

LIFE INSURANCE AND ANNUITIES (A) COMMITTEE

Life Insurance and Annuities (A) Committee Dec. 14, 2022, Minutes

Life Insurance and Annuities (A) Committee Nov. 14, 2022, Minutes (Attachment One)

Draft Pending Adoption

Draft: 12/21/22

Life Insurance and Annuities (A) Committee
Tampa, Florida
December 14, 2022

The Life Insurance and Annuities (A) Committee met in Tampa, FL, Dec. 14, 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); Colin M. Hayashida represented by Patrick P. Lo (HI); Doug Ommen (IA); Vicki Schmidt (KS); James J. Donelon (LA); Marlene Caride (NJ); Barbara D. Richardson (NV); Adrienne A. Harris represented by Mona Bhalla (NY); Cassie Brown represented by Rachel Hemphill (TX); Scott A. White (VA); and Nathan Houdek and Richard Wicka (WI). Also participating was: Grace Arnold (MN).

1. Adopted its Nov. 15 Minutes

Director French said the Committee met Nov. 15. During this meeting, the Committee took the following action: 1) adopted its Summer National Meeting minutes; 2) adopted the 2023 Generally Recognized Expense Table (GRET); 3) adopted the Life Actuarial (A) Task Force's 2023 proposed charges; and 4) adopted its 2023 proposed charges.

Commissioner Lawrence made a motion, seconded by Commissioner Caride, to adopt the Committee's Nov. 15 minutes (Attachment One). The motion passed unanimously.

2. Adopted the Report of the Life Actuarial (A) Task Force

Hemphill gave the Life Actuarial (A) Task Force report. She said the Task Force met Dec. 11–12. She said there are a few items she wants to highlight for the Committee. She said the Task Force adopted an index-linked variable annuity (ILVA) actuarial guideline. She said this actuarial guideline specifies the conditions under which an ILVA is consistent with the definition of a variable annuity and exempt from the *Standard Nonforfeiture Law for Individual Deferred Annuities* (#805), and it specifies nonforfeiture requirements consistent with variable annuities.

Hemphill said the Task Force adopted revisions to *Actuarial Guideline XLIX-A—The Application of the Life Illustrations Model Regulation to Policies with Index-Based Interest to Policies Sold On or After December 14, 2020* (AG 49-A) regarding indexed universal life (IUL) illustrations. She said there was a robust discussion of potential changes, including actuarial and non-actuarial changes to the *Life Insurance Illustrations Model Regulation* (#582). She said the Task Force directed the IUL (A) Subgroup to further consider and discuss comments received and potential actuarial changes. There was not a motion to propose action to the Committee at this time; however, if the Committee were to choose to work on non-actuarial revisions to Model #582 to promote consumer understanding, the Task Force and the Subgroup would be happy to coordinate any actuarial changes that it contemplates with those non-actuarial changes.

Hemphill said the Task Force continues to work to develop a replacement economic scenario generator (ESG). She said the Task Force heard presentations from the American Academy of Actuaries (Academy) on a simplified corporate model, interest rate stylized facts, and acceptance criteria, as well as a presentation from NAIC staff on qualitative results from the ESG Field Test. She explained that these presentations followed similar presentations and discussions held during the Task Force's virtual meetings since the Summer National Meeting, including: 1) a regulator-to-regulator session on Sept. 1, pursuant to paragraph 6 (consultations with NAIC staff members related to NAIC technical guidance) of the NAIC Policy Statement on Open Meetings, where NAIC staff provided technical guidance relating to acceptance criteria for the ESG, and no action was taken; and 2) public calls on Sept. 29 on equity model stylized facts and Oct. 27 on corporate model stylized facts and acceptance criteria. She said there

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has been significant ongoing work to ensure that the replacement ESG will be reasonable, prudent, and suitable for statutory valuation.

Hemphill said the Task Force adopted an NAIC staff memorandum and recommendation replacing the London Interbank Offered Rate (LIBOR) with the Secured Overnight Financing Rate (SOFR) to be used for setting swap spreads effective Dec. 30. This change is consistent with previously adopted Amendment Proposal Form (APF) 2022-04, which was incorporated in the 2023 *Valuation Manual*. Hemphill said the Task Force adopted an NAIC staff memorandum providing guidance on negative interest maintenance reserve (IMR), addressing an industry concern raised in a letter to the Statutory Accounting Principles (E) Working Group that there could be a potential double-counting if a net negative IMR were reflected in principle-based reserving (PBR) or in asset adequacy testing (AAT), despite being a non-admitted asset. This memorandum reflected NAIC staff and the Task Force's interpretation and guidance that the non-admitted asset would not be reflected in the PBR or AAT.

Birny Birnbaum (Center for Economic Justice—CEJ) said he wants to comment on IUL illustrations. He said while he appreciates the efforts of the actuaries on the Task Force to address illustration issues, the revisions to AG 49-A as a “quick fix” for IUL illustrations will not fix any of the structural problems with IUL illustrations or illustrations more broadly. He said the stated goal of AG 49-A and its various revisions has been to stop unrealistic and deceptive information being presented to consumers, and the Task Force efforts with AG 49-A, including the latest version, have not just failed to address IUL illustration problems, but they have made the situation worse.

Birnbaum said for any other investment, consumers are told that past performance is not a guarantee of future performance, and back-testing is prohibited. He said AG 49-A does not just permit such back-testing; it requires back-testing. He said in addition to memorializing a discredited practice in consumer financial disclosures, each version of AG 49-A has prompted insurers to develop more complex and opaque product designs simply to game AG 49-A and continue to produce unrealistic illustrated accumulation values.

Birnbaum said consumers are now in a bizarre situation where sold policies with now discredited illustrations will continue to get updated illustrations using the same discredited methodology because each version of AG 49-A grandfathers the previous discredited illustration regime. He said any neutral evaluation of the Task Force's performance in protecting consumers from IUL illustrations must conclude that the Task Force, despite its best efforts, has failed not once, not twice, but at least three times. He said the Task Force's failure is largely a result of trying to work within the framework of Model #582, despite that regulation being developed and adopted before the introduction of indexed products; i.e., products that reference market outcomes instead of products that reflect insurer investment outcomes.

Birnbaum said it should be clear that the issue of illustrations needs to be moved out of the Task Force and to a group charged with examining Model #582 and the *Annuity Disclosure Model Regulation* (#245) to modernize life and annuity illustrations consistent with best practices of consumer financial disclosure. While the Task Force may have a role if there are technical questions, the lead of this effort should be a new working group of the Committee.

Director French said the Task Force has been discussing IUL illustrations and the potential need for actuarial and non-actuarial changes. She explained that the revisions to AG 49-A are not so much a “quick fix,” but rather a “quick first step” in addressing issues with IUL illustrations.

Hemphill made a motion, seconded by Commissioner White, to adopt the report of the Life Actuarial (A) Task Force. The motion passed unanimously.

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3. Heard an Update from the Accelerated Underwriting (A) Working Group

Commissioner Arnold updated the Committee on the work of the Accelerated Underwriting (A) Working Group. She explained that since the Accelerated Underwriting Educational Report was adopted by the Committee at the Spring National Meeting, an ad hoc group of state insurance regulators has been meeting to consider specific guidance for state insurance regulators with respect to accelerated underwriting (AU) in life insurance. She said this ad hoc group identified market conduct as one of the areas where additional guidance could be helpful, and as the ad hoc group started putting pen to paper, it realized that coordinating with other NAIC groups is going to be critical to developing specific guidance.

Commissioner Arnold said the Working Group's task is narrowly focused on AU in life insurance; any guidance developed needs to be consistent with, and supportive of, all the related initiatives and work being undertaken by other NAIC groups, like the Collaboration Forum initiative under the Innovation, Cybersecurity, and Technology (H) Committee; the Market Conduct Examination Guidelines (D) Working Group; the Big Data and Artificial Intelligence (H) Working Group; and others. She said in mid-October, the ad hoc group received feedback from NAIC staff and state insurance regulators involved with other NAIC groups regarding the Committee's approach and efforts to ensure consistency and coordination.

Commissioner Arnold said the ad hoc group has incorporated the feedback it received from other NAIC groups, and it plans to have an open meeting in the new year to expose the guidance, which includes a referral to the Market Conduct Examination Guidelines (D) Working Group.

4. Heard and Update from the Annuity Suitability (A) Working Group

Commissioner Ommen updated the Life Insurance and Annuities (A) Committee on the work of the Annuity Suitability (A) Working Group. He said the Working Group continues to work on the implementation of the 2020 revisions to the *Suitability in Annuity Transactions Model Regulation* (#275). He said as of Nov. 27, 29 states have adopted the 2020 revisions, and six jurisdictions have legislation pending. He said work continues on the frequently asked questions (FAQ) document addressing the safe harbor/comparable standards provision in Model #275. He said Iowa and the other states that have adopted the 2020 revisions are gathering information related to the enforcement of the safe harbor, which will help to inform the Working Group's work on the FAQ document.

Commissioner Ommen reminded the Committee that Section 6E specifies the following requirements under the comparable standards safe harbor for all companies:

- (1) Recommendations and sales of annuities made in compliance with comparable standards shall satisfy the requirements under this regulation. This subsection applies to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue.

He said Iowa is seeing progress as insurance companies are working with securities broker-dealer partners to implement business rules, controls, and procedures that are complementary to the securities Regulation Best Interest (Reg BI) requirements but are specifically designed for fixed indexed annuities.

5. Heard an Update on the Enhanced Cash Surrender Value

Director French updated the Committee on the survey that was sent to states to gather information on enhanced cash surrender value (CSV) offers. She said 31 jurisdictions participated in the survey. She said the results will be reviewed and inform any next steps on the issue.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/...

Draft: 12/2/22

Life Insurance and Annuities (A) Committee
Virtual Meeting
November 15, 2022

The Life Insurance and Annuities (A) Committee met Nov. 15, 2022. The following Committee members participated: Judith L. French, Chair (OH); Carter Lawrence, Vice Chair (TN); Mark Fowler (AL); Peni Itula Sapini Teo represented by Elizabeth Perri (AS); Karima M. Woods represented by Philip Barlow (DC); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen (IA); Vicki Schmidt represented by Craig VanAalst (KS); Marlene Caride (NJ); Barbara D. Richardson (NV); Adrienne A. Harris represented by Bill Carmello and Mark McLeod (NY); Cassie Brown represented by Rachel Hemphill (TX); Scott A. White represented by Craig Chupp (VA); and Nathan Houdek (WI).

1. Adopted its Summer National Meeting Minutes

Commissioner Lawrence made a motion, seconded by Nakasone, to adopt the Committee's Aug. 11 (*see NAIC Proceedings – Summer 2022, Life Insurance and Annuities (A) Committee*) minutes. The motion passed unanimously.

2. Adopted the 2023 GRET

Hemphill explained that the Society of Actuaries (SOA) provided the Life Actuarial (A) Task Force with the annual update to the Generally Recognized Expense Table (GRET). She said no concerns were raised with the SOA updates, and the Task Force unanimously adopted the updated 2023 GRET on Sept. 8.

Commissioner Lawrence made a motion, seconded by VanAalst, to adopt the 2023 GRET (*see NAIC Proceedings – Fall 2022, Executive (EX) Committee and Plenary, Attachment Three*). The motion passed unanimously.

3. Adopted the Life Actuarial (A) Task Force's 2023 Proposed Charges

Hemphill explained that the Task Force made minor revisions to its 2022 charges for 2023. She said that the charges related to accelerated underwriting were expanded to include other emerging underwriting practices to reflect the diversity in the terms used beyond just accelerated underwriting. She said the Indexed Universal Life (IUL) Illustration (A) Subgroup charges were updated to include any needed changes to *Actuarial Guideline XLIX-A—The Application of the Life Illustrations Model Regulation to Policies With Index-Based Interest to Policies Sold on or After December 14, 2020 (AG 49-A)*, as new revisions are currently being considered. She said the last change made removed the 2022 targeted timeline for the Longevity Risk (E/A) Subgroup. Hemphill said the Task Force adopted its 2023 proposed charges via an e-vote that concluded Oct. 22.

Birny Birnbaum (Center for Economic Justice—CEJ) said that he supports the revised Task Force charges. He said he has suggested additional charges for the Life Insurance and Annuities (A) Committee, which are consistent with the Task Force's 2023 proposed charges.

Commissioner Ommen made a motion, seconded by Commissioner Fowler, to adopt the Life Actuarial Task Force 2023 Proposed Charges (*see NAIC Proceedings – Fall 2022, Executive (EX) Committee and Plenary, Attachment Two*). The motion passed unanimously.

4. Adopted the Committee's 2023 Proposed Charges

Director French explained that the 2023 proposed Life Insurance and Annuities (A) Committee charges are the same as last year, with the exception of the removal of the Life Insurance Online Guide (A) Working Group. She said that the online guide charge was added several years ago, and since that time, the NAIC website has completed a rebranding. As a result, much of the life insurance information has also been updated. She reminded attendees that the NAIC Communications team gave a presentation at the Summer National Meeting about plans to incorporate additional information seen on other states' insurance department websites, as well as translate information on the website into Spanish.

Director French explained that given this activity, creating something more comprehensive (like a decision tree) might give the impression that the NAIC is the primary resource for obtaining that kind of information, which is the purview of the states. Additionally, that kind of project would require resources and technical expertise beyond what the Working Group is able to provide. She said it is for these reasons that the Life Insurance Online Guide (A) Working Group and charge have been removed.

Birnbaum summarized his comment letter. He explained that the CEJ is asking the Committee to establish a charge for 2023 to develop principles and revised guidance for life insurance and annuity illustrations. He said the charge is broad, but it is urgently needed. He said tweaks to the *Life Insurance Illustrations Model Regulation (#582)* will not come close to solving the many problems with life and annuity illustrations.

Birnbaum said the Life Actuarial (A) Task Force is working on the third or fourth version of AG 49 because of ongoing concerns with unrealistic and deceptive illustrations of indexed universal life insurance products and insurers gaming each new iteration of AG 49 to defeat the purpose of reining in unrealistic illustrations. He asked why has the Task Force had to revisit this issue repeatedly over a short period of time and why insurers are able to subvert the intent of each new version of AG 49.

Birnbaum said the answer is that: 1) the Task Force is working within the constraints of Model #582, which did not contemplate the indexed products that now represent a huge portion of life insurance sales; and 2) the Task Force members are skilled actuarial technicians, so their solutions reflect their skill set. He said because illustrations are consumer disclosures, they require a different skill set. He said actuarial input is necessary, but the Task Force should not be taking the lead on illustrations.

Birnbaum said any attempts to address the shortcomings of illustrations must recognize that life insurance and annuity products—particularly indexed and variable products—are marketed as investments that compete with securities investments. He said this is true despite a pro forma statement that the product is insurance and not an investment. He said that projected future accumulation values in the illustrations are prohibited for any other type of financial investment.

Birnbaum mentioned that the CEJ comment letter includes some examples of IUL illustrations along with his comments. He said, putting aside the length and density of the documents, the illustrations fail the basic purpose of an illustration—to help the consumer understand how the product operates. He said the illustrations reflect product designs intended to maximize illustrated annual crediting rates and accumulation values. Birnbaum said even though the disclaimer says that the product is insurance and not an investment, the illustration is all about how the consumer can invest money and realize outsized returns. He said the illustration employs practices and techniques not permitted for any other type of investment product even though the insurance products are simply chassis for investments in all manner of financial instruments.

Birnbaum said the problems are not limited to IUL illustrations, but are also found with indexed annuities. He said the illustration regimes for indexed life insurance and indexed annuities are inconsistent. He said AG 49 attempts to cap the annual crediting rate for IUL, but there is no such limitation for indexed annuities. Birnbaum said that since he submitted his comment letter, he has reviewed a half dozen current illustrations for fixed indexed annuity products, and these illustrations show 15% to 20% annual crediting rates every year in a 50-year projection. He said that the illustration regimes are different, but the bad outcome is the same—unrealistic and deceptive operation of the product.

Birnbaum said he is not alone in raising concerns about illustrations and the destructive competition to produce unrealistic accumulation values. He said many life insurance professionals are also concerned. He said the comment letter he submitted identifies many concerning techniques that require a broad consideration of illustrations. He said the solution to these problems is shorter, simpler illustrations that show how the product actually operates and highlight the relevant benefits and potential dangers consistent with the best practices for consumer financial disclosure. Birnbaum said his proposed charge commits the NAIC to that path. He said this will not only protect insurance consumers, but also it will stop destructive competition that may affect the financial condition of insurers and lead to calls for more federal involvement.

Director French said that the IUL Illustration (A) Subgroup has identified the need to look at issues with illustrations, and she agreed that there are issues that may require involvement beyond the actuaries. Rather than amending the charges at this time, she suggested waiting to hear from the Life Actuarial (A) Task Force and whatever proposals it may have, which may include the Committee's involvement. Barlow said that he agrees that this is an issue that warrants the Committee's consideration. He said the illustrations that were included in the CEJ comment letter and illustrations he has seen in other places do a poor job explaining the product being sold, which is the purpose of the illustration. He said there are issues beyond technical actuarial issues that need to be addressed. Director French agreed with Barlow and said the IUL Illustration (A) Subgroup is committed to looking at the issues comprehensively and agreed that that the Committee will continue to discuss the issue.

Commissioner Ommen made a motion, seconded by Commissioner Lawrence, to adopt the Committee's 2023 proposed charges (*See NAIC Proceedings – Fall 2022, Executive (EX) Committee and Plenary, Attachment Two*). The motion passed unanimously.

5. Gave an Update on the Enhanced Cash Surrender Offer Issue

Director French reminded attendees that the issue of enhanced cash surrender value (CSV) offers in universal life insurance was raised during the Summer National Meeting. She explained that it is her intention to gather information about the issue. She said, as was mentioned during the Summer National Meeting, the NAIC Legal team drafted a memorandum looking into the history of universal life and its application to the *Standard Nonforfeiture Law for Life Insurance* (#808). She said a survey of state insurance departments also was developed to get a better understanding of the prevalence of enhanced CSV offers, what they look like, and to whom they apply. Director French said the survey and memorandum were distributed, and responses are requested by Nov. 21.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/A Cmte/2022 Fall National Meeting/11-15-22 ACmte min Draft