

Draft Pending Adoption

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Life Insurance and Annuities (A) Committee
Miami, Florida
December 11, 2016

The Life Insurance and Annuities (A) Committee met in Miami, FL, Dec. 11, 2016. The following Committee members participated: Nick Gerhart, Chair, represented by Doug Ommen and Mike Yanacheak (IA); Bruce R. Ramge, Vice Chair (NE); Jim L. Ridling represented by Steve Ostlund (AL); Dave Jones, Perry Kupferman and Lisbeth Landsman-Smith (CA); Stephen C. Taylor (DC); David Altmaier represented by Rich Robleto (FL); Ralph T. Hudgens (GA); Dean L. Cameron (ID); Ken Selzer represented by Craig Van Aalst (KS); James J. Donelon (LA); Monica J. Lindeen (MT); Maria T. Vullo and James Regalbuto (NY); Mary Taylor represented by Jillian Froment (OH); Elizabeth Kelleher Dwyer (RI); and Julie Mix McPeak represented by Chlora Lindley-Myers and Michael Humphreys (TN). Also participating were: Mary Mealer (MO); Mike Boerner (TX); and Tomasz Serbinowski (UT).

Director Ramge chaired the meeting on behalf on Commissioner Gerhart.

1. Heard a Federal Legislative Update

Heather Eilers-Bowser (NAIC) provided a federal update on the following topics.

a. The DOL's Fiduciary/Conflict of Interest Final Rule

Ms. Eilers-Bowser said the U.S. Department of Labor's (DOL) fiduciary/conflict of interest final rule was issued April 6. She said the regulation expands the scope of who is considered a fiduciary to federal Employee Retirement Income Security Act (ERISA) retirement plans and individual retirement accounts (IRAs), which will include a broader set of insurance agents, insurance brokers and insurance companies. She said it is uncertain how the new administration and the 115th U.S. Congress will handle the fiduciary standard. She said the president-elect has said that his administration will roll back many recent financial rules. She said there is speculation that the rule may be pared back or some of the deadlines extended in early 2017.

b. DMF

Ms. Eilers-Bowser said that, in June, the U.S. Department of Commerce published its final rule establishing a program by which persons may become certified to access information from the U.S. Social Security Administration's Death Master File (DMF). She said the final rule became effective Nov. 28 and will replace the temporary certification program that was established in 2014. The rule is intended to prevent fraudulent uses of the DMF and is a result of a provision in the Bipartisan Budget Act of 2013 that restricted access to an individual's information contained in the DMF for three years after the individual's death unless a person seeking access to such information is certified under a certification program to be established by the Commerce Department.

c. Senior Safe Act

Ms. Eilers-Bowser said the Senior Safe Act (S.2216/H.R. 4538) provides liability protections for financial institutions and their employees who report suspected senior financial exploitation. The act passed the U.S. House of Representatives in July, but failed to pass the U.S. Senate due to disagreements on limits to the liability protection.

2. Adopted its Oct. 19 Minutes

Mr. Ostlund made a motion, seconded by Superintendent Dwyer, to adopt the Committee's Oct. 19 minutes (Attachment One). The motion passed unanimously.

3. Heard a Presentation on the NAIC Life Insurance Policy Locator Service

Lois Alexander (NAIC) and Chris Witt (NAIC) gave a presentation on the newly operational NAIC Life Insurance Policy Locator Service. Ms. Alexander said the service was launched Nov. 18 and, as of Dec. 8, there had been 3,000 requests made. She said the company matching system page is operational and companies are able to download the requests and search for matches. She said the states are able to follow the results, noting that anyone with questions should contact her.

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4. Adopted the Reports of its Subgroups, Working Group and Task Forces

a. Model Law Review (A) Subgroup

Commissioner Lindeen said the Model Law Review (A) Subgroup was formed to assist the Life Insurance and Annuities (A) Committee in reviewing designated models for compliance with the NAIC's procedures for model law development. She said there were 12 models under the purview of the Committee that the Subgroup reviewed. She said the Subgroup considered the relevance and adoption rates of these 12 models in order to consider, with respect to each model, whether it should be retained as a model law, amended, converted to a guideline or archived. She said the Subgroup first met prior to the Summer National Meeting and quickly concluded that a number of the models were adopted in a majority of states, remain relevant and should be retained as model laws. She said the Subgroup had questions about a few of the models that were not as widely adopted. She said the Subgroup met for the second time Nov. 17, during which it concluded its work, agreeing to make recommendations to the Committee (Attachment Two).

She said the Subgroup agreed that all the models it was assigned to review are relevant and recommended they be retained, with the exception of the *Annuity Disclosure Model Regulation* (#245) and the *Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities* (#278), which are part of the 2017 proposed charges of the Life Insurance and Annuities (A) Committee; as such, no recommendation was needed for those models. She explained that the Subgroup agreed to highlight with its recommendations for three of the models, some issues that the Committee may want to consider in the future.

First, with respect to the *Modified Guaranteed Annuity Model Regulation* (#255), she said the Subgroup recommends, in addition to retaining the model, the Committee should consider looking into whether the states have not adopted the model because the requirements are contained elsewhere in their laws. Commissioner Lindeen also said the Subgroup recommended looking into whether there is a need for the development of a similar law for modified guaranteed annuities offered through general accounts products.

Second, with respect to the *Suitability in Annuity Transactions Model Regulation* (#275), she said the Subgroup recommends that Model #275 be retained, but suggested that, if Model #275 is opened in the future, California's modifications to its law—which are more consumer-friendly—should be reviewed and considered for inclusion in the model.

Third, with respect to the *Annuity Nonforfeiture Model Regulation* (#806), she said the Subgroup recommends that Model #806 should be retained until additional research can be undertaken to consider whether the requirements of this model are contained elsewhere in state law or rules, and consider whether Model #806 may be more appropriate as an actuarial guideline. Commissioner Lindeen said the Subgroup is willing to undertake the additional research with respect to Models #255 and Model #806, if the Committee wishes.

Commissioner Lindeen made a motion, seconded by Mr. Robleto, to adopt the report of the Model Law Review (A) Subgroup, including its Nov. 17 minutes (Attachment Three) and its recommendations to retain the models it was tasked with reviewing. The motion passed unanimously. Commissioner Lindeen made a motion, seconded by Commissioner Donelon to have the Subgroup look into the additional issues identified in Model #255 and Model #806. The motion passed unanimously.

b. Unclaimed Life Insurance Benefits (A) Working Group

Mr. Ommen said the Unclaimed Life Insurance Benefits (A) Working Group met via conference call Nov. 10. He said the Working Group reviewed and discussed the comments received on the draft proposed Unclaimed Life Insurance and Annuities Model Act developed by the Unclaimed Benefits Model Drafting (A) Subgroup. He said the Working Group decided to permit stakeholders to submit additional comments on the draft model, which the Working Group would consider and vote on, if necessary, during its next conference call. Mr. Ommen also said an extension of the request for model law development to draft a model on unclaimed benefits is needed, so that the Working Group can continue drafting the Unclaimed Life Insurance and Annuities Model Act.

Commissioner Donelon made a motion, seconded by Director Cameron, to adopt the report of the Unclaimed Life Insurance Benefits (A) Working Group, including its Nov. 10 minutes (Attachment Four). The motion passed unanimously. Mr. Ommen made a motion, seconded by Director Cameron to extend the request for model law development to allow the Working Group more time to finish its work on drafting the Unclaimed Life Insurance and Annuities Model Act. The motion passed unanimously.

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c. Life Insurance Illustration Issues (A) Working Group

Ms. Stegall said the Life Insurance Illustration Issues (A) Working Group met via conference call Nov. 15, Oct. 20 and Sept. 20. She said the Working Group continued to work on a one- to two-page policy overview document to help consumers better understand specific life insurance policies. She said the Working Group agreed on a draft list of key components that would be included in a policy overview document for term products. She said the Working Group agreed to begin work on key components in a policy overview of whole life policies. She said the Working Group agreed to address key components of universal life policies after addressing whole life policies. The Working Group plans to next meet via conference call Jan. 9, 2017.

Ms. Froment made a motion, seconded by Commissioner Donelon, to adopt the report of the Life Insurance Illustration Issues Working Group, including its Nov. 15 (Attachment Five), Oct. 20 (Attachment Six) and Sept. 20 (Attachment Seven) minutes. The motion passed unanimously.

d. Life Insurance Buyer's Guide (A) Working Group

Ms. Mealer said the Life Insurance Buyer's Guide (A) Working Group held an organizing conference call Nov. 29. She said the Working Group discussed whether the existing buyer's guide provides a good starting point and quickly realized that the current guide is in need of a comprehensive overhaul. She said the Working Group, interested regulators and interested parties were asked to submit via email to NAIC staff any examples of life insurance guides that might be helpful for the Working Group to review for inspiration on format and content.

Ms. Froment made a motion, seconded by Superintendent Dwyer to adopt the report of the Life Insurance Buyer's Guide (A) Working Group, including its Nov. 29 minutes (Attachment Eight). The motion passed unanimously.

e. Annuity Disclosure (A) Working Group

Mr. Yanacheak said the Annuity Disclosure (A) Working Group held an organizing conference call Nov. 22. He said the Working Group's charge is to review and revise, as necessary, Section 6—Standards for Illustrations of Model #245 to take into account the disclosures necessary to inform consumers in light of the innovations in products currently in the marketplace. He said the Working Group tried to identify some of weaknesses with the current Section 6, and learned from a few states that companies have an issue with the model not including an alternative for carriers to illustrate indexes on fixed indexed annuities that have not been in existence for the previous 10 years. He said the Working Group also heard from the states that at least one company is concerned that the definition of "non-guaranteed elements" is overly broad. He said the Working Group asked regulators and interested parties to be prepared to discuss potential solutions to the issues identified on its next conference call. He also said Working Group members, interested regulators and interested parties were asked to review Section 6 again and submit any other comments about ways the model could be improved. He said the Working Group plans to meet again via conference call in January 2017.

Mr. Yanacheak made a motion, seconded by Mr. Van Aalst to adopt the report of the Annuity Disclosure (A) Working Group, including its Nov. 22 minutes (Attachment Nine). The motion passed unanimously.

f. Life Actuarial (A) Task Force

Mr. Boerner reported that the Life Actuarial (A) Task Force met Dec. 8–9. During these meetings, the Task Force adopted its Dec. 1, Nov. 17, Nov. 3, Oct. 27, Oct. 20, Oct. 13 and Sept. 29 minutes. He said the Task Force adopted the following items during those calls: 1) revisions to *Actuarial Guideline XLIX—The Application of the Life Insurance Illustrations Model Regulation to Policies with Index-Based Interest* (AG 49); 2) revisions to *Actuarial Guideline XLVIII—Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation* (AG 48); and the 2017 Generally Recognized Expense Table (GRET) produced by the Society of Actuaries (SOA). He said the Task Force also recommended revisions to the significant elements of the Part A accreditation standards to the Financial Regulation Standards and Accreditation (F) Committee.

Mr. Boerner said the Task Force also adopted reports from its subgroups: 1) the IUL Illustration (A) Subgroup, including its Oct. 12 minutes; 2) the Experience Reporting (A) Subgroup; 3) the VM-22 (A) Subgroup, including its Nov. 18 minutes; 4) the Longevity Risk (A/E) Subgroup, including its Nov. 9 and Oct. 17 minutes; and 5) the C-3 Phase II/AG 43 (E/A) Subgroup.

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Mr. Boerner said the Task Force discussed the work of the joint American Academy of Actuaries (Academy)/SOA mortality table development team of simplified issue (SI) valuation tables, guaranteed issue (GI) valuation mortality tables and preneed experience tables. The discussion included working definitions for GI business and SI issue business. The development team provided GI tables for consideration by the Task Force. The Task Force discussed the SI and accelerated underwriting (AUW) mortality table work of the joint Academy/SOA mortality table development team. The discussion focused on the differentiation between SI and AUW underwriting practices. It was noted that the number of companies with AUW is growing rapidly. The Task Force discussed appointing a subgroup to consider eliminating the prospective test for certain products in the *Standard Nonforfeiture Law for Individual Deferred Annuities* (#805). The Task Force discussed modifications to the companywide exemption in VM-20, Requirements for Principle-Based Reserves for Life Products, including a proposal to allow an exemption for companies with less than \$50 million of ordinary premium regardless of the company's risk-based capital (RBC) ratio.

Mr. Boerner said the Task Force exposed the American Council of Life Insurers (ACLI) proposal to modify the timing of the VM-20 quarterly investment spread tables for a public comment period ending Jan. 13, 2017. The proposal recommends the calculation of the tables using data from the three months prior to the month ending the quarter. The Task Force also exposed the ACLI proposal to modify *Actuarial Guideline XXXVIII—The Application of the Valuation of Life Insurance Policies Model Regulation* (AG 38) to align its requirements with the version of the *Valuation Manual* in effect on the valuation date for a public comment period ending Jan. 20, 2017.

Mr. Boerner said the Task Force heard updates from: 1) the ACLI on the testing of the principle-based reserving (PBR) net premium reserve (NPR) and deterministic reserve (DR) for the term policies of eight companies to understand the relationship of the NPR and DR to the gross premium valuation for term policies; 2) the SOA on the results of the PBR survey; 3) NAIC staff on the 2016 PBR Pilot Project; 4) the Task Force's *Valuation Manual* review drafting group to provide responses to *Valuation Manual* questions submitted by state insurance regulators and members of the industry. The Task Force exposed the group's responses to nine questions for a public comment period ending Jan. 13, 2017; 5) the Interstate Insurance Product Regulation Commission (IIPRC); 6) the SOA on research, education and the *Principle-Based Approach (PBA) Implementation Guide*; 7) Actuarial Resources Corporation on the status of its project to streamline actuarial reporting; and 8) the Academy Council on Professionalism.

5. Adopted Revisions to AG 48

Mr. Boerner said the proposed revisions to AG 48 are intended to align it with the proposed Term and Universal Life Insurance Reserve Financing Model Regulation, which was adopted Sept. 30 by the Financial Condition (E) Committee and is on the agenda for consideration by the Executive (EX) Committee and Plenary at this national meeting.

Commissioner Lindeen made a motion, seconded by Mr. Robleto, to adopt the proposed revisions to AG 48 (*see NAIC Proceedings – Fall 2016, Executive (EX) Committee and Plenary, Attachment Thirteen*) The motion passed unanimously.

6. Adopted Revisions to AG 49

Mr. Boerner said the proposed revisions to AG 49. He said the revisions extend the guideline to all in-force illustrations for all policies within its scope, regardless of the date the policy was sold. Birny Birnbaum (Center for Economic Justice—CEJ) submitted a comment letter. Mr. Birnbaum said the effective date of July 1 in the proposed revisions should be moved up to March 1. He said the July 1 effective date is much longer than needed for the industry to implement this needed consumer protection of updated illustrations for in-force policies. He said AG 49 has been effective for new business for more than a year, which means that the industry has the infrastructure in place to produce AG 49 compliant illustrations. Mr. Ostlund said he remains concerned that revising AG 49 to include revised illustrations of in-force policies will be confusing to consumers. John Rhoades (ACLI) said the ACLI prefers the July 1 effective date to give companies enough time to program their systems.

Superintendent Vullo made a motion, seconded by Commissioner Jones, to adopt the revisions to AG 49, with a March 1 effective date (*see NAIC Proceedings – Fall 2016, Executive (EX) Committee and Plenary, Attachment Fourteen*). The motion passed.

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7. Adopted Revisions to Model #805

Director Ramage reminded the Committee that the Life Actuarial (A) Task Force was asked to revise Model #805 to clarify that the model, in its current form, does not apply to contingent deferred annuities (CDAs). He said the ACLI and the Insured Retirement Institute (IRI) submitted a joint comment letter. Ron Perkins (ACLI) and Jason Berkowitz (IRI) summarized the ACLI/IRI joint comment letter that suggests exempting CDAs from the entirety of Model #805, rather than the current revisions, which exempt CDAs from Section 3 through Section 8, and reserves authority to the commissioner to prescribe appropriate nonforfeiture benefits in the future by regulation. Mr. Perkins and Mr. Berkowitz said the exemption from the entire model is more in keeping with the direction given to the Life Actuarial (A) Task Force to specifically exclude CDAs from the scope of the model.

Mr. Serbinowski, who chaired the Contingent Deferred Annuity (A) Subgroup of the Life Actuarial (A) Task Force and also participated on the Contingent Deferred Annuity (A) Working Group that gave direction to the Subgroup, said the discussion by the Subgroup was that CDAs should be excluded from Model #805 because they do not fit. He said there was never a decision made that nonforfeiture was inappropriate for CDAs; rather, the decision was that there was no way to calculate nonforfeiture for CDAs under the current model, so they should be excluded. He said the Subgroup decided it was important to include the ability for the commissioner to prescribe appropriate nonforfeiture for CDAs by rule in the future. He said this approach is consistent with life insurance nonforfeiture, which includes a catch-all for innovative products. He also said it is unusual to exempt a product entirely; he said other exemptions in Model #805 are generally covered in other laws. Mr. Birnbaum said he believes the discretion to the commissioner to provide a nonforfeiture benefit that is included in the proposed revisions to Model #805 allows for the implementation of the cancellation benefit included in the guidance document adopted by the Life Insurance and Annuities (A) Committee at the 2015 Fall National Meeting: *Guidance for the Financial Solvency and Market Conduct Regulation of Insurers that Offer Contingent Deferred Annuities* (Guidance Document). Mr. Berkowitz suggested revising the language to give the commissioner authority to implement the cancellation benefit set forth in Guidance Document

Commissioner Lindeen made a motion, seconded by Mr. Ommen, to adopt the revisions to Model #805 (Attachment Ten). The motion passed.

Mr. Boerner said the Life Actuarial (A) Task Force agreed to move forward with considering revisions to Model #805 to eliminate the prospective test for certain products. He said the Task Force plans to move quickly and hoped that the CDA revisions and the revisions coming from the Task Force could move to the NAIC membership for adoption at the same time. The Committee agreed to hold Model #805 at the Committee level in anticipation of receiving additional revisions to Model #805 from the Life Actuarial (A) Task Force. Mr. Birnbaum expressed concern with the delay and asked the Committee to give the Task Force a deadline. Mr. Boerner said the Task Force would move quickly. Director Ramage said he did not think it was necessary for the Committee to take formal action to give the Task Force a deadline. He said if the Task Force takes too long, the Committee can simply send the CDA related revisions to Model #805 up to the Executive (EX) Committee and Plenary for consideration of adoption.

8. Discussed Annuity Suitability Violations

Mr. Regalbutto said the New York State Department of Financial Services has become aware of violations of New York's annuity suitability law. He said producers and companies are approaching consumers with deferred annuities and inducing them to replace them with immediate annuities. He said consumers are losing out on the guaranteed annuitization under the deferred annuity and are not being shown a comparison that includes the income benefit. He said, in some cases, consumers are losing out on thousands of dollars. He said other state insurance departments should be aware of this and may want to investigate whether this practice is occurring their respective states.

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

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