

## REQUEST FOR NAIC MODEL LAW DEVELOPMENT

This form is intended to gather information to support the development of a new model law or amendment to an existing model law. Prior to development of a new or amended model law, approval of the respective Parent Committee and the NAIC's Executive Committee is required. The NAIC's Executive Committee will consider whether the request fits the criteria for model law development. Please complete all questions and provide as much detail as necessary to help in this determination.

Please check whether this is:       New Model Law      or       Amendment to Existing Model

**1. Name of group to be responsible for drafting the model:**

Annuity Disclosure (A) Working Group of the Life Insurance and Annuities (A) Committee

**2. NAIC staff support contact information:**

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202-471-3986

**3. Please provide a brief description of the proposed new model or the amendment(s) to the existing model. If you are proposing a new model, please also provide a proposed title. If an existing model law, please provide the title, attach a current version to this form and reference the section(s) proposed to be amended.**

The Working Group would like to revise Section 6—Standards for Illustrations in the *Annuity Disclosure Model Regulation (#245)* to address issues identified by the Working Group related to innovations of annuity products currently in the marketplace that are not addressed or not adequately addressed in the current standards.

**4. Does the model law meet the Model Law Criteria?**       Yes      or       No      (Check one)

(If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).

**a. Does the subject of the model law necessitate a national standard and require uniformity amongst all states?**       Yes      or       No      (Check one)

If yes, please explain why: Consumers should receive accurate disclosures of the annuities they are purchasing.

**b. Does Committee believe NAIC members should devote significant regulator and Association resources to educate, communicate and support this model law?**

Yes      or       No      (Check one)

**5. What is the likelihood that your Committee will be able to draft and adopt the model law within one year from the date of Executive Committee approval?**

1       2       3       4       5      (Check one)

**High Likelihood**

**Low Likelihood**

**Explanation, if necessary:**

- 6. What is the likelihood that a minimum two-thirds majority of NAIC members would ultimately vote to adopt the proposed model law?**

1

X 2

3

4

5

(Check one)

**High Likelihood**

**Low Likelihood**

**Explanation, if necessary:**

- 7. What is the likelihood that state legislatures will adopt the model law in a uniform manner within three years of adoption by the NAIC?**

1

X 2

3

4

5

(Check one)

**High Likelihood**

**Low Likelihood**

**Explanation, if necessary:**

- 8. Is this model law referenced in the NAIC Accreditation Standards? If so, does the standard require the model law to be adopted in a substantially similar manner?**

Not an accreditation standard

- 9. Is this model law in response to or impacted by federal laws or regulations? If yes, please explain.**

No.

## ANNUITY DISCLOSURE MODEL REGULATION

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### Section 6. Standards for Annuity Illustrations

\* \* \* \*

- F. An illustration shall conform to the following requirements:
- (1) The illustration shall be labeled with the date on which it was prepared;
  - (2) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the disclosure document (e.g., the fourth page of a seven-page disclosure document shall be labeled "page 4 of 7 pages");
  - (3) The assumed dates of premium receipt and benefit payout within a contract year shall be clearly identified;
  - (4) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the contract is assumed to have been in force;
  - (5) The assumed premium on which the illustrated benefits and values are based shall be clearly identified, including rider premium for any benefits being illustrated;
  - (6) Any charges for riders or other contract features assessed against the account value or the crediting rate shall be recognized in the illustrated values and shall be accompanied by a statement indicating the nature of the rider benefits or the contract features, and whether or not they are included in the illustration;
  - (7) Guaranteed death benefits and values available upon surrender, if any, for the illustrated contract premium shall be shown and clearly labeled guaranteed;
  - (8) Except as provided in Paragraph (22), ~~the~~ the non-guaranteed elements underlying the non-guaranteed illustrated values shall be no more favorable than current non-guaranteed elements and shall not include any assumed future improvement of such elements. Additionally, non-guaranteed elements used in calculating non-guaranteed illustrated values at any future duration shall reflect any planned changes, including any planned changes that may occur after expiration of an initial guaranteed or bonus period;

- (9) In determining the non-guaranteed illustrated values for a fixed indexed annuity, the index-based interest rate and account value shall be calculated for three different scenarios: one to reflect historical performance of the index for the most recent ten (10) calendar years; one to reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the least index value growth (the “low scenario”); one to reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the most index value growth (the “high scenario”). The following requirements apply:
- (a) The most recent ten (10) calendar years and the last twenty (20) calendar years are defined to end on the prior December 31, except for illustrations prepared during the first three (3) months of the year, for which the end date of the calendar year period may be the December 31 prior to the last full calendar year;
  - (b) If any index utilized in determination of an account value has not been in existence for at least ten (10) calendar years, indexed returns for that index shall not be illustrated. If the fixed indexed annuity provides an option to allocate account value to more than one indexed or fixed declared rate account, and one or more of those indexes has not been in existence for at least ten (10) calendar years, the allocation to such indexed account(s) shall be assumed to be zero;
  - (c) If any index utilized in determination of an account value has been in existence for at least ten (10) calendar years but less than twenty (20) calendar years, the ten (10) calendar year periods that define the low and high scenarios shall be chosen from the exact number of years the index has been in existence;
  - (d) The non-guaranteed element(s), such as caps, spreads, participation rates or other interest crediting adjustments, used in calculating the non-guaranteed index-based interest rate shall be no more favorable than the corresponding current element(s);
  - (e) If a fixed indexed annuity provides an option to allocate the account value to more than one indexed or fixed declared rate account:
    - (i) The allocation used in the illustration shall be the same for all three scenarios; and
    - (ii) The ten (10) calendar year periods resulting in the least and greatest index growth periods shall be determined independently for each indexed account option.
  - (f) The geometric mean annual effective rate of the account value growth over the ten (10) calendar year period shall be shown for each scenario;
  - (g) If the most recent ten (10) calendar year historical period experience of the index is shorter than the number of years needed to fulfill the requirement of subsection H, the most recent ten (10) calendar year historical period experience of the index shall be used for each subsequent ten (10) calendar year period beyond the initial period for the purpose of calculating the account value for the remaining years of the illustration;
  - (h) The low and high scenarios: (i) need not show surrender values (if different than account values); (ii) shall not extend beyond ten (10) calendar years (and therefore are not subject to the requirements of subsection H beyond subsection H(1)(a)); and (iii) may be shown on a separate page. A graphical presentation shall also be included comparing the movement of the account value over the ten (10) calendar year period for the low scenario, the high scenario and the most recent ten (10) calendar year scenario; and

- (i) The low and high scenarios should reflect the irregular nature of the index performance and should trigger every type of adjustment to the index-based interest rate under the contract. The effect of the adjustments should be clear; for example, additional columns showing how the adjustment applied may be included. If an adjustment to the index-based interest rate is not triggered in the illustration (because no historical values of the index in the required illustration range would have triggered it), the illustration shall so state;
- (10) The guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., “see page 1 for guaranteed elements”);
- (11) The account or accumulation value of a contract, if shown, shall be identified by the name this value is given in the contract being illustrated and shown in close proximity to the corresponding value available upon surrender;
- (12) The value available upon surrender shall be identified by the name this value is given in the contract being illustrated and shall be the amount available to the contract owner in a lump sum after deduction of surrender charges, bonus forfeitures, contract loans, contract loan interest and application of any market value adjustment, as applicable;
- (13) Illustrations may show contract benefits and values in graphic or chart form in addition to the tabular form;
- (14) Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:
  - (a) The benefits and values are not guaranteed;
  - (b) The assumptions on which they are based are subject to change by the insurer; and
  - (c) Actual results may be higher or lower;
- (15) Illustrations based on non-guaranteed credited interest and non-guaranteed annuity income rates shall contain equally prominent comparisons to guaranteed credited interest and guaranteed annuity income rates, including any guaranteed and non-guaranteed participation rates, caps or spreads for fixed indexed annuities;
- (16) The annuity income rate illustrated shall not be greater than the current annuity income rate unless the contract guarantees are in fact more favorable;
- (17) Illustrations shall be concise and easy to read;
- (18) Key terms shall be defined and then used consistently throughout the illustration;
- (19) Illustrations shall not depict values beyond the maximum annuitization age or date;
- (20) Annuitization benefits shall be based on contract values that reflect surrender charges or any other adjustments, if applicable; and
- (21) Illustrations shall show both annuity income rates per \$1000.00 and the dollar amounts of the periodic income payable.
- (22) For participating immediate and deferred income annuities:
  - (a) Illustrations may not assume any future improvement in the applicable dividend scale (or scales, if more than one dividend scale applies, such as for a flexible premium annuity);
  - (b) Illustrations must reflect the equitable apportionment of dividends, whether performance meets, exceeds or falls short of expectations;

- (c) If the dividend scale is based on a portfolio rate method, the portfolio rate underlying the illustrated dividend scale shall not be assumed to increase;
- (d) If the dividend scale is based on an investment cohort method, the illustrated dividend scale should assume that reinvestment rates grade to long-term interest rates, subject to the following conditions:
  - (i) Any assumptions as to future investment performance in the dividend formula must be consistent with assumptions that are reflected in the marketplace within the normal range of analyst forecasts and investor behavior; these assumptions may not be changed arbitrarily, notwithstanding changes in markets or economic conditions, and must be consistent with assumptions that the issuer uses with respect to other lines of business; and
  - (ii) The illustrated dividend scale should assume that reinvestment rates grade to long-term interest rates, based on U.S Treasury bonds. For the purposes of this grading, the assumed long-term rates should not exceed the rates calculated using the formula in subparagraph iii, below, based on the time to maturity or reinvestment (the “Tenor”) of the investments supporting the cohort of policies.
  - (iii) Maximum long-term interest rates should be calculated for tenors of 3 months (or less), 5 years, 10 years and 20 years (or more), using U.S. Treasury rates. For each tenor, the maximum long-term interest rate will vary over time, based on historical interest rates as they emerge. The formula for the maximum long-term interest rate is the average of the median bond rate over the last 600 months and the average bond rate over the last 120 months, rounded to the nearest quarter of one percent (0.25%).
  - (iv) The maximum long-term interest rate for a tenor should be recalculated once per year, in January, using historical rates as of December 31 of the calendar year two years prior to the calendar year of the calculation date. The historical rate for each month is the rate reported for the last business day of the month.
  - (v) Grading to the maximum long-term interest rates should take place over:
    - (I) No less than 20 years from issue if U.S. Treasury rates as of the illustration date are below the long-term rates; or
    - (II) No more than 20 years from the issue if the U.S. Treasury rates as of the illustration date are above the long-term rates.
  - (vi) When the 10-year U.S. Treasury rate is less than the 10-year maximum long-term interest rate, an additional illustrated dividend scale should be presented. This additional illustrated dividend scale shall satisfy the following conditions:
    - (I) Assume that reinvestment U.S. Treasury rates do not exceed the initial investment U.S. Treasury rates, and
    - (II) Illustrate dividends no less than half of the dividends illustrated under the current dividend scales.
    - (III) If (a) and (b) above are in conflict—i.e., if half of the current dividends are greater than would be permitted by Condition (a)—then the reinvestment U.S. Treasury rates should equal the initial investment U.S. Treasury rates.

- (vii) The illustration should include a disclosure that is substantially similar to the following:

The illustrated current dividend scale is based on interest rates that are assumed to gradually [increase/decrease] from current interest rates to long-term interest rates, over a period of [twenty] years. By regulation, the long-term assumed interest rates cannot and do not exceed the rates listed in column (c) of the table below.

- (vii) If the illustration contains an additional dividend scale pursuant to subparagraph (vi) above, then the illustration should also include a disclosure that is substantially similar to the following:

The additional illustrated dividend scale is based on interest rates that are assumed no to increase and do not exceed the interest rates in column (b) of the table below.

Tenor	Current Interest Rate	Long Term
	Treasury Rate as of 12/31/2016	Mean Reversed Treasury Rate
3 Month (or less)	0.51%	3.00%
5 Year	1.93%	4.50%
10 Year	2.45%	5.00%
20 Years (or more)	3.06%	5.50%

## PROJECT HISTORY-2021

### ANNUITY DISCLOSURE MODEL REGULATION (#245)

#### **1. Description of the Project, Issues Addressed, etc.**

The *Annuity Disclosure Model Regulation* (#245) was revised to address its application to participating income annuities.

#### **2. Name of Group Responsible for Drafting the Model and States Participating**

The Annuity Disclosure (A) Working Group of the Life Insurance and Annuities (A) Committee was responsible for drafting the revisions.

#### **States Participating:**

Mike Yanacheak, Chair	Iowa
Chris Struk	Florida
Julie Holmes and Craig VanAalst	Kansas
Adewole Odumade	Maryland
John Robinson	Minnesota
Frank Stone	Oklahoma
Sarah Neil/Matt Gendron	Rhode Island
Doug Danzeiser/Phil Reyna	Texas

#### **3. Project Authorized by What Charge and Date First Given to the Group**

In 2016, the Life Insurance and Annuities (A) Committee adopted a charge for the Annuity Disclosure (A) Working Group to: “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.”

At the 2017 Summer National Meeting, the Executive (EX) Committee and Plenary adopted a Request for NAIC Model Law Development “to revise Section 6—Standards for Illustrations in the *Annuity Disclosure Model Regulation* (#245) to address issues identified by the Working Group related to innovations of annuity products currently in the marketplace that are not addressed or addressed adequately in the current standards.”

#### **4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated.**

The Annuity Disclosure (A) Working Group met six times to discuss an issue identified under its charge: that the model prohibits the illustration of “non-guaranteed elements,” which could be construed to include participating income annuities because of the formula used to calculate the dividend scale.

New York Life had been working with state insurance regulators since 2015 to develop language for inclusion in Model #245 to allow for the illustration of participating income annuities. The Working Group heard presentations explaining the issue and discussed a proposal forwarded by New York Life. The Working Group reviewed, discussed and revised the proposal. All drafts and comments were posted on the NAIC website. On March 2, 2018, the Working Group adopted draft revisions addressing participating income annuities.

#### **5. A General Description of the Due Process (e.g., exposure periods, public hearings or any other means by which widespread input from industry, consumers and legislators was solicited)**

The Annuity Disclosure (A) Working Group met Nov. 22, 2016; Dec. 14, 2017; March 9, 2017; April 13, 2017; Feb. 15 2018; March 2, 2018; and June 4, 2018. All drafts and comments were posted to the NAIC website. The Working Group adopted the revisions addressing participating income annuities on March 2, 2018, and the Life Insurance and Annuities (A) Committee adopted the revisions during the 2018 Summer National Meeting. These revisions were adopted and held by the Committee pending resolution of an additional issue that the Working Group identified. The Working Group did not end up

making any additional revision to the model. During the 2021 Spring National Meeting, the Committee agreed to disband the Working Group once these revisions to Model #245 were considered by the Membership.

**6. A Discussion of the Significant Issues (e.g., items of some controversy raised during the due process and the group's response)**

During its Feb. 15 meeting, the Working Group discussed concerns that the American Academy of Actuaries (Academy) raised with the participating income annuity proposal. The Academy was concerned that the proposal deviated from the current standard in its use of projected improvements and that it did not apply the change consistently across product types. New York Life explained that the proposal was purposefully narrow in scope to address a particular issue with a particular product; only participating income annuities include the potential for additional income in the form of dividends based on the divisible surplus of the company. New York Life also worked with Missouri to revise the proposal to include additional disclosures about future rate assumptions, and it included a requirement that consumers are shown an additional, more conservative illustrated scale when current interest rates are less than the long-term interest rates.

**7. Any Other Important Information (e.g., amending an accreditation standard)**

None.