gave a presentation on privacy developments affecting the insurance industry. She explained that the current debate focuses on the merits of a comprehensive legal privacy regime versus allowing industry and companies to self-regulate. She said there is a strong trend towards more sweeping privacy legislation at the international, federal and state levels. Some examples include New York's cybersecurity regulation for financial services companies (23 NYCRR 500), the European Union's (EU's) General Data Protection Regulation (GDPR), Nevada's privacy law, and the California Consumer Privacy Act (CCPA), which have all been enacted in the last five years.

Ms. Rathburn said her presentation is based on providing guidance to companies to address the privacy laws that are emerging. She said her presentation describes how companies can best comply with new legal requirements. She said there is a lot of focus on how different privacy laws affect the insurance industry and how companies can comply with all these varying regulations. She said companies should look at things from a policy and competitive perspective. Separate from the laws that are being enacted, consumers are becoming increasingly concerned about how their information is being accessed and used. Ms. Rathburn said companies want to be responsive to these concerns and transparent regarding how they use data.

Ms. Rathburn said companies can gain a competitive edge by having robust privacy programs in place. She said a recent study showed that companies enjoyed significant returns on their investments in privacy systems. She said as new legal regimes emerge, there are best practices that companies can put into place to prepare for compliance. She said companies need to make it a priority to know the data they are using and to have processes and mechanisms in place to respond to individual rights, whether an individual wants to access, correct or delete information. She said having a privacy notice that complies with the legal requirements that are in place for such notices in a state is critical. She said companies should regularly review and update their privacy practices, privacy notices, as well as regularly update any third-party contracts in which protected information is shared. She said part of knowing their data is staying up to date on legal developments and classifying data based on its sensitivity in regard to the applicable legal requirements. She said companies should develop procedures for processing an individual's rights under the legal regime, including developing model consents and training employees on how to handle requests within the required deadlines.

Ms. Rathburn said when state insurance regulators are looking to develop models, they need to keep in mind not only what they are most concerned about, but also how the insurance company is using data and their continued operations.

Mr. Sartain asked about transparency and whether Ms. Rathburn was aware of any laws addressing how authorizations should specify where data is being collected from. Ms. Rathburn explained that authorizations usually address a company's use and subsequent disclosure of information. She said a company's privacy practices should list what data a company is collecting.

Mr. Davis said a few states have laws covering transparency; but in the majority of cases, consumers are not aware of what information is being collected and used. He said he anticipates that laws will be drafted to cover this issue, and he expects nationwide laws addressing the use of data collection to be enacted.

Director Muriel asked Mr. Davis if it is his understanding that life insurance companies are currently using non-FCRA data. Mr. Davis said that his understanding, based on white papers, is that insurers are not using non-FCRA data currently to deny applications, but they may use the data to decide who to market to or whether to refer an application for additional underwriting. He said his impression is that companies are hesitant to use non-FCRA data, but they are very interested in doing so in the future.

Peter Kochenburger (University of Connecticut School of Law) asked what changes companies may be contemplating to improve how they obtain consumer consent. He said online disclosures are generally problematic, and consent, practically speaking, is often a fiction because few people actually read and understand consent forms or privacy notices. Ms. Rathburn said, in her opinion, the consent process and privacy notices are just getting more confusing, but companies are trying to address this issue. She said some companies are developing summaries that outline a company's general data use principles. She said layered notices are also common where checkboxes are utilized to verify that a consumer has read a notice, but there is not a standard, consistent practice. She said things are still in flux, but companies are hoping to develop shorter summary notices that consumers will be better able to understand.

Ms. Mavrothalasitis followed up on Mr. Sartain's question and asked how to make consumers aware that information from their phones or social media accounts may be used by insurers when they apply for a policy. For example, she said social media accounts or applications on iPhones have consents, and she discussed whether a third party with shared information should also have to obtain consent, or at least highlight to a consumer where they are getting their data from. Mr. Davis said an application will often prominently state that they will not disclose data to third parties, but the fine print says they will share "de-identified" or "anonymized" data, which in some cases can be "re-identified." Ari Scharg (Edelson) said when a company gets consent to use data for a specific purpose, it needs to be articulated and identified in their privacy policy. He said this type of usage of data would have to be identified in the privacy policy.

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

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Draft: 3/12/20

Accelerated Underwriting (A) Working Group
Conference Call
February 20, 2020

The Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Feb. 20, 2020. The following Working Group members participated: Robert H. Muriel, Chair (IL); Grace Arnold, Vice Chair (MN); Jason Lapham (CO); Russ Gibson (IA); Rich Piazza (LA); Cynthia Amann (MO); Chris Aufenthie (ND); Matt Holman (NE); Jillian Froment and Mark Hamlin (OH); Elizabeth Kelleher Dwyer represented Sarah Neil (RI); David Hippen (WA); and Mark Afable represented by Sue Ezalarab (WI). Also participating was: Wanchin Chou (CT).

1. Heard a Presentation from the CEJ

Director Muriel said the purpose of the Working Group's call is to hear a presentation from the Center for Economic Justice (CEJ), but before the presentation, he wanted to discuss the Working Group's next steps. He said he understands that some states have reached out to Deloitte to seek their comments on the reviewing, auditing and testing of a life insurer's accelerated underwriting program. He explained that as discussed during the Working Group's Feb. 6 conference call, the Working Group has scheduled a few more companies, law firms, the American Academy of Actuaries (Academy), and other speakers to present during future Working Group conference calls on actual company accelerated underwriting practices, legal, and compliance issues. He said the Working Group's objective is to provide state insurance regulators with a more in-depth understanding of, not just a theory, but the practical aspects of accelerated underwriting. He said following that discussion, the Working Group would discuss the auditing, reviewing and testing issues related to accelerated underwriting. He said the Working Group plans to reach out to Deloitte to have it present to the Working Group during its April 2 conference call on topics such as the auditing, reviewing and testing of a life insurance accelerated underwriting program, as well as its experience related to these topics. He urged Working Group members to contact him or the Working Group's vice chair if anyone has any questions about the Working Group's next steps and its objectives.

Birny Birnbaum (CEJ) discussed consumer protection issues related to accelerated underwriting in life insurance (AUW) and regulatory actions needed to address them. He said accelerated underwriting is the application of big data analytics (BDA) in insurance based on the data mining of massive databases with consumer information coupled with predictive modeling, and it has been used by property/casualty (P/C) insurers since the early 1990s. He said that given this, there is a lot of information and experience available to state insurance regulators to review related to BDA and its use with respect to AUW.

Mr. Birnbaum described what types of consumer data are used for certain types of BDA applications. He also discussed the historical and current regulatory oversight over the data and the algorithms used by insurers, explaining why insurers' use of BDA represents a challenge to state insurance regulation and consumer protection. He said insurers' use of BDA has a huge potential to benefit consumers and insurers, but it also has huge implications for fairness, access and affordability of insurance and for state insurance regulators' ability to keep up with the changes and protect consumers from unfair practices. He said the current insurance regulatory framework generally does not provide state insurance regulators with the tools and resources to effectively respond to insurers' use of big data. He noted that "free-market competition" alone cannot and will not protect consumers from unfair insurer practices. Regulatory modernization is needed to protect consumers, which is even more important for AUW because state insurance regulators do not even have the tools that have been developed for P/C insurance.

Mr. Birnbaum said insurers are using and have used BDA for more than predicting claims, such as fraud detection, price optimization and personalization. He provided a historical background on such use beginning in 2005 with Allstate using BDA algorithms with credit scoring. He described the current regulatory framework and how it has been challenged in the era of BDA. He detailed the regulatory structure in place from its beginnings as the old school era of big data and how that framework has moved to the new school era of big data with limited regulatory oversight and the ability of state insurance regulators to address certain issues, such as disparate impact issues.

Mr. Birnbaum described how BDA models are developed by comparing historical univariate analysis versus modern multivariate analysis, explaining their strengths, limitations and challenges. He said understanding the difference between historical univariate analysis and modern multivariate analysis is essential to understand consumer protection issues, and he needed regulatory response to insurers' use of BDA. He discussed algorithmic bias and its causes and remedies. He said insurers' use of BDA increases the potential for proxy discrimination and disparate impact. He highlighted the New York Department of Financial Services' Circular Letter to insurers on the use of external consumer data and information sources in

underwriting for life insurance and a provision from the NAIC's *Market Regulation Handbook* on the issue of disparate impact on protected classes. He discussed changes needed to modernize the current regulatory framework to address these issues by providing state insurance regulators with the necessary regulatory tools, resources and techniques to examine disparate impact. He said such modernization needs to generally include new or revised NAIC models, particularly for life insurance that: 1) establish principles and values for insurers' use of BDA; 2) require routine reporting by insurers and publication by state insurance regulators of types, sources and uses of data by insurers; 3) require advisory organization oversight of vendors providing algorithms for marketing, pricing and claims settlement; 4) require filing and regulatory review of underwriting guidelines and/or tier placement factors, rating plans and algorithms; and 5) provide explicit recognition of disparate impact against protected classes as unfair discrimination in marketing, pricing and claims settlement with safe harbors for practices that assess and minimize disparate impact without compromising cost-based pricing.

Mr. Gibson asked Mr. Birnbaum about disparate impact and disparate intent. Mr. Birnbaum explained the differences between the two. He said disparate intent occurred in the past when insurers intentionally discriminated against consumers with their use of race-based pricing and underwriting. He said disparate impact refers to unintentional discrimination or proxy discrimination, such as the use of criminal history in pricing and underwriting. He said the issue, particularly in this era of multivariate analysis is to recognize the possibility of disparate impact, identify it, and minimize it. Mr. Hippen asked Mr. Birnbaum if he had any recommendations to help to ensure that state insurance regulators stay abreast of what is going on in the marketplace with AUW. He said the first step is for state insurance regulators to establish their values and principles for using BDA. The second step is to make sure the state's laws are current with respect to the regulatory authority needed to meet the established values and principles. He said the last step is ensuring that the state department of insurance (DOI) has the necessary regulatory resources, such as DOI employee skill sets, needed to analyze multivariate analyses and algorithms to help ensure that insurers are complying with the state's values and principles for using BDA.

Mr. Chou discussed what has been occurring on the P/C insurance side with respect to BDA and its application to the life insurance side. He also asked how state DOIs can address the issue of limited regulatory resources. Mr. Birnbaum reiterated some of the suggestions that he offered for regulatory modernization to address issues in the new era of AUW. He suggested that state insurance regulators may want to leverage the Interstate Insurance Product Regulation Commission (Compact) to address the limited regulatory resources issue.

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

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Draft: 2/26/20

Accelerated Underwriting (A) Working Group
Conference Call
Feb. 6, 2020

The Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Feb. 6, 2019. The following Working Group members participated: Robert H. Muriel, Chair, Patrick Hyde, Erica Weyhenmeyer, Vincent Tsang and Bruce Sartain (IL); Grace Arnold, Vice Chair, and Fred Andersen and John Robinson (MN); Jason Lapham (CO); Russ Gibson and Lindsay Bates (IA); Rich Piazza (LA); Cynthia Amann, William Leung and Camille Anderson-Weddle (MO); Chris Aufenthie and Ross Hartley (ND); Jillian Froment, Peter Weber and Mark Hamlin (OH); Sarah Neil (RI); and Rebecca Rebholz and Lauren Van Buren (WI). Also participating were: Perry Kupferman, Katherina Hrouda and Pam O'Connell (CA); Wanchin Chou and Andrew Greenhalgh (CT); Michele MacKenzie (ID); Karl Knable (IN); Barbara Torkelson and Tate Flott (KS); Maile Campbell (NV); Mark McLeod and Peter Dumar (NY); Cuc Nguyen (OK); Tracy Bixler (PA); Rachel Hemphill (TX); and Tomasz Serbinowski (UT).

1. Discussed its Work Plan

Director Muriel asked for feedback on the focus of the Working Group's efforts so far. He reminded the Working Group that Deloitte Consulting gave a presentation during the Working Group's Jan. 23 conference call. He said he is working on scheduling presentations for the coming weeks with another consulting firm, a consumer advocate, two life insurance companies and a law firm. Ms. Arnold said that she has found the presentations helpful in understanding how accelerated underwriting (AUW) fits in a broader context.

Director Muriel said that some presenters have proprietary and confidential information to share and would like to do so in a regulator-to-regulator session. He explained that in keeping with the NAIC's open meetings policy, the Working Group is able to grant these requests on a case-by-case basis if they involve particular companies and company-specific proprietary intellectual property. He said he wants everyone to know that the Working Group plans to keep presentations in open session as much as possible and will strive to meet in regulator-to-regulator session when necessary to protect proprietary and confidential information.

Director Muriel clarified the Working Group will not be delving into the actuarial aspects of AUW. He explained that the Working Group's charge contemplates coordination with the Life Actuarial (A) Task Force, and the Working Group will not be duplicating their work. He said that the Working Group plans to focus on unlawful discrimination, privacy, transparency and disclosure in the context of AUW. He said the intention is for this focus to lead to an end product that satisfies the concerns of consumers, state insurance regulators and industry alike.

Birny Birnbaum (Center for Economic Justice—CEJ) said he agrees with the Working Group's stated focus and suggested adding a presentation about state efforts in this area, like the Illinois Biometric Protection Act (BIPA) and the genetic discrimination legislation in Florida. Mr. Tsang said he would ask the law firms he has been in contact with to address these topics in their presentations. Ms. Hemphill said it is not possible to completely separate topics like unfair discrimination from actuarial issues and suggested that there are Society of Actuaries (SOA) resources that would be helpful to the Working Group. Mr. Leung suggested that the Working Group review the Casualty Actuarial and Statistical (C) Task Force's *Regulatory Review of Predictive Models* white paper. Mr. Robinson asked whether genetic testing information is part of the AUW process and questioned whether it is an issue within the scope of the Working Group. Mr. Sartain said he had the same question. He said it is not clear what types of external data insurers are using and whether it may include Ancestry or 23andMe data.

David Leifer (American Council of Life Insurers—ACLI) said the decision of whether to tackle this topic in this Working Group is up to the state insurance regulators, but he said that life insurers do not use Ancestry or 23andMe data. He said any genetic information would be found in an individual's medical file. He said that a ban on the use of all genetic information is stunningly controversial. He suggested focusing on transparency and disclosure. He said that genetic information and credit score data is being dealt with elsewhere. Mr. Birnbaum said he hopes that the Working Group will develop principles and approaches to deal with AUW, regardless of the data source, in a uniform way across the country. Brendan Bridgeland (Center for Insurance Research—CIR) said that consumers are not sure what data is being accessed when they apply for life insurance. He said the presentations have mentioned the types of data used, but also include an "other data" catch-all category. He said he understands the desire to protect proprietary information about a specific algorithm, but from a transparency perspective, this is important information for consumers to have. He said that to the extent that genetic information is increasingly available, it

is important to consider it along with everything else that may be available and accessed. Director Muriel said the Working Group would continue to consider and discuss this issue.

Director Muriel summarized the topics he would like future presentations to address: 1) data sources, their legitimacy, privacy and embedded biases of the data, if any; 2) transparency and development of the algorithm; 3) accuracy verses fairness; 4) disclosure of AUW results to consumers; 5) implementation issues; and 6) controls, governance and data warehousing. He said two law firms have been contacted to present to the Working Group. He said one will be talking about discrimination from a legal perspective, and the second will cover cybersecurity. He said the Working Group will plan to coordinate with the NAIC working groups that are also working on related issues. He said he wants to make sure the different workstreams are coordinating.

Director Muriel asked for feedback on what the Working Group's work product should be. He said the default seems to be a white paper that would be for state insurance regulators, industry and consumers. Ms. Neil suggested that the Working Group revisit what was going on in the Big Data (EX) Working Group that precipitated the referral to the Life Insurance and Annuities (A) Committee. Jennifer Cook (NAIC) said she would circulate excerpts from the minutes of the Big Data (EX) Working Group. Director Muriel asked the Working Group to think about what work product the Working Group should develop.

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

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Draft: 2/12/20

Accelerated Underwriting (A) Working Group
Conference Call
Jan. 23, 2020

The Accelerated Underwriting (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Jan. 23, 2020. The following Working Group members participated: Robert H. Muriel, Chair, Mike Chrysler, Linda Bryant, Vincent Tsang and Bruce Sartain (IL); Grace Arnold, Vice Chair, and John Robinson (MN); Jason Lapham (CO); Russ Gibson and Lindsay Bates (IA); Rich Piazza (LA); Cynthia Amann, William Leung and Camille Anderson-Weddle (MO); Ross Hartley (ND); Matt Holman (NE); Jillian Froment and Mark Hamlin (OH); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); David Hippen (WA); and Diane Dambach; Mary Kay Rodriguez, Sue Ezalarab, Rebecca Rebholz and Lauren Van Buren (WI). Also participating were: Jacob Lauten (AK); Perry Kupferman, Katherina Hrouda and Pam O'Connell (CA); Andrew Greenhalgh (CT); Karl Knable (IN); Barbara Torkelson and Tate Flott (KS); Denise Lamy, and Karen McCallister (NH); Seong-min Eom (NJ); Annette James (NV); Cuc Nugyen (OK); Mark McLeod and Bill Carmello (NY); Brian Hoffmeister (TN); Mike Boerner (TX); Tomasz Serbinowski (UT); and James Young (VA).

1. Discussed its Work Plan

Director Muriel reminded the Working Group that the work plan contemplates the Accelerated Underwriting (A) Working Group progressing through three phases in order to complete its charge by the 2020 Fall National Meeting. The first phase is the information-gathering phase, which started with a presentation at the 2019 Fall National Meeting from Patrick L. Brockett (The University of Texas at Austin). Director Muriel said that this phase is scheduled to continue until the Spring National Meeting and that he is in the process of scheduling additional presentations for every other Thursday to explore this topic from different perspectives. He said Chris Stehno (Deloitte Consulting LLC) is giving the presentation on this conference call.

Mr. Stehno said Deloitte started helping clients with accelerated underwriting (AUW) in 2007. He explained that Deloitte called it “application triage” and that it came out of the realization that the number of people purchasing life insurance was declining. He said that the number of individual life and annuity policies sold has dropped significantly, while the face amounts of the policies sold has increased—indicating that just the wealthy are buying life insurance. He said the mechanism for selling life insurance—through agents earning a commission—has not evolved over the years. He said consumers’ buying preferences have changed and that the channels for selling insurance have not. He said agents cited the fact that the same number of hours is required to sell a policy, regardless of the size of the policy. He said it became clear that traditional sales methods, cumbersome and time-consuming risk assessment processes, and unacceptable commissions all have contributed to the declining numbers of middle-income people buying life insurance.

Mr. Stehno said Deloitte undertook protective value studies, where the company looked at whether paramedical exams and fluid collections are always necessary. He said Deloitte was trying to determine if there is a type of person that can be identified where there are diminishing returns for going through the paramedical exam and fluid collection. He explained that predictive analytics were being used to triage applications, identifying certain healthy applications for whom selected medical underwriting requirements can be waived. He said that Deloitte determined that out of the individuals that apply for life insurance, 30% to 40% are able to go through AUW. Most companies use a binary rule (such as policy face amounts or the age of applicant) in combination with an algorithm to determine if they can be waived out of traditional underwriting.

Mr. Stehno explained the application triage process used to determine if an application can skip traditional underwriting. He said illustrative eligibility criteria, a detailed build chart and disqualifying major medical conditions criteria are applied in the initial step of identifying eligible and healthy applicants. He said if the application met this linear criteria, then the company will query third-party data sources—such as Medical Information Bureau (MIB) records, motor vehicle records (MVRs), prescription drug (Rx) records and electronic health records (EHRs)—and apply an underwriting filter to that information to determine if the applicant needs to go through traditional underwriting. If the application does not go to traditional underwriting at this point, the applicant will go through a telephone interview, at which time additional underwriting filters are applied. If the application is not kicked to traditional underwriting after the phone interview, the data collected to that point is processed by predictive model. He said each application then receives a health score and reason code. Then a policy is issued within 24 to 48 hours without going through medical underwriting. About 40% of policies applied for are issued without medical underwriting. The remaining 60% of applications go through traditional underwriting. He said about 75% of the policies eligible for AUW are life insurance policies.

Mr. Stehno said that Deloitte has found that transparent and open algorithmic solutions provide for a better agent/customer experience as “reason codes” can be easily developed to share algorithm details at the appropriate level to the appropriate person. He said that applying application triage using application data, MIB, MVR, Rx and other 3rd party data, together with underwriting rules established by the insurer, often provides results that are similar to fully underwritten decisions for a significant portion of the business – predominantly the higher scoring segments. He explained that application triage does not result in an adverse action because they will either go through accelerated underwriting or traditional underwriting.

Mr. Stehno explained that most all large and mid-sized companies have established data analytics practices. He said over a dozen companies have some form of AUW in the marketplace. He said some reinsurers, data vendors and consulting firms are now offering “industry” algorithms and risk scoring. He said electronic health records are complementary to AUW and are now widely used. He explained that there are many opportunities for expanding the use of data analytics in life insurance, such as use in: producer optimization, product design and pricing; sales and marketing; new business and underwriting, inforce management; and claims and fraud.

Director Muriel asked Working Group members and interested regulators to reach out to industry in their states to get feedback on their expectations for this Working Group.

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

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Draft: 6/16/20

Annuity Disclosure (A) Working Group
Conference Call
March 13, 2020

The Annuity Disclosure (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call March 13, 2019. The following Working Group members participated: Mike Yanacheak, Chair, and Kim Cross (IA); Chris Struk (FL); Julie Holmes, Craig Van Aalst and Shannon Lloyd (KS); Nour Benchaaboun (MD); John Robinson (MN); Andrew Schallhorn and Cuc Nguyen (OK); Matt Gendron and Sarah Neil (RI); and Doug Danzeiser, Sandra Dodson and Lynn Pazdral (TX). Also participating were: Steve Ostlund (AL); Dave Lathrop (AZ); Carrie Couch and Marjorie Thompson (MO); Denise Lamy (NH); Andrew Dvorine (SC); David Hippen (WA); and Susan Ezalarab (WI).

1. Adopted a Revision to Section 6F(9)(b)(i) of Model #245

Mr. Yanacheak said that since the in-person Spring National Meeting has been postponed due to COVID-19, the Working Group finds itself with additional time to address any outstanding issues. He said that most of the Working Group members he has spoken with over the past few days think that the language in the Jan. 24 draft revisions to the *Annuity Disclosure Model Regulation (#245)* (Attachment Three-A) could be improved. The American Council of Life Insurers (ACLI) submitted a comment letter on this draft. Robbie Meyer (ACLI) summarized the ACLI comment letter. She said the ACLI remains concerned with the language of Section 6F(9)(b)(i) in the draft, which states: “The index is a combination of indices, made up of stocks, bonds, futures, commodities, interest rates, or exchange traded funds, each of which has been in existence for at least fifteen (15) years.”

Ms. Meyer said ACLI is concerned that this language would inadvertently undercut robust and understandable disclosures for consumers. She said the language is ambiguous as to whether each listed component needs to have been in existence for 15 years and whether each of the listed components needs to be an indice. She said this requirement would prohibit illustration of many nontraditional indices of fixed indexed annuities that have been approved for sale and in the market and that are constructed from financial components, such as exchange-traded funds (ETFs) or futures, that are not indices. Ms. Meyer said the ACLI suggests the following revision: “The index is comprised of indices, stocks, bonds, futures, commodities, interest rates or exchange traded funds, each of which has been in existence for at least fifteen (15) years.”

The Working Group discussed the ACLI’s suggested revision to Section 6F(9)(b)(i). Mr. Robinson said he has discussed this issue with the ACLI, as has Mr. Benchaaboun and Mr. Van Aalst. They all said they would support the ACLI language. Ms. Neil said she struggles with what steps are taken by companies to ensure that a consumer understands what goes into these indices. She said fixed indexed annuities (FIAs) typically attract a more traditional investor, but these types of indices contain elements that require a higher level of sophistication than a typical FIA. Mr. Robinson agreed that this is an issue and that maybe the Working Group should discuss how to tell the consumer about what makes up an index. However, he said he does not consider that question to be affected by the language change being discussed.

Mr. Schallhorn pointed out that there is a requirement to illustrate a high 10 years and a low 10 years, so consumers will be shown a possible upside and a downside. Ms. Neil explained that, in her view, if the suggested language opens up what financial products can comprise an index, she wants to be sure that proper steps are taken to ensure that consumers understand these financial products that comprise the index.

Birny Birnbaum (Center for Economic Justice—CEJ) followed up on Ms. Neil’s concerns and said the ACLI’s proposed revisions do more than simply say what financial products can be part of an index. He said this change allows the illustration of something that was not previously allowed to be illustrated because it had not been in existence for the requisite period of time. He said the biggest concern with this change is that it encourages data mining for certain historical results to create products that illustrate well. Mr. Birnbaum said there is no consumer demand for products with indices that consumers have never heard of and do not understand. He said just because a product is already in the marketplace does not mean it is a good product that should be illustrated. He said this language creates a situation that amounts to an invitation to data mine recent historical experience to produce a favorable illustration for the past 15 years, but it is not likely to produce the same results going forward. He said that is inherently misleading.

Mr. Birnbaum also said that the revisions allow for gaming of the illustration. He shared the following example to illustrate his point. He said if there is an index that is comprised of five financial instruments and only one of the instruments has been in existence for only 15 years, while the rest have been in existence for 20 years, the illustration of the index will only look back 15 years. He said this allows for a company to create an index to limit the look back to 15 years when a look back to years 16–20 would harm the illustration. Mr. Birnbaum suggested that 6F(9)(b)(i) should be revised to require each financial instrument to have been in existence for at least 20, but preferably 30, years.

Ms. Meyer said the ACLI believes that customers understand these products. She conceded that it is difficult to ensure understanding, but the more information consumers get, the more likely it is they will understand. She said prohibiting the illustration of a number of products that are already in the marketplace is in conflict with consumer education. She said that if a product has been approved, it should be able to be illustrated. She said if there are issues with these products that have been approved, this project addressing illustrations is not the most effective context to address those concerns.

Mr. Birnbaum said the ACLI says it is committed to consumer understanding, but he questioned that assertion based on the ACLI's opposition to other provisions in the model that would require disclosure to consumers about how the index is calculated. Mr. Birnbaum also said that the idea that more information is always better is false. More information does not equate to consumer understanding. He said consumers need information that will help them understand. He said illustrations are not needed to explain a product. He said illustrations create a false impression that past performance is an indication of future performance, which it is not. He said in this way, illustrations accomplish the opposite of consumer understanding. He said the goal is to stop misleading illustrations and force companies to explain their products in ways that consumers understand.

Mr. Birnbaum also said that the ACLI suggested revision is incorrect when it states that “[t]he index is comprised of indices, stocks, bonds, futures, commodities, interest rates, or exchange traded funds...” He said an index is not comprised of components, it tracks the performance of something. The Working Group discussed whether language that says “the index is an instrument that tracks the performance of indices, stocks, bonds, futures, commodities, interest rates or exchange traded funds...” is more accurate than saying the index is “comprised” of something. Mr. Robinson said Mr. Birnbaum's suggested language speaks to what an index does, which is not a definition. He said that the language the ACLI suggested is an accurate way to describe an index—that the index is a weighted average of something, describes what it is, to say that it tracks something and describes what it does. Mr. Gendron said 6F(9)(b)(i) talks about a “combination of indices,” and 6F(9)(b) (iii) speaks to “any algorithm or other method of combining the indices,” which explains what it means to “combine” the indices. He conceded that these are not exactly definitions, but that is the practical effect, so he is OK with the language.

Mr. Benchaaboun pointed out that 6F(9)(b)(iv) states that the algorithm must be made available to insurance commissioners, which means that the insurance departments will have the ability to approve the algorithm at the time of the product filing. Mr. Gendron said he is concerned with relying on the insurance commissioner's ability to approve an algorithm at the time of filing. He said he is not aware of any insurance departments that have standards for reviewing indices. He said he asked the Interstate Insurance Product Regulation Commission (Compact), and he learned that it has form filing requirements but no vetting or standards by which indices are measured. Mr. Gendron said this is not something that can be fixed quickly. He suggested that the Working Group could make a recommendation to the Life Insurance and Annuities (A) Committee that such standards should be developed, but they do not exist right now. Mr. Struk said Florida is not a member of the Compact and does not have standards by which to judge whether an index is appropriate or inappropriate. Ms. Neil said forms are reviewed to make sure they comply with state law. She said it is her opinion that this is the appropriate place for a discussion about how these products are going to be sold to the public.

Mr. Hippen said when reviewing filings, his department attempts to stop companies from using an index that it they controls or that it can tell from its construction could be easily manipulated by the company. He said, however, they are limited by how much and what kind of information the company provides.

Mr. Birnbaum summarized his view of how the revised provisions in the model allow for the creation of products that mislead consumers. He said first, there are the provisions that allow data mining to create bespoke indices that will illustrate favorably over the previous 15-year period. If the company sees that an index is not performing well, the model allows it to tweak the indices. The company is not required to disclose to the consumer how the index is calculated, and overwhelmed insurance departments do not provide a lot of accountability. He also pointed out that there is no requirement that the index company be separate from the company that is providing the hedging for the product based on the index. The index provider can change its rules as long as it is consistent with its own governance procedures, with no review of those rules.

Bryan Pinsky (American International Group Inc.—AIG) said that the AIG is very supportive of consumer protection and making sure that illustrations and all the other materials provided to consumers at the point of sale are clear, understandable, fair and balanced. He said the purpose for revising Model #245 is to ensure that the regulation is pragmatic and usable, but does not create inappropriate loopholes. He said he appreciates Mr. Birnbaum's underlying concerns, but some of his comments do not reflect the way that the industry operates or the way the indices actually work. He said hedge costs do not assume a reversion to the mean. He said hedge costs are not affected by past performance of indices; they consider how fair markets would price based on a formula. He said whether an index performance was high or low does not affect the hedge costs for these indices.

Mr. Pinsky explained that a lot of information is provided to consumers by their financial advisor that augments an illustration, such as marketing materials and fact sheets, that describe how the indices work. He said the reason that companies do not support providing the underlying algorithm and rule book to consumers is because they are not owned by the company and are not the insurance company's intellectual property. He said these are indices created and provided by third parties, and they continue to own the intellectual property. He said the rule book is not going to help consumers or financial advisors understand the index. He said that understanding is provided by the simplified, fair and balanced marketing materials, fact sheets provided by the index provider, and an understanding of how the index works within the indexed annuity that it is being purchased with, which is in the illustration.

Mr. Pinsky said it is important to realize that clients cannot lose money when they buy an indexed annuity. He said consumers are not investing in the index; they are investing in a product that references the index for the sole purpose of determining what interest credit will be provided to the client. He said that while the mechanisms supporting the index are important, the exact mathematical nuances of the index are not the most important pieces of information for the client to understand. He said the most important thing for consumers is diversification in choice in the product. He said these products were not developed to data mine for indices that illustrate most favorably; they are intended to provide diversification in choice for clients. He said because of how independent third parties are able to create these indices, they are generally able to provide a more stable crediting rate that the insurance companies are able to provide. He said no consumer is forced to buy or stay in these. He said clients in all indexed annuities can reallocate across different strategies or indices if they do not like what they have for whatever reason, or as their crediting strategies mature, at no cost. He said there are no facts to support the assertion that indices are changed to improve the look of performance. He said that sometimes indices are changed if there are new versions and that in new markets, environments may perform differently. He said that he is not sure of the reason for Mr. Birnbaum's concern with the tie between index providers and hedging. He said there might be a circumstance where there is an arm of an investment bank that provides hedging assets to insurance companies and may also have another arm that creates indices. But he said that ultimately, the insurance company is accountable for ensuring that it is setting an appropriate option budget for its clients on indices that are available within the products provided to its clients.

Mr. Yanacheak identified three issues the Working Group's discussion brought to light. The first is whether the Working Group should raise with the Life Insurance and Annuities (A) Committee the issue of the need for standards for product oversight in the states and with the Compact in the area of indexed annuities. He said the second issue involves the relationship between an index provider and the hedging provider. Iowa asked about this relationship in its product review and would like the Working Group to consider whether a referral to further consider this issue might be appropriate. The final issue is to revise Section 6F(9)(b)(i).

Mr. Van Aalst made a motion, seconded by Mr. Robinson, to revise Section 6F(9)(b)(i) as follows: "The index is comprised of indices, stocks, bonds, futures, commodities, interest rates, or exchange traded funds, each of which has been in existence for at least fifteen (15) years." Florida, Kansas, Maryland, Minnesota, Oklahoma and Texas voted in favor of the motion. Rhode Island opposed the motion. The motion passed.

Mr. Gendron said he has been working on some plain language modifications to the disclosure requirements in Section 6G that he would like the Working Group to consider before it forwards the revisions to Model #245 to the Life Insurance and Annuities (A) Committee. Mr. Kilcoyne said he also has language modifications to suggest for the language just adopted. Additionally, Mr. Robinson said he has some wording changes he would like the Working Group to consider. The Working Group agreed to wait to finalize the model until after reviewing this revised language. Mr. Yanacheak asked for revisions to be emailed to his attention, with a copy to Jennifer Cook (NAIC). Mr. Yanacheak confirmed that if the American Academy of Actuaries (Academy) has any minor suggestions along the lines of what the Working Group members were discussing, it should submit them.

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

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Underscores and overstrikes show changes from the existing model.

ANNUITY DISCLOSURE MODEL REGULATION

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Appendix A. Annuity Illustration Example

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Section 5. Standards for the Disclosure Document and Buyer's Guide

- A. (1) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall at or before the time of application be given both the disclosure document described in Subsection B and the Buyer's Guide, if any.
- (2) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the Buyer's Guide no later than five (5) business days after the completed application is received by the insurer.
- (a) With respect to an application received as a result of a direct solicitation through the mail:
- (i) Providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application.
- (ii) Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.
- (b) With respect to an application received via the Internet:
- (i) Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business day of receipt of the application.
- (ii) Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

- (c) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the insurance department of the state for a free annuity Buyer's Guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity Buyer's Guide.
- (d) Where the Buyer's Guide and disclosure document are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under state law or regulation.

B. At a minimum, the following information shall be included in the disclosure document required to be provided under this regulation:

- (1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity;
- (2) The insurer's legal name, physical address, website address and telephone number;
- (3) A description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate:
 - (a) The guaranteed and non-guaranteed elements of the contract, and their limitations, if any, including for fixed indexed annuities, the elements used to determine the index-based interest, such as the participation rates, caps or spread, and an explanation of how they operate;
 - (b) An explanation of the initial crediting rate, or for fixed indexed annuities, an explanation of how the index-based interest is determined, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;
 - (c) Periodic income options both on a guaranteed and non-guaranteed basis;
 - (d) Any value reductions caused by withdrawals from or surrender of the contract;
 - (e) How values in the contract can be accessed;
 - (f) The death benefit, if available and how it will be calculated;
 - (g) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and
 - (h) Impact of any rider, including, but not limited to, a guaranteed living benefit or long-term care rider;
- (4) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and
- (5) Information about the current guaranteed rate or indexed crediting rate formula, if applicable, for new contracts that contains a clear notice that the rate is subject to change.

C. Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

Section 6. Standards for Annuity Illustrations

A. An insurer or producer may elect to provide a consumer an illustration at any time, provided that the illustration is in compliance with this section and:

- (1) Clearly labeled as an illustration;
 - (2) Includes a statement referring consumers to the disclosure document and Buyer's Guide provided to them at time of purchase for additional information about their annuity; and
 - (3) Is prepared by the insurer or third party using software that is authorized by the insurer prior to its use, provided that the insurer maintains a system of control over the use of illustrations.
- B. An illustration furnished an applicant for a group annuity contract or contracts issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.
- C. The illustration shall not be provided unless accompanied by the disclosure document referenced in Section 5.
- D. When using an illustration, the illustration shall not:
- (1) Describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
 - (2) State or imply that the payment or amount of non-guaranteed elements is guaranteed; or
 - (3) Be incomplete.
- E. Costs and fees of any type shall be individually noted and explained.
- F. An illustration shall conform to the following requirements:
- (1) The illustration shall be labeled with the date on which it was prepared;
 - (2) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the disclosure document (e.g., the fourth page of a seven-page disclosure document shall be labeled "page 4 of 7 pages");
 - (3) The assumed dates of premium receipt and benefit payout within a contract year shall be clearly identified;
 - (4) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the contract is assumed to have been in force;
 - (5) The assumed premium on which the illustrated benefits and values are based shall be clearly identified, including rider premium for any benefits being illustrated;
 - (6) Any charges for riders or other contract features assessed against the account value or the crediting rate shall be recognized in the illustrated values and shall be accompanied by a statement indicating the nature of the rider benefits or the contract features, and whether or not they are included in the illustration;
 - (7) Guaranteed death benefits and values available upon surrender, if any, for the illustrated contract premium shall be shown and clearly labeled guaranteed;
 - (8) The non-guaranteed elements underlying the non-guaranteed illustrated values shall be no more favorable than current non-guaranteed elements and shall not include any assumed future improvement of such elements. Additionally, non-guaranteed elements used in calculating non-guaranteed illustrated values at any future duration shall reflect any planned changes, including any planned changes that may occur after expiration of an initial guaranteed or bonus period;

- (9) In determining the non-guaranteed illustrated values for a fixed indexed annuity, the index-based interest rate and account value shall be calculated for three different scenarios: one to reflect historical performance of the index for the most recent ten (10) calendar years; one to reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the least index value growth (the “low scenario”); one to reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the most index value growth (the “high scenario”). The following requirements apply:
- (a) The most recent ten (10) calendar years and the last twenty (20) calendar years are defined to end on the prior December 31, except for illustrations prepared during the first three (3) months of the year, for which the end date of the calendar year period may be the December 31 prior to the last full calendar year;
 - (b) If any index utilized in determination of an account value has not been in existence for at least ~~ten~~ fifteen (15) calendar years, indexed returns for that index shall not be illustrated, unless all of the following criteria are met:
 - (i) The index is a combination of indices, made up of stocks, bonds, futures, commodities, interest rates, or exchange traded funds, each of which has been in existence for at least fifteen (15) years;
 - (ii) The method of combination is such that a unique fifteen (15)-year history of the index can be constructed;
 - (iii) Any algorithm or other method of combining the indices shall be fixed from the creation of the index, except for changes made pursuant to the index provider’s established governance rules and procedures;
 - ~~(iv)~~ Any algorithm or other method that is supporting such an index and is included in the illustration shall be made available for inspection at the request of the commissioner; and

Drafting Note: States may want to consider making the algorithm available to consumers upon request.

- ~~(v)~~ Indexed returns that are based on historical performance prior to the existence of the index are visually differentiated from indexed returns that are based on historical performance thereafter.
- ~~(v)~~ If the fixed indexed annuity provides an option to allocate account value to more than one indexed or fixed declared rate account, and one or more of those indexes has not been in existence for at least ten (10) calendar years, the allocation to such indexed account(s) shall be assumed to be zero;
- ~~(c)~~ If any index utilized in determination of an account value has been in existence for at least ~~ten~~ fifteen (15) calendar years but less than twenty (20) calendar years, the ten (10) calendar year periods that define the low and high scenarios shall be chosen from the exact number of years the index has been in existence;
- ~~(d)~~ If any index utilized in determination of an account value meets the criteria of Section 6.F.(9)(b) but has less than twenty (20) calendar years of history, the ten (10) calendar year periods that define the low and high scenarios shall be chosen from the exact number of years of unique history, including history, constructed pursuant to 6.F.(9)(b)(ii);
- ~~(de)~~ The non-guaranteed element(s), such as caps, spreads, participation rates or other interest crediting adjustments, used in calculating the non-guaranteed index-based interest rate shall be no more favorable than the corresponding current element(s);

- (ef) If a fixed indexed annuity provides an option to allocate the account value to more than one indexed or fixed declared rate account:
 - (i) The allocation used in the illustration shall be the same for all three scenarios; and
 - (ii) The ten (10) calendar year periods resulting in the least and greatest index growth periods shall be determined independently for each indexed account option.
- (gf) The geometric mean annual effective rate of the account value growth over the ten (10) calendar year period shall be shown for each scenario;
- (gh) If the most recent ten (10) calendar year historical period experience of the index is shorter than the number of years needed to fulfill the requirement of subsection H, the most recent ten (10) calendar year historical period experience of the index shall be used for each subsequent ten (10) calendar year period beyond the initial period for the purpose of calculating the account value for the remaining years of the illustration;
- (hi) The low and high scenarios: (i) need not show surrender values (if different than account values); (ii) shall not extend beyond ten (10) calendar years (and therefore are not subject to the requirements of subsection H beyond subsection H(1)(a)); and (iii) may be shown on a separate page. A graphical presentation shall also be included comparing the movement of the account value over the ten (10) calendar year period for the low scenario, the high scenario and the most recent ten (10) calendar year scenario; and
- (hj) The low and high scenarios should reflect the irregular nature of the index performance and should trigger every type of adjustment to the index-based interest rate under the contract. The effect of the adjustments should be clear; for example, additional columns showing how the adjustment applied may be included. If an adjustment to the index-based interest rate is not triggered in the illustration (because no historical values of the index in the required illustration range would have triggered it), the illustration shall so state;
- (10) The guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., “see page 1 for guaranteed elements”);
- (11) The account or accumulation value of a contract, if shown, shall be identified by the name this value is given in the contract being illustrated and shown in close proximity to the corresponding value available upon surrender;
- (12) The value available upon surrender shall be identified by the name this value is given in the contract being illustrated and shall be the amount available to the contract owner in a lump sum after deduction of surrender charges, bonus forfeitures, contract loans, contract loan interest and application of any market value adjustment, as applicable;
- (13) Illustrations may show contract benefits and values in graphic or chart form in addition to the tabular form;
- (14) Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:
 - (a) The benefits and values are not guaranteed;
 - (b) The assumptions on which they are based are subject to change by the insurer; and
 - (c) Actual results may be higher or lower;
- (15) Illustrations based on non-guaranteed credited interest and non-guaranteed annuity income rates shall contain equally prominent comparisons to guaranteed credited interest and guaranteed annuity income rates, including any guaranteed and non-guaranteed participation rates, caps or spreads for fixed indexed annuities;

- (16) The annuity income rate illustrated shall not be greater than the current annuity income rate unless the contract guarantees are in fact more favorable;
 - (17) Illustrations shall be concise and easy to read;
 - (18) Key terms shall be defined and then used consistently throughout the illustration;
 - (19) Illustrations shall not depict values beyond the maximum annuitization age or date;
 - (20) Annuitization benefits shall be based on contract values that reflect surrender charges or any other adjustments, if applicable; and
 - (21) Illustrations shall show both annuity income rates per \$1000.00 and the dollar amounts of the periodic income payable.
- G. An annuity illustration shall include a narrative summary that includes the following unless provided at the same time in a disclosure document:
- (1) A brief description of any contract features, riders or options, guaranteed and/or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the contract;
 - (2) A brief description of any other optional benefits or features that are selected, but not shown in the illustration and the impact they have on the benefits and values of the contract;
 - (3) Identification and a brief definition of column headings and key terms used in the illustration;
 - (4) ~~A statement~~Statements containing in substance the following:
 - (a) For other than fixed indexed annuities:
 - (i) This illustration assumes the annuity's current nonguaranteed elements will not change. It is likely that they **will** change and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.
 - (ii) The values in this illustration are **not** guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information;
 - (b) For fixed indexed annuities:
 - (i) (I) This illustration assumes the index will repeat historical performance and that the annuity's current non-guaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, will not change. It is likely that the index will not repeat historical performance, the non-guaranteed elements will change, and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.
 - (II) The values in this illustration are not guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information.

(ii) For fixed indexed annuities where the index has not been in existence for fifteen (15) years, but the criteria in Section 6.F.(9)(b) have been met, the following additional statements:

(I) Indexed returns that are based on historical performance prior to the existence of the index are visually differentiated from indexed returns that are based on historical performance thereafter;

(II) Because the index has not been in existence for the entire time period used in the illustration, some of the values of the index shown are a weighted average of indices or other financial instruments that were in existence for that time period;

(III) Either the weights used in combining the indices or other financial instruments are constant over time, or the weights are based on an algorithm that is consistently applied over time but may produce different weights in different years; and

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

(iii) For fixed indexed annuities where the index is a combination of indices or other financial instruments and has been in existence for fifteen (15) years, the following additional statements:

(I) Either the weights used in combining the indices are constant over time, or the weights are based on an algorithm that is consistently applied over time but may produce different weights in different years; and

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

(5) Additional explanations as follows:

(a) Minimum guarantees shall be clearly explained;

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

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

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

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

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

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

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

- (iii) For contracts with a fixed maturity date, the periodic income amount for at least one of the annuity income options available, based on the guaranteed rates in the contract at the fixed maturity date; and
- (iv) The periodic income amount based on the currently available periodic income rates for the annuity income option in item (ii) or item (iii), if desired.

H. Following the narrative summary, an illustration shall include a numeric summary which shall include at minimum, numeric values at the following durations:

- (1) (a) First ten (10) contract years; or
- (b) Surrender charge period if longer than ten (10) years, including any renewal surrender charge period(s);
- (2) Every tenth contract year up to the later of thirty (30) years or age seventy (70); and
- (3) (a) Required annuitization age; or
- (b) Required annuitization date.

I. If the annuity contains a market value adjustment, hereafter MVA, the following provisions apply to the illustration:

- (1) The MVA shall be referred to as such throughout the illustration;
- (2) The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the value available upon surrender;
- (3) The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the death benefit;
- (4) A statement, containing in substance the following, shall be included:

When you make a withdrawal the amount you receive may be increased or decreased by a Market Value Adjustment (MVA). If interest rates on which the MVA is based go up after you buy your annuity, the MVA likely will decrease the amount you receive. If interest rates go down, the MVA will likely increase the amount you receive.
- (5) Illustrations shall describe both the upside and the downside aspects of the contract features relating to the market value adjustment;
- (6) The illustrative effect of the MVA shall be shown under at least one positive and one negative scenario. This demonstration shall appear on a separate page and be clearly labeled that it is information demonstrating the potential impact of a MVA;
- (7) Actual MVA floors and ceilings as listed in the contract shall be illustrated; and
- (8) If the MVA has significant characteristics not addressed by Paragraphs (1) – (6), the effect of such characteristics shall be shown in the illustration.

Drafting Note: Appendix A provides an example of an illustration of an annuity containing an MVA that addresses Paragraphs (1) – (6) above.

J. A narrative summary for a fixed indexed annuity illustration also shall include the following unless provided at the same time in a disclosure document:

- (1) An explanation, in simple terms, of the elements used to determine the index-based interest, including but not limited to, the following elements:

- (a) The Index(es) which will be used to determine the index-based interest;
 - (b) The Indexing Method – such as point-to-point, daily averaging, monthly averaging;
 - (c) The Index Term – the period over which indexed-based interest is calculated;
 - (d) The Participation Rate, if applicable;
 - (e) The Cap, if applicable; and
 - (f) The Spread, if applicable;
- (2) The narrative shall include an explanation, in simple terms, of how index-based interest is credited in the indexed annuity;
 - (3) The narrative shall include a brief description of the frequency with which the company can re-set the elements used to determine the index-based credits, including the participation rate, the cap, and the spread, if applicable; and
 - (4) If the product allows the contract holder to make allocations to declared-rate segment, then the narrative shall include a brief description of:
 - (a) Any options to make allocations to a declared-rate segment, both for new premiums and for transfers from the indexed-based segments; and
 - (b) Differences in guarantees applicable to the declared-rate segment and the indexed-based segments.
- K. A numeric summary for a fixed indexed annuity illustration shall include, at a minimum, the following elements:
- (1) The assumed growth rate of the index in accordance with Subsection F(9);
 - (2) The assumed values for the participation rate, cap and spread, if applicable; and
 - (3) The assumed allocation between indexed-based segments and declared-rate segment, if applicable, in accordance with Subsection F(9).
- L. If the contract is issued other than as applied for, a revised illustration conforming to the contract as issued shall be sent with the contract, except that non-substantive changes, including, but not limited to changes in the amount of expected initial or additional premiums and any changes in amounts of exchanges pursuant to Section 1035 of the Internal Revenue Code, rollovers or transfers, which do not alter the key benefits and features of the annuity as applied for will not require a revised illustration unless requested by the applicant.

Section 7. Report to Contract Owners

For annuities in the payout period that include non-guaranteed elements, and for deferred annuities in the accumulation period, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

- A. The beginning and end date of the current report period;
- B. The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;
- C. The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and
- D. The amount of outstanding loans, if any, as of the end of the current report period.

Section 8. Penalties

In addition to any other penalties provided by the laws of this state, an insurer or producer that violates a requirement of this regulation shall be guilty of a violation of Section [cite state's unfair trade practices act].

Section 9. Separability

If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the regulation and its application to other persons or circumstances shall not be affected.

Section 10. [Optional] Recordkeeping

- A. Insurers or insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information provided in the disclosure statement (including illustrations) for [insert number] years after the contract is delivered 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.

- 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 11. Effective Date

This regulation shall become effective [insert effective date] and shall apply to contracts sold on or after the effective date.

Annuity Illustration Example

[The following illustration is an example only
And does not reflect specific characteristics of any actual product for sale by any company]

ABC Life Insurance Company
Company Product Name

Flexible Premium Fixed Deferred Annuity with a Market Value Adjustment (MVA)
An Illustration Prepared for John Doe by John Agent on mm/dd/yyyy
(Contact us at Policyownerservice@ABCLife.com or 555-555-5555)

Sex: Male	Initial Premium Payment: \$100,000.00
Age at Issue: 54	Planned Annual Premium Payments: None
Annuitant: John Doe	Tax Status: Nonqualified
Oldest Age at Which Annuity Payments Can Begin: 95	Withdrawals: None Illustrated

Initial Interest Guarantee Period	5 Years
Initial Guaranteed Interest Crediting Rates	
First Year (reflects first year only interest bonus credit of 0.75%):	4.15%
Remainder of Initial Interest Guarantee Period:	3.40%
Market Value Adjustment Period:	5 Years
Minimum Guaranteed Interest Rate after Initial Interest Guarantee Period *:	3%

* After the Initial Interest Guarantee Period, a new interest rate will be declared annually. This rate cannot be lower than the Minimum Guaranteed Interest Rate.

Annuity Income Options and Illustrated Monthly Income Values

This annuity is designed to pay an income that is guaranteed to last as long as the Annuitant lives. When annuity income payments are to begin, the income payment amounts will be determined by applying an annuity income rate to the annuity Account Value.

Annuity income options include the following:

- Periodic payments for Annuitant’s life
- Periodic payments for Annuitant’s life with payments guaranteed for a certain number of years
- Periodic payments for Annuitant’s life with payments continuing for the life of a survivor annuitant

Illustrated Annuity Income Option: Monthly payments for annuitant’s life with payments guaranteed for 10-year period.
Assumed Age When Payments Start: 70

	Account Value	Monthly Annuity Income Rate/\$1,000 of Account Value *	Monthly Annuity Income
Based on Rates Guaranteed in the Contract	\$164,798	\$5.00	\$823.99
Based on Rates Currently Offered by the Company	\$171,976	\$6.50	\$1,117.84

* If, at the time of annuitization, the annuity income rates currently offered by the company are higher than the annuity income rates guaranteed in the contract, the current rates will apply.

ABC Life Insurance Company

Company Product Name

Flexible Premium Fixed Deferred Annuity with a Market Value Adjustment (MVA)

An Illustration Prepared for John Doe by John Agent on mm/dd/yyyy

Contact us at Policyownerservice@ABCLife.com or 555-555-5555

Contract Year/Age	Premium Payment	Values Based on Guaranteed Rates				Values Based on Assumption that Initial Guaranteed Rates Continue		
		Interest Crediting Rate	Account Value	Cash Surrender Value Before MVA	Minimum Cash Surrender Value After MVA	Interest Crediting Rate	Account Value	Cash Surrender Value Before and After MVA
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1 / 55	\$ 100,000	4.15%	\$ 104,150	\$ 95,818	\$ 92,000	4.15%	\$ 104,150	\$ 95,818
2 / 56	0	3.40%	107,691	100,153	93,000	3.40%	107,691	100,153
3 / 57	0	3.40%	111,353	104,671	95,614	3.40%	111,353	104,671
4 / 58	0	3.40%	115,139	109,382	98,482	3.40%	115,139	109,382
5 / 59	0	3.40%	119,053	114,291	114,291	3.40%	119,053	114,291
6 / 60	0	3.00%	122,625	118,946	118,946	3.40%	123,101	119,408
7 / 61	0	3.00%	126,304	123,778	123,778	3.40%	127,287	124,741
8 / 62	0	3.00%	130,093	130,093	130,093	3.40%	131,614	131,614
9 / 63	0	3.00%	133,996	133,996	133,996	3.40%	136,089	136,089
10 / 64	0	3.00%	138,015	138,015	138,015	3.40%	140,716	140,716
11 / 65	0	3.00%	142,156	142,156	142,156	3.40%	145,501	145,501
16 / 70	0	3.00%	164,798	164,798	164,798	3.40%	171,976	171,976
21 / 75	0	3.00%	191,046	191,046	191,046	3.40%	203,268	203,268
26 / 80	0	3.00%	221,474	221,474	221,474	3.40%	240,255	240,255
31 / 85	0	3.00%	256,749	256,749	256,749	3.40%	283,972	283,972
36 / 90	0	3.00%	297,643	297,643	297,643	3.40%	335,643	335,643
41 / 95	0	3.00%	345,050	345,050	345,050	3.40%	396,717	396,717

For column descriptions, turn to page 245-14

Column Descriptions

- (1) **Ages** shown are measured from the Annuitant's age at issue
- (2) **Premium Payments** are assumed to be made at the beginning of the Contract Year shown

Values Based on Guaranteed Rates

- (3) **Interest Crediting Rates** shown are annual rates; however, interest is credited daily. During the Initial Interest Guarantee Period, values developed from the Initial Premium Payment are illustrated using the Initial Guaranteed Interest Rate(s) declared by the insurance company, which include an additional first year only interest bonus credit of 0.75%. The interest rates will be guaranteed for the Initial Interest Guarantee Period, subject to an MVA. After the Initial Interest Guarantee Period, a new renewal interest rate will be declared annually, but can never be less than the Minimum Guaranteed Interest Rate shown.
- (4) **Account Value** is the amount you have at the end of each year if you leave your money in the contract until you start receiving annuity payments. It is also the amount available upon the Annuitant's death if it occurs before annuity payments begin. The death benefit is not affected by surrender charges or the MVA.
- (5) **Cash Surrender Value Before MVA** is the amount available at the end of each year if you surrender the contract (after deduction of any Surrender Charge) but before the application of any MVA. Surrender charges are applied to the Account Value according to the schedule below until the surrender charge period ends, which may be after the Initial Interest Guarantee Period has ended.

Years Measured from Premium Payment:	1	2	3	4	5	6	7	8+
Surrender Charges:	8%	7%	6%	5%	4%	3%	2%	0%

- (6) **Minimum Cash Surrender Value After MVA** is the minimum amount available at the end of each year if you surrender your contract before the end of five years, no matter what the MVA is. The minimum is set by law. The amount you receive may be higher or lower than the cash surrender value due to the application of the MVA, but never lower than this minimum. Otherwise the MVA works as follows: If the interest rate available on new contracts offered by the company is LOWER than your Initial Guaranteed Interest Rate, the MVA will INCREASE the amount you receive. If the interest rate available on new contracts offered by the company is HIGHER than your initial guaranteed interest rate, the MVA will DECREASE the amount you receive. Page 4 of this illustration provides additional information concerning the MVA.

Values Based on Assumption that Initial Guaranteed Rates Continue

- (7) **Interest Crediting Rates** are the same as in Column (3) for the Initial Interest Guarantee Period. After the Initial Interest Guarantee Period, a new renewal interest rate will be declared annually. For the purposes of calculating the values in this column, it is assumed that the Initial Guaranteed Interest Rate (without the bonus) will continue as the new renewal interest rate in all years. The actual renewal interest rates are not subject to an MVA and will very likely NOT be the same as the illustrated renewal interest rates.
- (8) **Account Value** is calculated the same way as column (4).
- (9) **Cash Surrender Value Before and After MVA** is the Cash Surrender Value at the end of each year assuming that Initial Guaranteed Interest Rates continue, and that the continuing rates are the rates offered by the company on new contracts. In this case the MVA would be zero, and Cash Surrender Values before and after the MVA would be the same.

Important Note: This illustration assumes you will take **no** withdrawals from your annuity before you begin to receive periodic income payments. **Withdrawals will reduce both the annuity Account Value and the Cash Surrender Value.** You may make partial withdrawals of up to 10% of your account value each contract year without paying surrender charges. Excess withdrawals (above 10%) and full withdrawals will be subject to surrender charges.

This illustration assumes the annuity's current interest crediting rates will not change. It is likely that they will change and actual values may be higher or lower than those in the illustration.

The values in this illustration are not guarantees or even estimates of the amounts you can expect from your annuity. For more information, read the annuity disclosure and annuity buyer's guide.

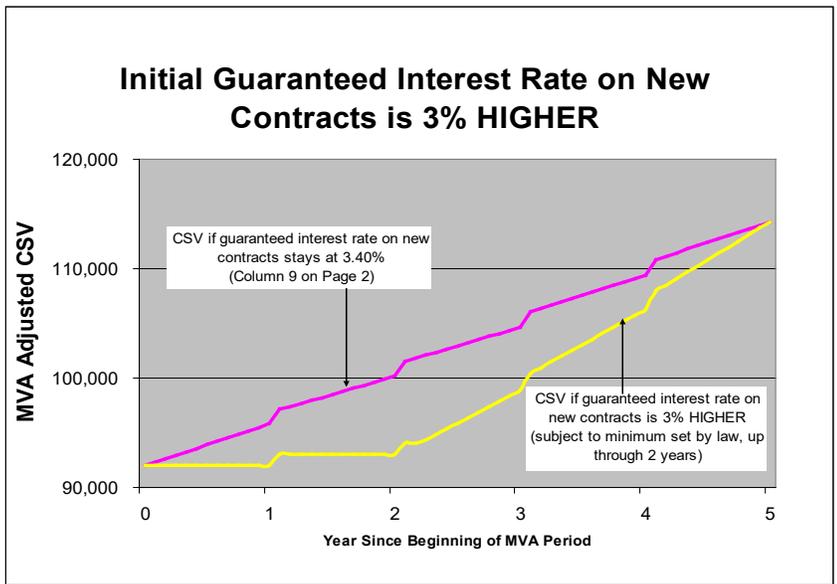
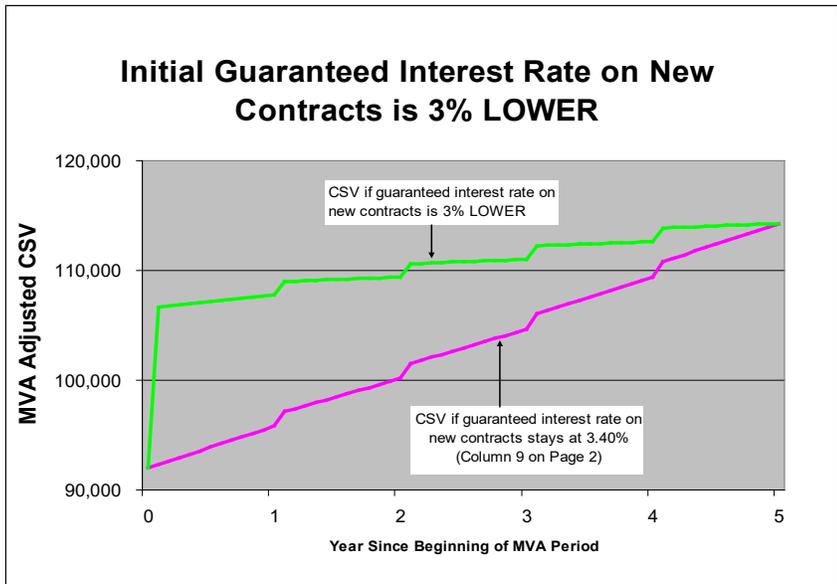
MVA-adjusted Cash Surrender Values (CSVs) Under Sample Scenarios

The graphs below shows MVA-adjusted Cash Surrender Values (CSVs) during the first five years of the contract, as illustrated on page 2 (\$100,000 single premium, a 5-year MVA Period) under two sample scenarios, as described below.

Graph #1 shows if the interest rate on new contracts is 3% LOWER than your Initial Guaranteed Interest Rate, the MVA will increase the amount you receive (green line). The pink line shows the Cash Surrender Values if the Initial Guaranteed Interest Rates continue (from Column (9) on Page 2).

Graph #2 shows if the interest rate on new contracts is 3% HIGHER than your Initial Guaranteed Interest Rate, the MVA will decrease the amount you receive, but not below the minimum set by law (Column (6) on Page 2), which in this scenario limits the decrease for the first 2 years (yellow line). The pink line shows the Cash Surrender Values if the Initial Guaranteed Interest Rates continue (from Column (9) on Page 2).

These graphs and the sample guaranteed interest rates on new contracts used are for demonstration purposes only and are not intended to be a projection of how guaranteed interest rates on new contracts are likely to behave.



Draft: 8/11/20

Annuity Suitability (A) Working Group
Virtual Summer National Meeting
July 29, 2020

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call July 29, 2020. The following Working Group members participated: Doug Ommen, Chair (IA); Jillian Froment, Vice Chair (OH); Steve Ostlund (AL); Jodi Lerner (CA); Tanisha Merced (DE); Dean L. Cameron (ID); Tate Flott (KS); Renee Campbell (MI); Bruce R. Ramage (NE); Keith Nyhan (NH); Cuc Nguyen (OK); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Rachel Jrade-Rice (TN); and Richard Wicka (WI). Also participating was: Malinda Shepherd (KY).

1. Adopted its Dec. 19, 2019, and 2019 Fall National Meeting Minutes

The Working Group met Dec. 19, 2019, and Dec. 7, 2019. During its Dec. 19 meeting, the Working Group discussed comments received on appendices to the *Suitability in Annuity Transactions Model Regulation* (#275).

Superintendent Dwyer made a motion, seconded by Director Froment, to adopt the Working Group's Dec. 19 (Attachment - A), and Dec. 7, 2019, minutes (*see NAIC Proceedings – Fall 2019, Life Insurance and Annuities (A) Committee, Attachment Two*). The motion passed unanimously.

2. Discussed State Activities to Adopt Revised Model #275

Commissioner Ommen said the purpose of this agenda item is hear a discussion of activities some states have taken to adopt the 2020 revisions to Model #275, which added a best interest standard of conduct for insurers and producers. He said this discussion relates to the Working Group's work in 2020 to complete the second part of its charge to "consider how to promote greater uniformity across NAIC-member jurisdictions."

Commissioner Ommen said Iowa adopted the Model #275 revisions through the adoption of an administrative rule in May with a Jan. 1, 2021, effective date. Superintendent Dwyer discussed the steps Rhode Island has taken to move toward promulgating a rule to adopt the 2020 revisions. She asked Commissioner Ommen about Iowa's experience in adopting the Model #275 revisions and whether the Iowa Department of Insurance (DOI) had experienced pushback from stakeholders with respect to some of the provisions. Commissioner Ommen said that prior to Iowa beginning its administrative rulemaking process, the Iowa DOI had discussions with stakeholders. Some of the discussions related to issues included in the draft frequently asked questions (FAQ) guidance document the Working Group will discuss next. He said Iowa received widespread support from stakeholders on the new regulation. Commissioner Ommen detailed the process the Iowa DOI used to adopt the regulation, which included going through an administrative rules committee of the Iowa Legislature, and through that process, the Iowa DOI was able to explain the history and the process the NAIC used to develop the Model #275 revisions. He explained that Iowa's administrative rulemaking process does not allow for the adoption of drafting notes within the text of a rule. He said stakeholders encouraged the Iowa DOI to include the drafting notes found in the Model #275 revisions in a bulletin, which insurers can use, together with the rule, to assist in their implementation.

Director Cameron said Idaho has submitted legislation related to the Model #275 revisions for consideration during Idaho's upcoming legislative session. He said the Idaho DOI has not received any comments yet suggesting changes to the language in the Model #275 revisions. He discussed legislation enacted during Idaho's last legislative session imposing additional standards for indexed annuities. He discussed provisions in the legislation requiring clarification and provisions that caused concern among some stakeholders, such as the new surrender charge requirements and provisions requiring insurers to file before use of advertising materials and materials insurers provide to their producers. Commissioner Ommen agreed that states could encounter additional issues other than those specifically related to the best interest standard of conduct during their process to adopt the Model #275 revisions.

Director Froment said Ohio is beginning its administrative process to adopt the Model #275 revisions. She said the Ohio DOI has had informal discussions with stakeholders and expects within the next few weeks to submit a legislation proposal implementing the Model #275 revisions for executive branch review before submitting legislation to the Ohio legislature for its consideration. Director Froment said that during some the Ohio DOI's discussions with stakeholders, some questions have been raised about certain provisions in the Model #275 revisions and the intent behind them. She said the Ohio DOI has

expressed its commitment to stakeholders to develop a bulletin or a FAQ document to answer some of the questions, but is looking to use some of what the Working Group includes in its FAQ guidance document to assist Ohio in developing its own FAQ or bulletin. She said Ohio also is looking at a Jan. 1, 2021, implementation date.

Ms. Shepherd explained that Kentucky has a requirement to review adopted regulations every five years. She said that as part of this review process, the Kentucky DOI will be submitting revised annuity suitability regulations that will include the Model #275 revisions to the Kentucky Legislature in August.

Commissioner Ommen said that Working Group members, NAIC staff and he are ready and available to assist the states as they move forward with adopting the Model #275 revisions. He said he believes the FAQ guidance document is part of this effort to provide assistance to the states, but he also urged states to reach out directly to the Working Group members if they have questions about the Model #275 revisions.

3. Exposed the Draft FAQ Guidance Document

Commissioner Ommen said that NAIC staff, along with others and himself, developed this draft FAQ document (Attachment ?-A) as one way for the Working Group to complete the second part of its charge to “consider how to promote greater uniformity across NAIC member jurisdictions.” He explained that this guidance document would assist the states as they move forward with adopting the Model #275 revisions through either the administrative or legislative process. Commissioner Ommen said the FAQ document included in the Working Group’s materials is a draft and at the end of the discussion, he is going to suggest the Working Group set a 30-day public comment period to receive comments on it. He said the purpose of the 30-day comment period is for the Working Group to receive input from stakeholders on what issues should be addressed in the document. He explained that some of the initial questions included in the FAQ document are questions NAIC staff and others received to date from the states and other stakeholders as they have moved forward with adopting the Model #275 revisions.

After additional discussion, the Working Group agreed to expose the draft FAQ document for a 30-day public comment period. The Working Group directed NAIC staff to revise the draft to “clean up” the draft prior to distributing it for public comment.

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

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