

Draft: 8/2/22

Life Insurance and Annuities (A) Committee
Virtual Meeting
July 20, 2022

The Life Insurance and Annuities (A) Committee met July 20, 2022. The following Committee members participated: Judith L. French, Chair (OH); Carter Lawrence, Vice Chair (TN); Mark Fowler (AL); Karima M. Woods represented by Philip Barlow (DC); Doug Ommen represented by Matthew Cunningham and Kim Cross (IA); Vicki Schmidt (KS); James L. Donelon (LA); Marlene Caride (NJ); Adrienne A. Harris represented by Bill Carmello and Mark McLeod (NY); Cassie Brown represented by Mike Boerner (TX); and Scott A. White (VA). Also participating were: Fred Andersen (MN); and Kevin Gaffney (VT).

1. Adopted its Spring National Meeting Minutes

Commissioner Donelon made a motion, seconded by Commissioner Schmidt, to adopt the Spring National Meeting Minutes (*see NAIC Proceedings – Spring 2022, Life Insurance and Annuities (A) Committee*). The motion passed unanimously.

2. Adopted 2023 Valuation Manual Amendments

Mr. Boerner explained that there are nine *Valuation Manual* amendments for consideration by the Committee. He explained that the amendments are largely technical and range from clarifications to more substantive technical amendments like amendment proposal form (APF) 2020-12 related to hedging. Mr. Boerner said he wants to spend a little more time on APF 2022-04, which was recently adopted by the Life Actuarial (A) Task Force and addresses the transition from the London Interbank Offered Rate (LIBOR) to the Secured Overnight Financing Rate (SOFR) in the procedure for setting swap spreads.

Pat Allison (NAIC) explained that LIBOR will cease to be published by mid-2023. She said the *Valuation Manual* currently has a specific reference to LIBOR swap spreads, and a table of LIBOR swap spreads is currently published on the NAIC website. Those swap spreads are prescribed in VM-20, Requirements for Principle-Based Reserves for Life Products. She said APF 2022-04 accomplished several things: 1) it names SOFR as the official replacement for LIBOR; and 2) it provides the methodology that NAIC staff will use to set both short-term and long-term swap spreads. The approach requires NAIC staff to gather SOFR data from at least two nationally recognized sources and average them together. The NAIC is currently working with three different data providers to get the data. There will be some contract work with those data providers that should be completed within the next couple of months. The APF 2022-04 handles 2023 and future years since it would go into effect in the 2023 *Valuation Manual*. There is the consideration of how to handle the transition to SOFR for the remainder of 2022. There is language in the *Valuation Manual* that states that once the NAIC determines that LIBOR is no longer effective, it will recommend a replacement, which will become effective upon adoption by Life Actuarial (A) Task Force; adoption by the Life Insurance and Annuities (A) Committee is not required. She explained that the use of SOFR is becoming quite widespread, and NAIC staff have drafted a memorandum to the Task Force recommending the move to SOFR in 2022. All that remains to put that in place is to complete the contract work with the data providers. Then the date of transition can be added to the memorandum and brought to the Task Force for adoption. Ms. Allison said that everything should be in place to make the transition in the next couple of months from LIBOR to SOFR.

Mr. Boerner made a motion, seconded by Commissioner White, to adopt the 2023 *Valuation Manual* amendments (see *NAIC Proceedings – Fall 2022, Executive (EX) Committee and Plenary, Attachment ?*). The motion passed unanimously.

3. Adopted the AAT Guideline

Mr. Andersen explained that the asset adequacy testing (AAT) guideline was adopted by the Life Actuarial (A) Task Force on June 16 and is part of a coordinated NAIC effort regarding the oversight of the increase in private equity and complex assets in the life insurance industry. He explained that this guideline was developed and adopted by the Life Actuarial (A) Task Force on June 16 and focuses on aspects related to reserve adequacy. The purpose of this guideline is to help ensure life insurers involved in complex assets will be able to pay claims even if those assets do not perform as expected.

Mr. Andersen explained that once the guideline is adopted by the NAIC, beginning next April, state insurance regulators will receive additional documentation and analysis related to private equity and complex assets supporting business including annuities, pension risk transfers (PRTs), and other life insurer business. He said the additional information will include: 1) analysis of the risks of the complex assets; 2) details underlying the assumptions on how those assets will perform; 3) expectations on the sophistication of the company models matching the complexity of the assets; and 4) assurance that any counterparty risks related to reinsurance are considered and documented. He said the Valuation Analysis (E) Working Group will act as a resource to assist states in the reviews of the filings associated with the guideline.

Commissioner White said that this is an important part of the work being done by groups at the NAIC reporting to both the Life Insurance and Annuities (A) Committee and the Financial Condition (E) Committee. He said they are looking at not only private equity, but also activity-based regulatory considerations, capital charges in the reporting, and potential under-reserving issues.

Commissioner Schmidt made a motion, seconded by Mr. Boerner to adopt the AAT guideline (see *NAIC Proceedings – Fall 2022, Executive (EX) Committee and Plenary, Attachment ?*). The motion passed unanimously.

4. Heard a Presentation on NAIC Website Updates

Laura Kane (NAIC) reviewed several life insurance updates that have been made to the NAIC website. She explained that the title of the page was updated to include both life insurance and annuities, and the corresponding landing page was also updated to include information on annuities. She said additional information was added to provide greater context around the purpose of these products. She said some new frequently asked questions (FAQ) were added, and an overview of life settlements based on an NAIC approved guide was also added. In addition to linking to the *Life Insurance Buyer's Guide*, there are also links to the buyer's guides for deferred annuities and fixed deferred annuities. She said the Communications team worked with NAIC funded consumer representative and readability expert Brenda J. Cude (University of Georgia) to improve the readability level and increase the accessibility of the insurance pages.

Ms. Kane discussed information on other states' websites that might be good to include on the NAIC website. One example is a chart from the Texas Department of Insurance's (DOI's) website. The Texas chart compares term life insurance, whole life insurance and universal life insurance by premium, how long the policy lasts, what the policy pays, and advantages and disadvantages of each policy type. She also said that other state insurance departments include information about commonly seen riders. She said the Communications team would need some assistance to create this content on the website. Director French asked whether this is something the Life Insurance Online

Guide (A) Working Group might be able to assist with. She asked for any state insurance regulators who might be interested in assisting with this project to contact Jennifer Cook (NAIC). Commissioner Gaffney said that there is a Vermont chart that may be useful in this effort.

Ms. Kane also said another update that the Communications team is working on is translating the consumer guides into Spanish. They have been relying on the Puerto Rico Insurance Department staff to check the translation but would welcome assistance from additional states. Director French asked for state insurance regulators to contact Ms. Cook if they have anyone on staff who could help with reviewing publications for accuracy after they have been translated into Spanish.

Birny Birnbaum (Center for Economic Justice—CEJ) asked Ms. Kane if the NAIC website has been consumer tested to see how effective the information is in educating consumers. Ms. Kane said that the website has not been consumer tested, but she thinks that consumer testing may be part of a more comprehensive overhaul of the entire website. Director French agreed that making sure that things are accessible to consumers is important.

5. Heard an Update on the Survey into the Use of AI and ML in Life Insurance

Commissioner Gaffney explained that there are four workstreams under the Big Data and Artificial Intelligence (H) Working Group, chaired by Superintendent Elizabeth Kelleher Dwyer. He explained that he is leading up Workstream One, which is the group working on a survey looking into the use of artificial intelligence (AI) and machine learning (ML) in life insurance.

Commissioner Gaffney explained that 13 states (Colorado, Connecticut, Illinois, Iowa, Louisiana, Minnesota, Nebraska, North Dakota, Oregon, Pennsylvania, Rhode Island, Virginia, and Wisconsin) are collaborating to develop and administer the survey to life insurance companies meeting certain criteria. He said there four criteria for including companies in the survey: 1) companies must have written more than \$250 in premium on all individual policies in 2021; 2) term writers must have issued policies on more than 10,000 lives; 3) a state market share analysis must show that the 13 states are adequately represented by the selected companies; and 4) there must be representation by InsurTech in the selected companies. InsurTech companies are not required to meet the \$250 million premium threshold.

Commissioner Gaffney explained that the goal of the survey is to understand how life insurance companies are deploying AI and ML technologies in the following operational areas: pricing and underwriting, marketing, and loss prevention. He said the survey also seeks to understand the design of governance structures companies have in place to ensure they are using AI/ML ethically, that governance structure mitigates harm to insureds, and that there are sufficient controls in place to protect the models from inappropriate intrusions. He said the survey also attempts to understand the minimum and maximum face amount thresholds at which companies deploy AI/ML technologies.

Commissioner Gaffney said the general design of the survey is to: 1) understand whether life companies are using AI/ML in certain functions, or plan to be in the future, as discussed below; 2) have companies identify the AI/ML models they are using in certain operational areas; 3) have companies disclose whether their AI/ML models are developed internally, externally, or hybrid development; 4) have companies disclose what data elements, internal or third-party, the company is leveraging in their AI/ML models; and 5) understand the accuracy and predictive value of the AI/ML data in respect of mortality and morbidity.

Commissioner Gaffney reviewed the goals of each section of the survey. He explained that the pricing and underwriting section of the survey focuses on AI/ML being deployed in the following 11 areas: 1) setting assumptions; 2) speed and accuracy; 3) specialty products for certain conditions, such as diabetes; 4) automated

premium rates; 5) automated approval; 6) automated denial; 7) underwriting tier determination; 8) company placement; 9) input into non-automated approval decision; 10) input into non-automated denial decision; and 11) automate processing through the agency channels. He explained that the survey allows for up to three specialty diseases and considers automated approval and denial of policies to fall in the category of accelerated underwriting. The survey also allows companies to elaborate on other underwriting-related functions.

Commissioner Gaffney explained that the marketing section of the survey focuses on AI/ML being deployed in seven areas: 1) geographic marketing; 2) targeted online advertising; 3) identification of recipients of mail or phone advertising; 4) provision of offers to existing customers; 5) identification of potential customer groups; 6) demand modeling; and 7) direct online sales. The survey also allows companies to elaborate on other marketing-related functions.

Commissioner Gaffney said that the loss prevention section of the survey focuses on AI/ML being deployed in the following six areas: 1) wearable devices; 2) wellness initiatives; 3) discount medical programs; 4) smoking and accelerated underwriting; 5) wellness programs; and 6) disease detection. He said the survey also allows companies to elaborate on other loss prevention-related functions.

Commissioner Gaffney said that the survey reflects 10 data element categories: 1) credit-based insurance score; 2) financial credit score; 3) other type of non-credit “score”; 4) public records; 5) demographic; 6) telematics type data; 7) driving behavior; 8) biometrics; 9) medical; and 10) online media. He said the survey also allows companies to elaborate on other nontraditional data elements and to provide examples. Each data element category is defined in the survey instructions with supporting examples.

Commissioner Gaffney explained that the governance section of the survey attempts to understand the governance framework companies have in place to ensure their AI/ML model is being used ethically and not causing harm to consumers. Among the governance concerns the survey attempts to address are: 1) restrictions imposed by third parties would prevent insurers from disclosing data or AI/ML materials to state insurance regulators; 2) company compliance with the NAIC AI Principles, including: a) fairness and ethics considerations; b) accountability for data algorithms’ compliance with laws, as well as intended and unintended impacts; c) appropriate resources and knowledge involved to ensure compliance with laws, including those related to unfair discrimination; d) ensure transparency with appropriate disclosures, including notice to consumers specific to data being used and methods for appeal and recourse related to inaccurate data; and e) AI systems are secure, safe and robust, including decision traceability and security and privacy risk protections; 3) adoption of an existing standard or guidance regarding a governance framework, either developed internally or by a third party. If by a third party, the survey requests companies to disclose the third party; 4) consumer awareness and disclosure of the use of third-party data and algorithms in pricing, underwriting, marketing, and loss prevention. Commissioner Gaffney said the survey asks whether companies disclose any adverse findings of the consumer uncovered by the AI or ML model to the consumer; and 5) monitoring of the results of AI or ML models and the amount of human intelligence influencing the AI/ML results.

Commissioner Gaffney said that initial kick-off calls have been conducted to describe the purpose and design of the survey with specific companies, and feedback has already started coming in. He said the survey will be modified based on the feedback. He said the hope was to send the survey out by mid-August, but given resource issues and other ongoing surveys, the timeline may get pushed back. Director French said she looks forward to the information gleaned from the survey and asked Commissioner Gaffney to keep the Committee updated as things progress.

6. Discussed Other Matters

Director French raised the issue of enhanced cash surrender options that has come up in National Conference of Insurance Legislators (NCOIL) meetings over the past several months. She explained that the issue involves the offers of enhanced cash surrender for certain universal life policies and the application of the *Standard Nonforfeiture Law for Life Insurance* (#808). She said NCOIL issued a resolution, and the American Council of Life Insurers (ACLI) issued a letter in opposition to the NCOIL resolution. She said there would be additional discussion of this issue at the Life Insurance and Annuities (A) Committee in the future. She said to contact Ms. Cook for additional information on this topic.

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

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*Virtual Meeting***ANNUITY SUITABILITY (A) WORKING GROUP**

July 25, 2022

Summary Report

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met July 25, 2022. During this meeting, the Working Group:

1. Adopted its May 26 and May 3 minutes, which included the following action:
 - A. Discussed draft frequently asked questions (FAQs) on the safe harbor/comparable standards provision in the revised *Suitability in Annuity Transactions Model Regulation* (#275), which added a best interest standard of conduct for insurers and producers.
2. Based on the comments received and the meeting discussion, decided to restructure the draft FAQs to provide more targeted and narrower FAQs concerning the safe harbor/comparable standards provision in the revised Model #275.

Draft: 8/1/22

Annuity Suitability (A) Working Group
Virtual Meeting
July 25, 2022

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met July 25, 2022. The following Working Group members participated: Doug Ommen, Chair (IA); Tate Flott, Vice Chair (KS); Jimmy Gunn (AL); Jodi Lerner (CA); Jessica Luff (DE); Karl Fromm (ID); Renee Campbell (MI); Denise Lamy (NH); Daniel Bradford (OH); Matt Gendron (RI); Brian Hoffmeister (TN); and Richard Wicka (WI).

1. Adopted its May 26 and May 3 Minutes

The Working Group met May 26 and May 3. During these meetings, the Working Group took the following action: 1) discussed adding new frequently asked questions (FAQ) on the safe harbor/comparable standards provision in the revised *Suitability in Annuity Transactions Model Regulation* (#275) to the adopted FAQ guidance document; and 2) discussed comments received on these potential new FAQs.

Mr. Gendron made a motion, seconded by Mr. Hoffmeister, to adopt the Working Group's May 26 (Attachment ?-A) and May 3 (Attachment ?-B) minutes. The motion passed unanimously.

2. Discussed Draft Safe Harbor/Comparable Standards Provision FAQ

Commissioner Ommen said that as discussed during the Working Group's May 26 meeting, following that meeting, an ad hoc small drafting group consisting of a few Working Group members met twice to review the draft frequently asked questions (FAQ) on the safe harbor/comparable standards provision in the revised Model #275, which added a best interest standard of conduct for insurers and producers. As a result of those meetings, NAIC staff prepared a comment chart (Attachment ?-C) reflecting the comments received on the draft FAQ, including the ad hoc small drafting group's comments. He said the purpose of this meeting is for the Working Group to walk through the comment chart question-by-question focusing on the ad hoc small drafting group's comments.

Beginning with the first question, Commissioner Ommen explained the ad hoc small drafting group's comments about the necessity of this FAQ. Jason Berkowitz (Insured Retirement Institute—IRI) said the Joint Trades' approach for this FAQ and some of the subsequent FAQ was to provide the states looking to adopt the revised model background and basic information about the safe harbor provision—what it is and how it works. The Working Group discussed its concerns with this approach, including providing FAQ answers mirroring the language in the revised model. The Working Group also discussed the complexity of determining whether a comparable standard meets the revised model's requirements and the importance of understanding the requirements of that comparable standard. Mr. Berkowitz discussed potential new approaches to restructuring the FAQ and answers to address the ad hoc small drafting group's concerns. He acknowledged that the first question and some of the subsequent FAQ were not critical from the Joint Trades' perspective. He reiterated that these FAQ were intended to provide background information to those states looking to adopt the revised model that might not have been involved in the drafting process to understand the purpose of the safe harbor provision. He said some of the later FAQ are more critical because they are intended to provide some clarity and clear up any possible confusion concerning some aspects of the safe harbor provision.

Birny Birnbaum (Center for Economic Justice—CEJ) said the CEJ believes the FAQ should serve as either an educational tool for those states looking to adopt the revised model or, particularly for the safe harbor provision, as interpretive guidance for those states that have adopted the revised model because the safe harbor provision

seems to be more ambiguous than other provisions in the revised model. He suggested the FAQ should be simple and clear. He provided examples of FAQ the CEJ believes would be useful.

The Working Group discussed whether it should restructure the FAQ and what should be in the FAQ, particularly whether the safe harbor provision applies to non-variable annuities and what is expected of a financial professional and entities supervising such professionals seeking to use the safe harbor provision. The Working Group continued walking through the draft FAQ and discussing the ad hoc small drafting group's comments.

Wes Bissett (Independent Insurance Agents and Brokers of America—IIABA) expressed support for the Working Group's plan to restructure the FAQ. He suggested that in restructuring the FAQ and answers, the Working Group should focus on the actual text of the revised model and not intent. Mr. Birnbaum suggested that it could be important for the Working Group to include in the FAQ guidance and clarity on whether the comparable standard must in fact be a comparable standard for purposes of the safe harbor provision given the issue of whether federal laws and regulations, and the comparable standards derived from such federal laws and regulations, apply to recommendations and sales of non-variable annuities.

After it completed its review, with the ad hoc small drafting group taking the lead, the Working Group decided to move forward with redrafting and restructuring the FAQ based on its discussion.

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

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Draft: 7/5/22

Annuity Suitability (A) Working Group
Virtual Meeting
May 26, 2022

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met May 26, 2022. The following Working Group members participated: Doug Ommen, Chair (IA); Tate Flott, Vice Chair (KS); Yada Horace (AL); Jodi Lerner (CA); Jessica Luff (DE); Karl Fromm (ID); Renee Campbell (MI); Maureen Belanger (NH); Daniel Bradford and Michelle Brugh Rafeld (OH); Matt Gendron (RI); Stephanie Cope (TN); and Richard Wicka (WI).

1. Discussed Comments Received on Chair Draft Safe Harbor/Comparable Standards Provision FAQ

Commissioner Ommen said the purpose of this meeting is for the Working Group to discuss the comments received by the May 23 public comment deadline on the chair's draft frequently asked questions (FAQ) on the safe harbor/comparable standards provision in the revised *Suitability in Annuity Transactions Model Regulation* (#275), which added a best interest standard of conduct for insurers and producers. He said the Working Group received comments from the XY Planning Network and the Independent Insurance Agents & Brokers of America (IIABA). He said the Working Group also would discuss the Joint Trades' comments submitted earlier.

The Working Group walked through the chair draft FAQ question-by-question (Attachment ?-A). Commissioner Ommen asked for any comments in addition to the written comments received on the first FAQ, which concerns the application of the safe harbor to certain types of recommendations or sales. Birny Birnbaum (Center for Economic Justice—CEJ) asked for clarification on what is meant by “types of recommendations and sales” in the first draft FAQ. He said that based on the question's wording, it seems to imply that there is a difference in the types of recommendations and sales the safe harbor applies to as opposed to the types of recommendations and sales Model #275 applies to. He suggested that the Working Group might want to leave the question out as it is currently written or rewrite it to make it clear on what distinguishes the safe harbor provision from the other provisions of Model #275. Commissioner Ommen noted that the Joint Trades provided a short answer mirroring the language in Section 6E. He said the XY Planning Network suggests a more extensive answer, including discussing the comparable standards.

Commissioner Ommen asked for additional comments on the second FAQ, which asks when a producer would be considered as acting as a financial professional for purposes of the safe harbor provision. Wes Bissett (IIABA) said the IIABA did not comment on this question. He said that the Joint Trades suggested the FAQ answer repeats what is in Model #275, which he is not sure is helpful. He said a possible answer to this FAQ could be to clarify that the safe harbor applies to a financial professional licensed and acting in that capacity for that annuity transaction. Duane Thompson (XY Planning Network) discussed the XY Planning Network's suggested answer to the FAQ. The Working Group discussed the FAQ question and potential answers to it, particularly with respect to when a producer who is licensed as a broker-dealer or investment advisor could also be subject to a fiduciary duty with respect to a particular annuity transaction. Commissioner Ommen asked Mr. Bissett to submit additional comments on this FAQ, including a suggested answer reflecting his comments.

The Working Group discussed the next FAQ on what comparable standards meet the criteria for the safe harbor. Commissioner Ommen pointed out the comments from the Joint Trades and XY Planning Network. Mr. Bissett said the IIABA would be concerned if the Working Group included the last sentence of the Joint Trades' suggested answer to the FAQ because it suggests a representative of a broker-dealer who complies with the U.S. Securities and Exchange Commission's (SEC) Regulation Best Interest (Reg BI) in recommending a fixed or fixed-indexed

annuity could be covered under the safe harbor. The IIABA does not believe that is the case. Commissioner Ommen asked Mr. Bissett to provide language to the Working Group in support of his comments.

The Working Group discussed the next FAQ concerning any additional requirements in Model #275 a financial professional would have to satisfy if the financial provision has made a sale or recommendation of an annuity in full compliance with a comparable standard. Commissioner Ommen asked if there were any comments in addition to the Joint Trades and the XY Planning Network comments on this FAQ. There were no additional comments.

The Working Group discussed the next FAQ asking if there are specific conditions an insurer must meet for the safe harbor to apply. Commissioner Ommen asked if there were any additional comments on the FAQ in addition to the Joint Trades and the XY Planning Network comments. Mr. Bissett suggested clarifying the FAQ. He also suggested that the Working Group consider adding another FAQ, which the IIABA had included in comments it submitted previously: “Does the safe harbor exempt insurers from any of the supervisory or other requirements established under the model?” The Working Group discussed the intent of the FAQ and whether the answer to the FAQ is intended to solicit what an insurer needs to do to be able to use the safe harbor. After additional discussion, Commissioner Ommen asked interested parties to re-review this FAQ and their suggested answers to it to determine if the FAQ needs restructuring to provide more context or, as Mr. Bissett suggests, adding another FAQ to clarify its intent.

The Working Group discussed the next FAQ on whether insurers have any other obligations under Model #275 with respect to producers relying on the safe harbor. Commissioner Ommen said the IIABA, the Joint Trades, and the XY Planning Network submitted comments. Mr. Bissett said the IIABA would like clarification on what is meant by “other” obligations and whether the FAQ was referencing other obligations outside of the Model #275 requirements. Commissioner Ommen suggested that this question might be redundant and as such, the Working Group might consider striking it.

The Working Group discussed the next FAQ on whether insurers must obtain documentation from a financial professional or the entity supervising the financial professional to determine if the professional’s or the entity’s policies and procedures support a comparable standard for purposes of the safe harbor provision. Commissioner Ommen said the XY Planning Network had submitted a suggested response to this FAQ. He asked for additional comments. There were no additional comments.

The Working Group discussed the next FAQ concerning requirements for insurers to conduct regular audits or otherwise verify that the financial professional or entity supervising the financial professional is complying with the comparable standard. Commissioner Ommen said the XY Planning Network had submitted a suggested response to this FAQ. He asked for additional comments. There were no additional comments.

The next proposed FAQ concerns whether an insurer must require a financial professional or an entity supervising the financial professional to use the insurer’s specific suitability form. The Working Group discussed the FAQ. Commissioner Ommen asked if the Joint Trades expected to submit a suggested answer to this FAQ. Jim Szostek (American Council of Life Insurers—ACLI) said he anticipates the Joint Trades would discuss the FAQ and submit a suggested answer to it.

The Working Group discussed the next suggested FAQ, which asks whether Section 6E(2) of the model allows an insurer without supporting documentation to rely on a financial professional’s statement, or the statement from an entity supervising the financial professional, that an annuity recommendation complies with a comparable standard. Commissioner Ommen said this is something the Iowa Department of Insurance (DOI) has seen over the years with an insurer receiving a certification of compliance and given this, he would suggest the answer to the FAQ would be “no.” He said the Working Group would like to receive comments from interested parties on what

an insurer would expect a financial professional or an entity supervising a financial professional to submit to support the financial professional's or the entity's assertion that the annuity recommendation complies with the applicable comparable standard.

The Working Group discussed the last proposed FAQ, which asks whether the record-keeping obligations under the revised model apply when the safe harbor is invoked. The Working Group discussed the application of the comparable standard when the comparable standard does not have a similar requirement, such as the revised model's record-keeping and document requirement. Commissioner Ommen said he believes that this FAQ is another FAQ that relates to the scope and reach of the safe harbor and touches on previous questions as to what is a "comparable standard" if the comparable standard does not include requirements in the revised model, such as its documentation requirements. He said the Working Group would like to receive comments from interested parties on any potential answer to this FAQ, particularly on the safe harbor provision's reach. For example, does the safe harbor provision apply only to the revised model's Section 6 provisions, or does it extend to the training and/or recordkeeping requirements? Mr. Bissett pointed out the IABA's previous comments on this issue.

The Working Group discussed its next steps. After discussion, the Working Group decided to form an ad hoc drafting group to redraft the suggested FAQs to reflect its discussion during this meeting.

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

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Draft: 5/23/22

Annuity Suitability (A) Working Group
Virtual Meeting
May 3, 2022

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met May 3, 2022. The following Working Group members participated: Doug Ommen, Chair (IA); Tate Flott, Vice Chair (KS); Jimmy Gunn (AL); Jodi Lerner (CA); Jessica Luff (DE); Karl Fromm (ID); Renee Campbell (MI); Derek Wallman (NE); Denise Lamy (NH); Daniel Bradford and Michelle Brugh Rafeld (OH); Matt Gendron (RI); Brian Hoffmeister (TN); and Richard Wicka (WI).

1. Discussed Adding New FAQ on the Safe Harbor/Comparable Standards Provision

Commissioner Ommen said the purpose of this meeting is for the Working Group to discuss whether to add new frequently asked questions (FAQ) on the safe harbor/comparable standards provisions in the revised *Suitability in Annuity Transactions Model Regulation* (#275), which added a best interest standard of conduct for insurers and producers. He said included in the notice for today's meeting were comments the Working Group received from the Joint Trades suggesting new FAQ on the safe harbor/comparable standards provision in Model #275 and additional guidance on the producer training provisions.

Commissioner Ommen asked for comments on moving forward with adding new FAQ on the safe harbor/comparable standards provision and including additional guidance on the producer training provisions. He also suggested using the Joint Trades' suggested safe harbor/comparable standards provision FAQ as a starting point. The Working Group members expressed support for moving forward on those topics.

Commissioner Ommen discussed the possibility of creating ad hoc drafting groups to work on the new safe harbor/comparable standards provision FAQ and revisions to the current FAQ on producer training and have the Working Group use the drafts created by these ad hoc drafting groups to begin its discussions.

Wes Bissett (Independent Insurance Agents & Brokers of America—IIABA) said the IIABA supports adding new FAQ to the FAQ guidance document on the safe harbor/comparable standards provision. He said the IIABA had submitted suggested FAQ on that provision last year during the Working Group's discussions on the FAQ guidance document. He offered to resubmit those comments to the Working Group for its consideration. Mr. Bissett also said the IIABA would be concerned with the Working Group using the Joint Trades' suggested safe harbor/comparable standards provision FAQ as a basis for beginning its work before any discussion of or public comments were received on them. He said this suggests the Working Group supports the FAQ, particularly the FAQ answers on which the IIABA has concerns.

Commissioner Ommen assured Mr. Bissett that in suggesting the Working Group use the Joint Trades' FAQ as a starting point, it was not his intention to lead anyone into thinking the Working Group supported it prior to any discussion or receiving comments on it. He said he anticipates the Working Group thoroughly discussing the Joint Trades' FAQ and other comments received during its May 26 meeting. He also asked Mr. Bissett to resubmit the IIABA's earlier comments on this topic. Jason Berkowitz (Insured Retirement Institute—IRI), speaking on behalf of the Joint Trades, said the Joint Trades FAQ reflect their interpretation of the safe harbor/comparable standards provision in Model #275. He also reminded the Working Group about its deliberative process in developing the 2020 revisions during which not all stakeholder suggested revisions were accepted. In revising the FAQ document, he urged the Working Group not to permit the discussion to devolve into rehashing those issues again. He said

the Joint Trades would like the Working Group to focus on the NAIC's interpretation of the safe harbor/comparable standards provision and how it should be applied.

Mr. Berkowitz also pointed out that as part of the Joint Trades' suggested FAQs, the Joint Trades included a one-page chart clarifying the producer training provisions. The chart outlines common scenarios with respect to when a producer would need to complete the four-hour training or the one-hour training. Mr. Bissett suggested from a regulatory perspective, the Working Group revisit FAQ #4 in the current FAQ document to specifically clarify whether the four obligations outlined in Section 6A are the only elements a producer or insurer needs to satisfy to meet the best interest standard of care. He said such clarity is essential for a court to determine what duty a producer may owe to a client. He cited a Massachusetts case, which centered on whether a producer has a fiduciary duty to a client, as evidence of why such clarification is needed. Commissioner Ommen asked Mr. Bissett to submit any case citations he may have to support his suggestion.

Commissioner Ommen said that based on the discussion, he would prepare a chair draft of suggested safe harbor/comparable standards FAQ. NAIC staff will circulate the draft for public comment. He encouraged stakeholders to submit comments, including additional suggested FAQ and answers to those FAQ. He said the Working Group would discuss any comments received during its May 26 meeting. Without objection, the Working Group also agreed to include the Joint Trades' producer training chart in the revised FAQ for future discussion.

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

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2022 Summer National Meeting
Portland, Oregon

LIFE ACTUARIAL (A) TASK FORCE

Monday, August 8, 2022

8:00 a.m. – 4:30 p.m.

Tuesday, August 9, 2022

8:00 – 11:00 a.m.

Meeting Summary Report

The Life Actuarial (A) Task Force met Aug. 8–9, 2022. During this meeting, the Task Force:

1. Adopted its July 21, July 7, June 30, June 23, June 16, June 9, June 2, May 26, May 19, May 12, May 5, and April 14 minutes, which included the following action:
 - A. Exposed economic scenario generator (ESG) files for field testing.
 - B. Exposed an NAIC staff recommendation for transitioning from the London Interbank Offered Rate (LIBOR) to the Secured Overnight Financing Rate (SOFR) for the remainder of 2022.
 - C. Exposed the joint American Academy of Actuaries (Academy) Life Experience Committee and Society of Actuaries (SOA) Preferred Mortality Project Oversight Group (POG) recommendation for historical mortality improvement (HMI) and future mortality improvement (FMI).
 - D. Adopted its Spring National Meeting minutes.
 - E. Adopted amendment proposal 2020-12, which revises hedge modeling when future hedging strategies are not clearly defined.
 - F. Adopted amendment proposal 2022-04, which proposes updates to the VM-20, Requirements for Principle-Based Reserves for Life Products, prescribed swap spreads guidance considering the LIBOR transition to the SOFR for 2023 and later.
 - G. Adopted amendment proposal 2022-05, which modifies VM-51, Experience Reporting Formats, by adding a dividend plan code and a COVID-19 indicator and changing a field identifier.
 - H. Adopted *Actuarial Guideline LIII—Application of the Valuation Manual for Testing the Adequacy of Life Insurer Reserves* (AG 53).
2. Adopted the report of the Variable Annuity Capital and Reserve (E/A) Subgroup.
3. Adopted the report of the Experience Reporting (A) Subgroup.
4. Adopted the report of the Valuation Manual (VM)-22 (A) Subgroup, including its July 19, July 13, June 29, June 14, June 1, May 11, April 27, and April 13 minutes.
5. Adopted the report of the Index-Linked Variable Annuity (A) Subgroup, including its July 13, May 18, and May 17 minutes.
6. Adopted the report of the Indexed Universal Life (IUL) Illustration (A) Subgroup, including its July 18 minutes. Some Task Force members expressed support for requesting that the Life Insurance and

Annuities (A) Committee consider limited, targeted revisions to the *Life Insurance Illustrations Model Regulation* (#582). The Task Force extended the exposure regarding options to address the current illustration concerns and included a request for comment regarding such limited, targeted revisions to Model #582 that may help to reduce or eliminate the need for addressing issues through an actuarial guideline.

7. Discussed AG 53 asset adequacy testing (AAT) templates that were previously exposed for public comment through Aug. 19.
8. Discussed the Academy framework for developing, evaluating, and implementing ESGs.
9. Discussed the status of the current ESG field test initiated in June.
10. Exposed the Generally Recognized Expense Tables (GRETs) for a 21-day public comment period ending Aug. 29.
11. Heard an update from the SOA on research and education.
12. Heard an update from the joint Academy and SOA POG on the recommendation for HMI and FMI.
13. Heard an update on the SOA and Life Insurance Marketing and Research Association (LIMRA) experience studies partnership.
14. Heard an update on the activities of the Academy Life Practice Council.
15. Heard from the Academy on ESG stylized facts for the equity model.
16. Heard an update from the Academy Council on Professionalism and Education.