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. <u>Heard an Update on the Survey into the Use of AI and ML in Life Insurance</u>

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.

SharePoint/NAIC Support Staff Hub/Committee Support/ACmte/ACmtemin 7-20-22 min final.docx

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.

SharePoint/NAIC Support Staff Hub/Member Meetings/A Cmte/Annuity Suitability WG/ASWG 7-25-22min.docx