

Draft Pending Adoption

Date: 12/9/20

Life Insurance and Annuities (A) Committee
Virtual 2020 Fall National Meeting
December 7, 2020

The Life Insurance and Annuities (A) Committee met Dec. 7, 2020. The following Committee members participated: Marlene Caride, Chair (NJ); Doug Ommen, Vice Chair, and Mike Yanacheak (IA); Jim L. Ridling (AL); Alan McClain (AR); Trinidad Navarro represented by Fleur McKendell (DE); Dean L. Cameron (ID); Vicki Schmidt (KS); James J. Donelon (LA); Jon Godfread (ND); Bruce R. Range (NE); Chris Nicolopoulos represented by Maureen Belanger and Roni Karnis (NH); Barbara D. Richardson (NV); Linda A. Lacewell represented by Mark McLeod (NY); Tynesia Dorsey (OH); and Mark Afable and Richard Wicka (WI). Also participating were: David Altmaier (FL); Robert H. Muriel (IL); Jessica K. Altman (PA); Elizabeth Kelleher Dwyer and Sarah Neil (RI); Larry D. Deiter (SD); Mike Boerner (TX); and Tanji J. Northrup (UT).

1. Adopted its Nov. 10 and Summer National Meeting Minutes

The Committee met Nov. 10 and Aug. 11. During its Nov. 10 meeting, the Committee took the following action: 1) adopted its July 10 minutes; 2) adopted its 2021 proposed charges; 3) adopted the Life Actuarial (A) Task Force's 2021 proposed charges; 4) adopted revisions to the *Standard Nonforfeiture Law for Individual Deferred Annuities* (#805); 5) adopted the 2021 Generally Recognized Expense Tables (GRET); 6) adopted revisions to *Actuarial Guideline XLIX—The Application of the Life Illustrations Model Regulation to Policies with Index-Based Interest* (AG 49); and 7) adopted technical revisions to *Actuarial Guideline XLIX-A—The Application of the Life Illustrations Model Regulation to Policies with Index-Based Interest Sold On or After November 25, 2020* (AG 49-A).

Director Cameron made a motion, seconded by Commissioner Schmidt, to adopt the Committee's Nov. 10 (Attachment One) and Aug. 11 (*see NAIC Proceedings – Summer 2020, Life Insurance and Annuities (A) Committee*) minutes. The motion passed unanimously.

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

a. Accelerated Underwriting (A) Working Group

Director Muriel said the Accelerated Underwriting (A) Working Group met Nov. 17. He said during this meeting, the Working Group adopted its minutes from the Summer National Meeting. The Working Group also received updates on the progress of its two ad hoc groups—the Ad Hoc Drafting Subgroup and the Ad Hoc Liaison Subgroup. The Ad Hoc Liaison Subgroup continues to monitor the activities of other NAIC groups working on related issues and sharing that information with the Ad Hoc Drafting Subgroup. He said the Ad Hoc Drafting Subgroup is working on an educational report that will include recommendations for state insurance regulators. He noted that the Ad Hoc Drafting Subgroup has agreed, at this time, not to pursue developing a new NAIC model.

Director Muriel said the Ad Hoc Drafting Subgroup also shared a draft outline of its educational report with the Working Group. He said, however, the Ad Hoc Drafting Subgroup is not exposing the outline for a formal public comment period. He said the Ad Hoc Drafting Subgroup is accepting informal comments on items that may be missing from the outline. Anyone who has comments can send those comments to NAIC staff. He said the Ad Hoc Drafting Subgroup plans to expose sections of the educational report for a formal public comment period as those sections are drafted.

b. Annuity Disclosure (A) Working Group

Mr. Yanacheak said the Annuity Disclosure (A) Working Group has not met since March 13 because Working Group members have continued to focus on issues related to the pandemic in their own states. He said the Working Group's March 13 minutes are included in the Committee's meeting materials.

Mr. Yanacheak said that during its March 13 meeting, the Working Group agreed to some language revisions to the *Annuity Disclosure Model Regulation* (#245), but the Working Group also identified a few additional issues that remain unresolved. He said that given this, the Working Group has been unable to finalize its work and is requesting an extension of its Request for NAIC Model Law Development in anticipation of the Committee reviewing its 2021 charges early next year and discussing issues related to the Working Group's work as related to its charge.

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c. Annuity Suitability (A) Working Group

Commissioner Ommen said the Annuity Suitability (A) Working Group has not met since the Summer National Meeting. He said that during that meeting, the Working Group discussed its work for 2020. The Working Group agreed to develop a frequently asked questions (FAQ) document to assist the states as they move forward with adopting the revised *Suitability in Annuity Transactions Model Regulation* (#275) as part of completing the second part of its 2020 charge to “consider how to promote greater uniformity across NAIC-member jurisdictions.”

Commissioner Ommen said that following the meeting, the Working Group exposed a draft FAQ document for a 30-day public comment period ending Oct. 2. He said the Working Group plans to discuss the comments received on the draft FAQ document and its next steps during a meeting on Dec. 14.

d. Life Insurance Illustration Issues (A) Working Group

Mr. Wicka said the Life Insurance Illustration Issues (A) Working Group has not met since the Summer National Meeting, but the Working Group has minutes from its July 24 and March 10 meetings for the Committee to adopt. He said during these meetings, the Working Group discussed and reviewed two alternate versions of revisions to the *Life Insurance Disclosure Model Regulation* (#580). He said one version retains the current time frame for delivery of the policy overview at the same time as the buyer’s guide (either at the time of application or at the time of policy delivery if there is a free-look period). The other version has the policy overview delivered at the time of application.

Mr. Wicka said the Working Group also reviewed two alternative versions of the sample policy overview for term life insurance policies. One version shows the sample pre-underwriting; the other shows the sample after underwriting. He said the Working Group exposed the sample policy overview for a public comment period ending Aug. 28. He explained that during its discussions of the sample policy review, interested parties and other stakeholders raised questions about the Working Group’s work. As a result, the Working Group temporarily suspended its work until it receives additional guidance from the Committee. Mr. Wicka said that given this, the Working Group also is requesting an extension of its Request for NAIC Model Law Development while the Committee discusses the Working Group’s work and potential changes to its charges.

e. Life Insurance Online Guide (A) Working Group

Ms. Neil said the Life Insurance Online Guide (A) Working Group met Oct. 20 and Feb. 24. She said that the Working Group has struggled with how to coordinate discussions on the format and functionality of a life insurance online guide, including what content should be included in such a guide. She said that during the Summer National Meeting, the Working Group received guidance from the Committee on what should be the Working Group’s focus and potential next steps, including leveraging the expertise of the NAIC Communications Division to assist the Working Group in developing the format and functionality of an online guide.

Ms. Neil said that during the Working Group’s Oct. 20 meeting, the Working Group heard a presentation from Laura Kane (NAIC) on the upcoming changes the NAIC Communications Division plans to make to the NAIC website. She said the Working Group’s next steps are to review the content currently on the NAIC website and suggest additional content to the NAIC Communications Division. The Working Group also plans to work with the NAIC Communications Division as it develops options for the Working Group to consider for displaying any additional content it suggests being added to the NAIC website.

f. Life Actuarial (A) Task Force

Mr. Boerner said the Life Actuarial (A) Task Force met Dec. 3. He said during this meeting, the Task Force adopted its Nov. 12, Nov. 5, Oct. 29, Oct. 27, Oct. 22, Oct. 8, Oct. 1, Sept. 24 and Aug. 27 minutes, which included the following action: 1) adopted its Summer National Meeting minutes; 2) adopted its 2021 proposed charges; 3) adopted the 2021 GRET; 4) adopted revisions to AG 49; 5) adopted changes to Model #805; 6) adopted amendment proposal 2020-02, which clarifies guidance on the boundaries of a company’s latitude in following VM-20, Requirements for Principle-Based Reserves for Life Products, steps; 7) adopted amendment proposal 2020-03, which clarifies net premium reserve (NPR) calculation requirements; and 8) adopted amendment proposal 2020-09, which modifies the life principle-based reserving (PBR) exemption.

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Mr. Boerner said the Task Force also adopted reports from several of its groups including: 1) the Longevity Risk (E/A) Subgroup; 2) the Guaranteed Issue (GI) Life Valuation (A) Subgroup; 3) the Experience Reporting (A) Subgroup; 4) the Indexed Universal Life (IUL) Illustration (A) Subgroup; 5) the Variable Annuities Capital and Reserve (E/A) Subgroup; and 6) the Valuation Manual (VM)-22 (A) Subgroup, including its Oct. 28, Oct. 26, Oct. 21 and Sept. 29 minutes. The Task Force also adopted amendment proposal 2020-08, which provides an alternative method for mortality aggregation.

Mr. Boerner said the Task Force received updates from several groups, including an update from the Interstate Insurance Product Regulation Commission (Compact) and the American Academy of Actuaries (Academy) Life Practice Council. The Task Force also heard a report from the NAIC Legal staff on the application of Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy and security to the NAIC as the experience reporting agent under VM-50, Experience Reporting Requirements, and VM-51, Experience Reporting Formats, of the *Valuation Manual*. The Task Force also heard an Academy proposal requesting that the Task Force consider a one-year time lag for PBR mortality reporting. Additionally, the Task Force received an overview of the economic scenario generator (ESG) timeline and model.

Mr. Boerner said the Task Force re-exposed amendment proposal 2019-33, which provides for the application of PBR requirements for group life insurance contracts with individual risk selection criteria issued under insurance certificates. The Task Force also exposed amendment proposal 2020-11, which allows exemption of policies from prior issue years when there is a change in the life PBR exemption requirements.

Director Ramge made a motion, seconded by Director Cameron, to adopt the following reports: the Accelerated Underwriting (A) Working Group, including its Nov. 17 (Attachment Two) minutes; the Annuity Disclosure (A) Working Group, including an extension of the Request for NAIC Model Law Development; the Annuity Suitability (A) Working Group; the Life Insurance Illustration Issues Working Group, including its July 24 (Attachment Three) and March 10 (Attachment Four) minutes and an extension of the Request for NAIC Model Law Development; the Life Insurance Online Guide (A) Working Group, including its Oct. 20 (Attachment Five) and Feb. 24 (Attachment Six) minutes; and the Life Actuarial (A) Task Force. The motion passed unanimously.

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

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NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Virtual Meeting

(in lieu of meeting at the 2021 Spring National Meeting)

ACCELERATED UNDERWRITING (A) WORKING GROUP

Friday, March 19, 2021

2:00 – 3:00 p.m. ET / 1:00 – 2:00 p.m. CT / 12:00 – 1:00 p.m. MT / 11:00 a.m. – 12:00 p.m. PT

Summary Report

The Accelerated Underwriting (A) Working Group met March 19, 2021. During this meeting, the Working Group:

1. Heard an update from the ad hoc drafting group regarding progress made in drafting an educational report on accelerated underwriting in life insurance, which included the following plans:
 - a. Meeting every three weeks to maintain progress in drafting language to share with the Working Group.
 - b. Working from the Nov. 16, 2020, outline distributed during the Nov. 17, 2020, Working Group meeting.
 - c. Focusing the draft narrowly to remain consistent with and avoid conflicts with the work of other NAIC groups like the Innovation and Technology (EX) Task Force, the Big Data and Artificial Intelligence (EX) Working Group, the Casualty Actuarial and Statistical (C) Task Force, and the Privacy Protections (D) Working Group.
 - d. Planning to share draft language with the Working Group and interested parties for comment as sections are completed.

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Draft: 3/24/21

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

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

1. Received a Report from the Ad Hoc Drafting Group

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

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

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

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

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

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Virtual Meetings

(in lieu of meeting at the 2021 Spring National Meeting)

ANNUITY SUITABILITY (A) WORKING GROUP

Thursday, March 25, 2021

12:30 – 2:00 p.m. ET / 11:30 a.m. – 1:00 p.m. CT / 10:30 a.m. – 12:00 p.m. MT / 9:30 – 11:00 a.m. PT

Tuesday, March 9, 2021

3:30 – 5:00 p.m. ET / 2:30 – 4:00 p.m. / 1:30 – 3:00 p.m. MT / 12:30 – 2:00 p.m. PT

Summary Report

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met March 25 and March 9, 2021. During these meetings, the Working Group:

1. Adopted its Dec. 14, 2020, minutes, which included the following action:
 - a. Discussed the comments received by the Oct. 2, 2020, public comment deadline on the draft frequently asked questions (FAQ) guidance document the Working Group is developing to assist the states with adoption and implementation of the revised *Suitability in Annuity Transactions Model Regulation (#275)*, which added a best interest standard of conduct for insurers and producers.
2. Adopted its Feb. 22 minutes, which included the following action:
 - a. Discussed potential revisions to the FAQ guidance document.
3. Continued its discussion of potential revisions to the FAQ guidance document and directed NAIC staff to revise the document based on the discussions to date and distribute the revised document for the Working Group's discussion and possible adoption during a meeting in late April or early May.

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Draft: 3/31/21

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

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

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

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

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

2. Discussed Comments on a Draft FAQ Guidance Document

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

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

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

No comments were received on Question 11.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Discussed a New FAQ Conflict of Interest Question

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

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

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

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Draft: 3/4/21

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

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

1. Discussed Comments on a Draft FAQ Guidance Document

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Draft: 1/26/21

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

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

1. Discussed Comments on a Draft FAQ Guidance Document

Commissioner Ommen said during the Working Group’s meeting at the 2020 Summer National Meeting, the Working Group agreed to distribute for a 30-day public comment period a draft Frequently Asked Questions (FAQ) guidance document (Attachment 2-A), which the Working Group developed as one way for it to complete the second part of its 2020 charge to “[c]onsider how to promote greater uniformity across NAIC member jurisdictions.” He explained that the purpose of this guidance document is to assist the states as they move forward with adopting the revised *Suitability in Annuity Transactions Model Regulation* (#275), which added a best interest standard of conduct for insurers and producers, through either an administrative or a legislative process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Virtual Meeting

LIFE INSURANCE ILLUSTRATION ISSUES (A) WORKING GROUP

February 23, 2021 / March 10, 2021

Summary Report

The Life Insurance Illustration Issues (A) Working Group met on February 23 and March 10. During these meetings, the Working Group:

1. Continued making progress in the development of a one- to two-page consumer-oriented policy overview document in order to achieve its charge of improving the understandability of the life insurance policy summaries already required in Section 7B of the *Life Insurance Illustrations Model Regulation* (#582) and Section 5A(2) of the *Life Insurance Disclosure Model Regulation* (#580).
2. Revised two alternative draft versions of the sample policy overview for term life policies based on comments received during a comment period ending Aug. 28, 2020. One version shows the sample pre-under writing, the other after underwriting.
3. Planned to consider during its next meeting a motion to bring revised versions of the policy overview and corresponding revised versions of Model #580 to the Life Insurance and Annuities (A) Committee for guidance to the Working Group on next steps.

An extension of the Request for NAIC Model Law Development is requested to allow the Working Group to make agreed upon revisions so the Life Insurance and Annuities (A) Committee can have sufficient information to provide guidance to the Working Group on next steps.

Draft: 3/31/21

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

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

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

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

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

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

a. What is the name of this product?

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

b. Does the policy ever expire?

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

Does the policy ever expire?

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

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

Does the policy ever end? If so, what is the term of the policy?

Yes. The policy ends when the term you choose (20 years) ends, but you can choose to renew this policy each year until you are age 95.

c. What is the death benefit?

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

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

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

The death benefit is \$500,000.

d. Can the death benefit change?

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

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

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

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

e. Can I take a loan from my policy?

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

This policy does not have any loan options.

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

No. You can’t borrow money from this policy.

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

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

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

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

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

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

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

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

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

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

h. Can I extend the term of coverage?

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

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

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

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

i. Are there optional riders available for this policy?

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

Are there optional riders available for this policy?

Yes, optional riders are available. To learn what riders are available and their cost, talk to your insurance agent or a company representative.

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

Are there other policy enhancements or optional riders available for this policy?

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

j. Does this policy have any living benefit options?

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

Does this policy have any living benefit options?

Yes, there is an optional living benefit rider available for an additional cost.

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

Is there a policy option that allows me to access my death benefit while I’m alive?

Yes, for additional premium, you can get part of your death benefit before you die if you are terminally ill.

k. Does this policy accumulate cash value?

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

Does this policy accumulate cash value?

No.

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

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

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

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

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

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

What are the costs of this Life Insurance Policy?

Based on the death benefit selected and the quoted risk class, the premium is estimated to be – per month. The premium may be paid either monthly, quarterly, semi-annually or annually. If you pay premiums monthly, quarterly, or semi-annually, the total premium will be greater than if you pay annually.

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

What does this life insurance policy cost?

Based on the death benefit selected and the quoted risk class, your premium is estimated to be – per year.

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

b. Does the policy ever expire?

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

Does the policy ever expire?

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

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

Does the policy ever end? If so, what is the term of the policy?

Yes. The policy ends when the term you chose ends. You may choose a 10-, 20- or 30-year term. You can choose to renew this policy each year until you are age 95.

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

c. What is the death benefit?

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

What is the death benefit?

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

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

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

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

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

You will need to fill out an application and go through the underwriting process to determine if you are eligible for this product, what the cost of the product will be and the amount of coverage you are eligible to receive.

In the course of considering an insured’s application, an insurer may request or collect health information about the insured in variety of ways. If you qualify, you may be able to obtain this policy without a health questionnaire or physical examination. If you do not qualify, you may still be eligible for this policy, but you will be required to fill out a health questionnaire and undergo a physical examination.

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

You’ll need to fill out an application. You also must go through an underwriting process. Underwriters review your application and decide if you’re eligible to buy this policy, and, if you are, what your premium would be and how much coverage you could buy.

In the course of considering your application, an insurer may request or collect health information about you in a variety of ways.

You might be approved to buy a policy without any information about your health. If you aren’t, you may still be eligible for this policy, but you’ll be required to fill out a health questionnaire and undergo a physical examination.

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

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

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

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Draft: 3/31/21

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

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

1. Reviewed Next Steps

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

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

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

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

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

2. Discussed Comments Submitted on Sample Policy Overview Documents

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

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

a. Introduction

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

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

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

This document lists this insurance policy's key features and benefits. You can get a similar summary of key policy features from other insurance companies to help you compare similar policies.

If you have questions about life insurance generally or other types of policies, the National Association of Insurance Commissioners has useful information at <https://content.naic.org/consumer/life-insurance.htm/>

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b. Information About the Insured

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

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

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

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

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

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

The premium is X per month.

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

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

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

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

d. Will My Premium Ever Change?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Can I lower the death benefit amount to reduce premium?

No.

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

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

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

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Draft: 3/31/21

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

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

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LIFE ACTUARIAL (A) TASK FORCE

Thursday, April 8, 2021

11:00 a.m. – 2:00 p.m. ET / 10:00 a.m. – 1:00 p.m. CT / 9:00 a.m. – 12:00 p.m. MT / 8:00 – 11:00 a.m. PT

Thursday, April 8, 2021

3:00 – 5:30 p.m. ET / 2:00 – 4:30 p.m. CT / 1:00 – 3:30 p.m. MT / 12:00 – 2:30 p.m. PT

Meeting Summary Report

The Life Actuarial (A) Task Force met April 8, 2021. During these meetings, the Task Force:

1. Adopted its March 18, 2021; March 11, 2021; March 4, 2021; Feb. 25, 2021; Feb. 11, 2021; Feb. 4, 2021; Jan. 28, 2021; Jan. 21, 2021; and Dec. 17, 2020, minutes, which included the following action:
 - a. Adopted its 2020 Fall National Meeting minutes.
 - b. Adopted amendment proposal 2020-11, which allows exemption of policies from prior issue years when there is a change in the Life Principle-Based Reserving (PBR) Exemption requirements.
 - c. Exposed amendment proposal 2020-12, which creates consistency between clearly defined hedging strategy (CDHS) requirements in VM-20, Requirements for Principle-Based Reserves for Life Products, and VM-21, Requirements for Principle-Based Reserves for Variable Annuities, and revises hedge modeling to only require CDHS if modeling future hedging reduces the reserves under VM-20 or total asset requirement (TAR) under VM-21.
 - d. Exposed amendment proposal 2020-13, which revises the asset collar language for negative modeled reserves.
2. Adopted the report of the Longevity Risk (E/A) Subgroup.
3. Adopted the report of the Guaranteed Issue (GI) Life Valuation (A) Subgroup.
4. Adopted the report of the Experience Reporting (A) Subgroup, including its March 2 minutes.
5. Adopted the report of the Indexed Universal Life (IUL) Illustration (A) Subgroup.
6. Adopted the report of the Variable Annuities Capital and Reserve (E/A) Subgroup.
7. Adopted the report of the Valuation Manual (VM)-22 (A) Subgroup, including its March 17, March 3, Feb. 24, Feb. 10, Feb. 3, Jan. 27 and Jan. 20 minutes.
8. Exposed amendment proposal 2020-10, which allows for the recognition of mortality improvement beyond the valuation date.
9. Discussed and provided a response to comments on the Economic Scenario Generator (ESG).
10. Heard an update from the Society of Actuaries (SOA) on research and education.
11. Heard an update from the American Academy of Actuaries (Academy) Life Practice Council.
12. Adopted amendment proposal 2020-13.
13. Re-exposed amendment proposal 2020-12.



NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

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2021 | **NATIONAL**
| **MEETING**
| *VIRTUAL*

14. Exposed amendment proposal 2021-03, which updates the VM-21 reference to the required minimum distribution age.
15. Exposed amendment proposal 2021-04, which clarifies the language in previously adopted edits to VM-02, Minimum Nonforfeiture Mortality and Interest, to avoid potential circularity.
16. Heard an update from NAIC staff on the mortality data collection project.

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2021 Charges

LIFE INSURANCE AND ANNUITIES (A) COMMITTEE

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

Ongoing Support of NAIC Programs, Products or Services

1. The **Life Insurance and Annuities (A) Committee** will:
 - A. Monitor the activities of the Life Actuarial (A) Task Force.
2. The **Accelerated Underwriting (A) Working Group** will:
 - A. Consider the use of external data and data analytics in accelerated life underwriting, including consideration of the ongoing work of the Life Actuarial (A) Task Force on the issue; and, if appropriate, draft guidance for the states.
3. The **Annuity Disclosure (A) Working Group** will:
 - A. Review and revise, as necessary, Section 6—Standards for Annuity Illustrations in the *Annuity Disclosure Model Regulation* (#245) to take into account the disclosures necessary to inform consumers in light of the product innovations currently in the marketplace.
4. The **Annuity Suitability (A) Working Group** will:
 - A. Review and revise, as necessary, the *Suitability in Annuity Transactions Model Regulation* (#275). (COMPLETED)
 - B. Consider how to promote greater uniformity across NAIC member jurisdictions.
5. The **Life Insurance Illustration Issues (A) Working Group** will:
 - A. Explore how the narrative summary required by Section 7B of the *Life Insurance Illustrations Model Regulation* (#582) and the policy summary required by Section 5A(2) of the *Life Insurance Disclosure Model Regulation* (#580) can be enhanced to promote consumer readability and understandability of these life insurance policy summaries, including how they are designed, formatted and accessed by consumers.
6. The **Life Insurance Online Guide (A) Working Group** will:
 - A. Develop an online resource on life insurance, including the evaluation of existing content on the NAIC website, to be published digitally for the benefit of the public.
7. The **Retirement Security (A) Working Group** will:
 - A. Explore ways to promote retirement security consistent with the NAIC’s continuing “Retirement Security Initiative.”

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

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**Comments of the Center for Economic Justice
To the NAIC Life Insurance and Annuity (A) Committee
Recommendations for 2021 Charges
April 7, 2021**

The Center for Economic Justice writes to recommend the following changes to the 2021 charges for the A Committee:

1. The **Life Insurance and Annuities (A) Committee** will:
 - A. Monitor the activities of the Life Actuarial (A) Task Force.
2. The **Accelerated Underwriting (A) Working Group** will:
 - A. Consider the use of external data and data analytics in accelerated life underwriting, including consideration of the ongoing work of the Life Actuarial (A) Task Force on the issue and, if appropriate, drafting guidance for the states.
3. The **Life and Annuity Illustration Reengineering Annuity Disclosure** (A) Working Group will ~~A. Review and revise, as necessary, Section 6—Standards for Annuity Illustrations in the Annuity Disclosure Model Regulation (#245) to take into account the disclosures necessary to inform consumers in light of the product innovations currently in the marketplace. review the NAIC Life Insurance Disclosure, Life Insurance Illustration, Annuity Disclosure and Advertisement of Life Insurance and Annuity models and develop the key content and principles for illustrating the operation of the insurance or contract, including, but not limited to:~~
 - A. Ensure consistency between the Life Insurance Disclosure and Life Insurance Illustration models and advise if the models should be combined;
 - B. Ensure consistency between the Life Insurance Illustration and Annuity Disclosure Model for approaches to illustration of indexed products;
 - C. Develop key content and principles for illustrations to improve consumer protection and consumer comprehension of products, including but not limited to exploring recommendations for disclosure for IUL from the IUL subgroup/LATF; and
 - ~~B.~~D. Identify major consumer protection concerns with life insurance and annuity advertising;

3.4. The Annuity Suitability (A) Working Group will:

~~Review and revise, as necessary, the *Suitability in Annuity Transactions Model Regulation* (#275).~~

- A. Consider how to promote greater uniformity across NAIC-member jurisdictions, including completion of Frequently Asked Questions regarding the 2020 revisions to the *Suitability in Annuity Transactions Model Regulation* (#275) by the Summer National Meeting.

4.5. The Life Insurance ~~Policy Overview Illustration Issues~~ (A) Working Group will:

- A. Develop a policy overview document to replace the policy summary in the Life Insurance Disclosure Model Regulation to provide a comparative shopping tool for consumers that briefly identifies the key features of the life insurance product, including consideration of design, format and methods of delivery to and access by consumers consistent with the purposes of the model regulation. Explore how the narrative summary required by Section 7B of the *Life Insurance Illustrations Model Regulation* (#582) and the policy summary required by Section 5A(2) of the *Life Insurance Disclosure Model Regulation* (#580) can be enhanced to promote consumer readability and understandability of these life insurance policy summaries, including how they are designed, formatted and accessed by consumers.

5.6. The Life Insurance Online Guide (A) Working Group will:

- A. Develop an online resource on life insurance, including the evaluation of existing content on the NAIC website, to be published digitally for the benefit of the public.

6.7. The Retirement Security (A) Working Group will:

- A. Explore ways to promote retirement security consistent with the NAIC's continuing "Retirement Security Initiative."

Discussion and Rationale

Accelerated Underwriting Working Group

We urge the working group to fulfill its charge by developing the necessary regulatory guidance for accelerated underwriting (AUW). AUW has been used by life insurers for ten years and is no longer a new topic or initiative. Rather, AUW represents life insurers' move into use of non-insurance big data sources and predictive modeling algorithms that have been used by property casualty insurers for over two decades. Even if, after five years of study by various groups at the NAIC, further education of regulators is needed, that education should be provided in the context of critical regulatory guidance and oversight of the data sources and algorithms used in AUW.

Life Insurance Policy Overview Working Group

We propose renaming the current Life Illustrations Working Group and revising the charge to more accurately describe the working group's actual mandate and activities. The work product of the group – the policy overview – is unrelated to illustrations.

This working group needs specific support from the A Committee regarding timing of delivery of the new policy overview, as well as the buyer's guide. We discuss these issues in more detail, below.

Further, we urge the A Committee to engage more directly and intensively with life and annuity illustrations, as set out in our proposed new charge, below.

New Illustration Reengineering Working Group

CEJ also recommends – and cannot stress enough the urgency of – a working group to address the sorry state of life insurance and annuity illustrations and the related harm to consumers. One of the three legs of the NAIC Retirement Security Initiative is consumer education. Yet, current NAIC model regulations regarding life insurance and annuity illustrations and advertising permit – and in some cases, require – misleading, confusing and/or deceptive information be provided to consumers in the form of illustrations.

While the work of the current LIIWG is excellent – the summary overview of key product features will help consumers – the working group is not addressing any of the problems with illustrations. Similarly, the Annuity Disclosure group and last year's work on IUL illustrations are tweaking models that are fundamentally flawed and which take diametrically-opposed approaches to illustrations. While both working groups recognize the larger problems and issues with illustrations, each working group has a very narrow charge that prevents response to the larger problems or coordination with one another.

One major problem is that the approaches to illustrations for life insurance and annuities – particularly for indexed products – are radically inconsistent even for products that operate in a similar fashion. Annuity illustrations requirements don't cap crediting rates, so insurers turn to bespoke indexes created by investment banks by data-mining historical experience to falsely present potential future earnings. But, the annuity illustration at least requires a best and worst ten year scenario in an effort to get at sequence of return risk. And for FIAs, the use of bespoke indices has created huge conflicts of interest because the providers of the indexes (investment banks) may also be providing the hedging programs to the insurer licensing the index.

In the case of IUL illustrations, there have been several versions of AG49 – the latest is AG49-A – trying to catch up with the new IUL products designed to game the then-current AG49 requirements. The latest version attempts to eliminate the deceptive illustrations associated with bonus and multiplier features that led to illustrations with higher accumulation values despite higher expenses and lower crediting rates.

But insurers have already begun to game AG-49A. One company now provides non-illustration illustrations to accompany the actual illustration. The accompanying “example” shows a “typical” accumulation using all the assumptions prohibited by AG-49A.

IUL illustrations also differ from indexed annuity illustrations because of the absence in the IUL illustration requirements of any disclosure of sequence of return risk. IUL illustrations show monotonic returns every year – with the result that loans, which can be illustrated at a lower cost than the crediting rate, are illustrated as cash withdrawals that cost the policyholder nothing. One result of IUL product designs and illustrations is that a significant portion – perhaps the majority – of IUL sales is premium-financed.

The discussions at the IUL subgroup regarding revisions to AG49 also support the creation of the proposed Life Insurance and Annuity Illustration Working Group. The subgroup solicited comments from interested parties for suggestions how to address the problems with current IUL illustrations. Industry stakeholders largely agreed that the current AG49 was not stopping unrealistic illustrations and, importantly, was not providing consumers with critical information regarding risk and return of products promising higher accumulation in exchange for additional fees. Industry commenters asked the IUL subgroup to add new disclosures¹

The state of illustrations today is far worse than in 2015 (see discussion below) and the NAIC models create diametrically-opposed approaches for illustration of indexed life insurance and indexed annuities despite the fact that the indexed products have more similarities than differences for purposes of illustration.

Our proposed charges will – appropriately – end the work of the Annuity Disclosure Working Group. The working group has been worked very diligently to address one issue regarding annuity illustrations – illustrating products tied to indexes in existence for less than ten years. As noted above, this concept represents a contradiction to the AG 49 approach for IUL which seeks to stop the use of data-mined indexes to produce inflated and unrealistic future projections based on cherry-picked historical experience. The issue of how long an index must be in existence before it can be used for illustrations is a key issue that needs to be considered as part of a holistic look at illustrations for both life and annuity indexed products.

Finally, advances in understanding of consumer biases regarding financial services products and of design of consumer disclosures to empower consumers requires a thorough review of the current illustration regime.

¹ For example, Lincoln Financial Group, National Life Group, Pacific Life and Transamerica jointly recommended requiring a mandatory breakout of charges on illustrations and requiring consumers receive clear and concise information on: (1) the potential impact on accumulated values of index volatility; and (2) downside risks of the product, including any multiplier. Securian Financial wrote “Securian Financial believes in transparency for the consumer and the advisor; without transparency, there cannot be understanding. Today, the way the industry illustrates some product designs lacks the necessary transparency for consumers and advisors to understand how the product performs and the associated risks.” Securian proposed a number of new, additional disclosures to accompany the illustration.

Life Insurance Policy Overview Working Group – Key Issues

The history of the Life Insurance Illustrations Working is relevant for understanding both why the current LIIWG needs a new name and better charge and why a new Life Insurance and Annuity Illustration Working Group with a broad charge is needed. The current LIIWG was created in 2015 to address concerns with illustrations, but the charge was limited to avoid a broader look at problems with illustrations. The minutes of November 2015 Life Insurance and Annuities (A) Committee state:

Commissioner Gerhart explained that the American Academy of Actuaries (Academy) wrote a letter suggesting expansion of the Working Group's charge to include a review of the *Life Insurance Buyer's Guide* (Buyer's Guide). He said the American Council of Life Insurers (ACLI) followed up with a letter stating that it did not oppose the addition, but pointed out that the Committee itself already has an existing charge to revise the Buyer's Guide, and the addition of this task to the Working Group might slow down its ability to accomplish the current charge.

Birny Birnbaum (Center for Economic Justice—CEJ) said that although Model #582 may be uniformly adopted by the states, that does not mean it translates into uniform illustrations provided to consumers. He said one reason for this is that Model #582 is out-of-date and does not reflect new product designs. It also does not reflect consumers' use of technology to access information. Mr. Birnbaum also reminded the Committee of the illustration issues that resulted in the development of *Actuarial Guideline XLIX—The Application of the Life Insurance Illustrations Model Regulation to Policies with Index-Based Interest* (AG 49) and broader issues with illustrations. He also expressed support for the Committee revising the *Life Insurance Buyer's Guide*.

Mr. Regalbuto expressed support for opening Model #582 to look at issues related to AG 49. Mr. Robleto asked if appointing a new working group to look at the narrative summary provision in Model #582 and the policy summary provision in Model #580 addressed the Committee's commitment to level the playing field among insurers. Commissioner McPeak said addressing that issue is still in progress.

The new working group did solicit and review examples of then-current narrative summaries and policy summaries in 2016. The examples submitted by the ACLI showed wildly different formats, lengths and content of the documents across insurers and even across the same category of products. The industry practice was shown to be a document that combined the requirements of the policy summary and narrative summary of the two models without distinction – industry was unable to identify a specific policy summary document.

The working group decided that the best approach would be to create a new, simpler document – called the Policy Overview – to replace the policy summary to fulfill the charge of the working group. The working group presented this approach to the parent Life (A) Committee at the August 27, 2016 Committee meeting and received the Committee's support.

Although the working group has not completed its charge, significant progress and key insights have been made. First, the policy summary (of the disclosure model) and the narrative summary (of the illustrations model) serve different purposes. The policy summary (to be replaced by the policy overview) describes key features of the life insurance product. The narrative summary explains the illustration.

Second, the life insurance disclosure model includes a “mini-illustration” for products not marketed with an illustration. The model states,

“The insurer shall provide a policy summary to prospective purchasers where the insurer has identified the policy form as one that will not be marketed with an illustration. The policy summary shall show guarantees only. It shall consist of a separate document with all required information set out in a manner that does not minimize or render any portion of the summary obscure.”

The working group recognized that this portion of the policy summary should be split out from the key feature portion of the policy summary into two documents – the new policy overview and a statement of guaranteed premium and benefits.

Third, based on the recognition of the interaction between the illustrations and the disclosure model, the group affirmed that the policy overview would be provided with all life insurance products, whether marketed with an illustration or not – a decision consistent with the purpose of the disclosures model whose application is not limited to products not marketed with an illustration.

Fourth, the timing of delivery of the policy summary (now overview) and buyer’s guide in the disclosure model is inconsistent with the purpose of the model. The purpose of the model is

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

Yet, the delivery of the policy overview – now designed to provide a brief summary of the key features of the product – and the buyer’s guide is not required prior to the purchase in the model. Consequently, key information designed to help a consumer shop for life insurance is not delivered until after the policy has been purchased. While there may have been some justification for this approach when the policy summary included information available only after the policy was issued or in a period in which document delivery was only by paper, those reasons are no longer valid and clearly undermine the purpose of the model and the disclosures.

While the Life Illustrations Working Group has been diligent, despite repeated efforts by the ACLI to derail the working group with false claims of “exceeding the working group’s charges,” two key issues limit the working group’s efforts and need to be resolved. The first issue is the timing of delivery of the policy overview and the buyer’s guide. Industry is adamant that there should be no change from the current requirement that permits delivery only after the policy is purchased. If this delivery provision remains, the purpose of the model, the policy overview and the buyer’s guide are undermined. Second, the disclosures model and the illustrations model are intimately related because certain disclosures are required if a product is not marketed with an illustration, certain disclosures are required if a product is marketed with an illustration and certain disclosures are required regardless of whether the product is marketed with an illustration. Consequently, there is a need to take a holistic look at the two models for consistency and efficiency and we suggest that this be one of the charges for the proposed new Illustrations Reengineering Working Group.



Consumer Federation of America

David Altmaier, President
Marlene Caride, Chair, A Committee (Life and Annuities)
National Association of Insurance Commissioners
444 North Capitol Street (Suite 700)
Washington, DC 20001

Re: Life Insurance Underwriting in the Wake of COVID

Dear President Altmaier and Chair Caride:

COVID-19 has impacted consumers and regulators in many ways. As Americans get vaccinated and COVID recedes, we must be vigilant in protecting consumers from aftershocks.

I attach an article from Reuters ([*Global life insurers impose restrictions, worried about long-term pandemic risks*](#)), documenting significant changes in life insurance underwriting in Europe. Our initial inquiries have not turned up such changes in America, but the possibility of similar actions by life insurers here in America is high.

As the article indicates, life underwriters in Europe are imposing waiting periods of 30 days or more before considering insuring former COVID patients, including those who have recovered. Other insurers are limiting coverage by age groupings. Some are even imposing waiting periods on people who have not been diagnosed with COVID, based on previous symptoms alone.

Some reasonable precautions by life insurers are understandable but to burden COVID patients and their families a second time is unjust and unfair. The situation requires clear and transparent approaches that safeguard consumers.

Consumer Federation of America therefore calls upon the NAIC to adopt a model rule for life underwriters who might delay or deny life insurance coverage because an applicant had COVID or may have had it previously. The rule should require that the underwriting rules employed be made public prior to use, be totally transparent and meet standards for reasonability as to what would trigger delay or denial of coverage.

This rule is also important for current policyholders who may be considering dropping their coverage for a period to save some money to help the family get through the economic consequences of COVID. These policyholders need to know the possible danger of such action.

We are sending a copy of this letter to the leading life insurers and ACLI. Voluntary compliance with transparency and reasonableness of any COVID-related life insurance underwriting would be a welcome development.

Sincerely,

J. Robert Hunter
Director of Insurance
Former Texas Insurance Commissioner

James H. Hunt
Life Insurance Actuary
Former Vermont Insurance Commissioner

CC: Michael A. Khalaf, CEO
Met Life Group
200 Park Avenue
New York, NY 10166

Daniel Joseph Houston, CEO
Principal Financial Group, Inc.
711 High Street
Des Moines, IA 50392

Charles F. Lowrey, CEO
Prudential Financial Inc.
88 Pacific Street
Newark, NJ 07105

Brian Duperreault, CEO
American International Group
175 Water Street
New York, NY 10038

Mark Pearson, CEO
Equitable Holdings
1290 6th Avenue
New York, NY 10104

Michael Falcon, CEO
Jackson National Life Group
2005 Seager Street
Lansing, MI 48906

Ted Mathas, CEO
New York Life Insurance Company
51 Madison Avenue
New York, NY 10019

Mark W. Mullin, CEO
Transamerica
6400 C Street SW
Cedar Rapids, IA 52404

Roger W. Crandall, CEO
Massachusetts Mutual Life Insurance Company
1295 State Street
Springfield, MA 01111

Susan K. Neely, CEO
American Council of Life Insurers
101 Constitution Avenue, NW (Suite 700)
Washington, DC 20001

Dennis R. Glass, CEO
Lincoln National Corporation
150 North Radnor-Chester Road
Radnor, PA 19087

Andrew J. Beal and Kay Noonan
NAIC Support Staff
444 North Capitol Street NW (Suite 700)
Washington, DC 20001