

Draft Pending Adoption

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Life Insurance and Annuities (A) Committee
Philadelphia, Pennsylvania
August 7, 2017

The Life Insurance and Annuities (A) Committee met in Philadelphia, PA, Aug. 7, 2017. The following Committee members participated: Bruce R. Ramge, Chair (NE); Dean L. Cameron, Vice Chair (ID); Jim L. Ridling represented by Steve Ostlund and Reyn Norman (AL); Dave Jones and Perry Kupferman (CA); Stephen C. Taylor (DC); David Altmaier (FL); Ralph T. Hudgens (GA); Doug Ommen and Mike Yanacheak (IA); James J. Donelon represented by Tom Travis (LA); Mike Rothman represented by John W. Robinson (MN); Jon Godfread represented by Jeff Ubben (ND); Maria T. Vullo (NY); Jillian Froment and Michelle Rafeld (OH); Elizabeth Kelleher Dwyer represented by Matt Gendron (RI); and Julie Mix McPeak represented by Michael Humphreys (TN). Also participating were: Michael Kakuk (MT); Mike Boerner (TX); and Richard Wicka (WI).

1. Heard a Federal Update

Heather Eilers-Bowser (NAIC) gave an update on NAIC activity related to the U.S. Department of Labor (DOL) fiduciary rule. She said there have been numerous efforts to revise or repeal the final rule in the U.S. Congress and in the courts since the DOL finalized its regulations broadening its definition of “fiduciary investment advice” under the federal Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code in April 2016. She explained that the definition of “fiduciary” has been expanded by the DOL to include any professional making a recommendation or solicitation—and not simply giving ongoing advice. Previously, only advisors, under the federal Investment Advisers Act of 1940, who were charging a fee for service (either hourly or as a percentage of account holdings) on retirement plans were considered fiduciaries. She said that the DOL, in response to the NAIC’s initial comments to the proposed rule, included language acknowledging the savings clause in ERISA for state insurance, banking or securities laws. Nonetheless, the regulatory impact study for the rule makes note of the Federal Insurance Office (FIO) report’s criticism that the *Suitability in Annuity Transactions Model Regulation* (#275) has not been adopted by all of the states and specifically states that communications that prompt suitability standards under state insurance or securities laws, trigger the application of a fiduciary standard under the DOL rule.

Ms. Eilers-Bowser said the rule became final April 10, with full implementation set for Jan. 1, 2018. However, on Feb. 3, President Donald Trump issued a memorandum that resulted in a 60-day delay in the rule’s implementation. This action included instructions for the DOL to carry out an “economic and legal analysis” on the rule’s potential impact. She explained that, ultimately, President Trump’s memo also directed the DOL to move forward with “rescinding or revising the Rule” after undergoing the proper reviews and rulemaking procedures. On April 7, the applicability date of the new “fiduciary” definition and the “best interest contract exemption” (BICE) was extended from April 10 to June 9. The BICE requires advisers to adhere to impartial conduct standards to give advice in the best interest of the client, receive no more than reasonable compensation and make appropriate disclosures, among other requirements.

Ms. Eilers-Bowser explained that most sales of insurance and annuity products to ERISA plans fall in the prohibited transaction exemption (PTE 84-24). Under the DOL final rule, PTE 84-24 would apply to advisors selling non-annuity insurance contracts and annuities that satisfy the DOL’s definition of a “fixed rate annuity contract.” However, the implementation of the changes to PTE 84-24 is not until Jan. 1, 2018. After which, advisors selling variable annuities and fixed-indexed annuities would need to satisfy the conditions of the BICE rather than PTE 84-24, on which they were previously allowed to rely. On July 6, the DOL published a request for information (RFI) in the *Federal Register* seeking answers to 18 questions posed primarily to the industry.

On Aug. 3, the NAIC submitted comments to the DOL on the RFI. In the NAIC comments, the NAIC strongly encouraged the DOL to coordinate closely with state insurance regulators as it considers possible changes to the fiduciary rule. She said the comment letter points out that insurance regulation is currently in harmony with federal and state securities regulation for shared distribution channels. She said the letter stresses that, while the DOL has joint jurisdiction with the states with respect to insurance products sold through ERISA plans, the states have regulatory responsibilities with respect to the entire market for such products, including disclosure requirements, professional standards of conduct for agents and supervisory controls.

She said the NAIC comments state that consumer protection is the hallmark of the state-based insurance regulatory system. The comments explain that a robust system already exists to provide policyholder protections through solvency and market conduct regulations designed to ensure that life insurance and annuity customers are treated fairly. The comments highlight

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current suitability requirements and the work of the Annuity Suitability (A) Working Group to upgrade those standards to ensure consumers are protected, while at the same time achieving regulatory consistency to reduce burdens on the industry.

Ms. Eilers-Bowser said the NAIC is considering providing the U.S. Securities and Exchange Commission (SEC) with comments, which SEC Chair Jay Clayton has sought informally, mainly from the industry and other interested parties. Ms. Eilers-Bowser said she anticipates a continuing open dialogue with both the DOL and the SEC on this issue, noting that she plans to update the Committee as the process moves forward.

2. Adopted its July 18 Minutes

Commissioner Altmaier made a motion, seconded by Director Cameron, to adopt the Committee's July 18 minutes (Attachment One). The motion passed unanimously.

3. Adopted the Report of the Annuity Disclosure (A) Working Group

Mr. Yanacheak said the Annuity Disclosure (A) Working Group met via conference call April 13. He said the Working Group continued to discuss two issues under its charge "to review and revise, as necessary, Section 6—Standards for Illustrations in the *Annuity Disclosure Model Regulation* (#245) to take into account disclosures necessary to inform consumers in light of the innovations in products currently in the marketplace": 1) issues with illustrating participating income annuities because of the formula used to calculate the dividend scale; and 2) the inability to illustrate indexes on fixed-indexed annuities that have not been in existence for the previous 10 years.

Mr. Yanacheak said that, although the Working Group is still in the process of discussing and working through how best to address the issues identified, the Working Group voted to refer a Request for NAIC Model Law Development to revise Section 6 of Model #245 to address the issues identified by the Working Group that are not addressed, or addressed adequately, in the existing model. He said the Working Group plans to meet to begin working on drafting language to revise the model.

Mr. Yanacheak made a motion, seconded by Mr. Ostlund, to adopt the report of the Annuity Disclosure (A) Working Group, including its April 13 minutes (Attachment Two). The motion passed.

4. Adopted the Report of the Annuity Suitability (A) Working Group

Director Cameron said the Annuity Suitability (A) Working Group met Aug. 6, during which it adopted its July 26 and Spring National Meeting minutes. He said the Working Group heard an update on NAIC activities related to the DOL fiduciary rule. Director Cameron said the Working Group continued its discussions regarding potential revisions to Model #275. He said the Working Group heard from stakeholders—consumers, insurers, and agents and brokers—on the issue, including their concerns with the potential revisions. He said the Working Group intends to continue these stakeholder discussions via several conference calls before the Fall National Meeting.

Director Cameron made a motion, seconded by Commissioner Altmaier, to adopt the report of the Annuity Suitability (A) Working Group (Attachment Three). The motion passed.

5. Adopted the Report of the Life Insurance Buyer's Guide (A) Working Group

Ms. Mealer said the Life Insurance Buyer's Guide (A) Working Group met July 31 and July 10. She said the Working Group discussed proposed outlines and formats for a buyer's guide and agreed to move forward along two tracks: 1) develop a short guide to provide a basic overview of life insurance such that first-time consumers have enough information to ask questions to obtain more detailed information; and 2) develop an electronic tool that allows for a "decision tree" format to allow for a deeper dive into certain topics in manageable increments. She said the Working Group agreed to pursue a question-and-answer format for the short guide. Ms. Mealer said NAIC staff has had a preliminary conversation about leveraging the existing NAIC platform to create the electronic life insurance tool. Ms. Mealer said she has asked the Working Group, interested regulators and interested parties to review the life insurance-related information currently on the NAIC website, particularly in the Insure U section. She said the Working Group plans to meet following the Summer National Meeting to work on the short buyer's guide and to hear a presentation about the information on the NAIC website and answer any questions.

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Commissioner Altmaier made a motion, seconded by Director Cameron, to adopt the report of the Life Insurance Buyer's Guide (A) Working Group, including its including its July 31 Minutes (Attachment Four) and July 10 minutes (Attachment Five). The motion passed.

6. Adopted the Report of the Life Insurance Illustration Issues (A) Working Group

Mr. Wicka said the Life Insurance Illustration Issues (A) Working Group met July 31, June 28 and June 14. He said the Working Group continued to discuss how to move forward in carrying out the agreed-upon approach of developing a one- to two-page, consumer-oriented policy overview document. He explained that the goal of the policy overview document is to improve the understandability of the life insurance policy summaries already required in the *Life Insurance Disclosure Model Regulation* (#580) and the *Life Insurance Illustrations Model Regulation* (#582). He said the Working Group has started discussing draft language to revise Model #580 and Model #582 to include a policy overview document requirement. Mr. Wicka explained that the Working Group has also reviewed a draft policy overview template that does not supply the required format, but rather, is intended to serve as an example of a policy overview document that meets the requirements of the model. He said the Working Group plans to continue to meet to discuss updated revisions to draft model language and the template, revised based on the Working Group's discussions.

Commissioner Altmaier made a motion, seconded by Mr. Ostlund, to adopt the report of the Life Insurance Illustration Issues (A) Working Group, including its July 31 (Attachment Six) and June 28 (Attachment Six-A) and June 14 (Attachment Seven) minutes. The motion passed.

7. Adopted the Report of the Model Law Review (A) Subgroup

Mr. Kakuk said the Model Law Review (A) Subgroup met June 19. He said the Subgroup discussed how best to complete its charge to work with the Life Actuarial (A) Task Force to review issues identified during the Subgroup's completion of the Model Law Review Initiative, specifically: 1) with respect to the *Modified Guaranteed Annuity Model Regulation* (#255): a) research whether the requirements of Model #255 are contained elsewhere in state law or rules; and 2) consider whether there is a need for the development of a similar law for modified guaranteed annuities (MGAs) offered through general accounts products; and 3) with respect to the *Annuity Nonforfeiture Model Regulation* (#806): a) research whether the requirements of Model #806 are contained elsewhere in state law or rules; and b) consider whether Model #806 may be more appropriate as an actuarial guideline.

Mr. Kakuk said the Working Group received some information from the NAIC Legal Division regarding both Model #806 and Model #255, but agreed more information was needed. The Working Group agreed to ask the American Council of Life Insurers (ACLI) to survey its members to determine the extent to which MGAs are being sold in the states and whether they are sold as general or separate account products. Mr. Kakuk said the ACLI has indicated it is willing to survey its members to assist the Working Group in this regard. Mr. Kakuk said the Working Group agreed, with respect to Model #806, to ask insurance department actuaries how the *Standard Nonforfeiture Law for Individual Deferred Annuities* (#805) is being implemented in the absence of Model #806. Mr. Kakuk said NAIC staff would work to get that survey drafted and distributed. Mr. Kakuk said the Working Group plans to meet to discuss survey responses once they are received.

Director Froment made a motion, seconded by Commissioner Altmaier, to adopt the report of the Model Law Review (A) Subgroup, including its June 19 minutes (Attachment Eight). The motion passed.

8. Adopted the Report of the Promoting Appropriate Sales Practices in Life Insurance and Annuities (A) Working Group

Ms. Rafeld said the Promoting Appropriate Sales Practices in Life Insurance and Annuities (A) Working Group met June 26, June 1 and May 11. She said the Working Group developed a survey to assist the Working Group in determining whether the *Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities* (#278) requires revising. She said the survey was emailed to NAIC members May 17 and responses have been collected from 22 states. She said the Working Group plans to discuss those responses on its next conference call, which is scheduled for Aug 29. Ms. Rafeld said the Working Group also discussed revisions to the NAIC consumer alert. Ms. Rafeld said a new draft of the consumer alert will be circulated to Working Group members, interested regulators and interested parties for discussion during its August conference call.

Commissioner Altmaier made a motion, seconded by Director Froment, to adopt the report of the Promoting Appropriate Sales Practices in Life Insurance and Annuities (A) Working Group, including its June 26 (Attachment Nine), June 1 minutes (Attachment Ten) and May 11 minutes (Attachment Eleven). The motion passed.

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9. Adopted the Report of the Unclaimed Life Insurance Benefits (A) Working Group

Commissioner Ommen said the Unclaimed Life Insurance Benefits (A) Working Group met June 8. He said, at the request of the Committee, the Working Group identified the top three issues on which it failed to reach consensus and, as a result, impedes the ability of the Committee and, ultimately, the NAIC membership from obtaining the two-thirds vote necessary to adopt the draft Unclaimed Life Insurance and Annuities Model Act as an NAIC model in accordance with the NAIC's model law development procedures. He said the top three issues relate to the proposed model's applicability: 1) retroactive application; 2) prospective application; and 3) asymmetrical application.

Commissioner Ommen made a motion, seconded by Commissioner Jones, to adopt the report of the Unclaimed Life Insurance Benefits (A) Working Group, including its June 8 minutes (Attachment Twelve). The motion passed.

10. Disbanded the Unclaimed Life Insurance Benefits (A) Working Group

Commissioner Jones said California chaired the Unclaimed Benefits Model Drafting (A) Subgroup and had attempted to work through the several issues where there was a lack of consensus. He had thought the group had been able to reach consensus, after numerous conference calls, and a lot of time and effort. However, consensus has remained elusive. He said the ACLI comment letter has identified additional evidence of disagreement and pointed out that many states have already taken action on the topic. He said he is disappointed, but it would be impractical to continue debating the model at this point.

Bruce Ferguson (ACLI) said the ACLI's July 27 letter to Director Rame questioned the need for the Committee to move forward in the face of the lingering controversy on essential aspects of the draft model and the number of states that have already taken action on the issue. He said the ACLI is in agreement with Commissioner Jones.

Brendan Bridgeland (Center for Insurance Research) said a lot of work went into the draft Unclaimed Life Insurance and Annuities Model Act, and he is disappointed in the lack of consensus. He said the market conduct exams the states did helped many, many people and was a big win for the state-based insurance regulatory system. He encouraged the states, going forward, to continue conducting market conduct exams and following up where necessary, because this has made a phenomenal difference for consumers.

Commissioner Jones made a motion, seconded by Mr. Ostlund, to disband the Unclaimed Life Insurance Benefits (A) Working Group. Idaho, Alabama, California, District of Columbia, Florida, Georgia, Iowa, Louisiana, Minnesota, New York, Ohio, Rhode Island and Tennessee voted in favor of the motion. North Dakota voted against the motion. The motion passed.

11. Adopted the report of the Life Actuarial (A) Task Force

Mr. Boerner reported that the Life Actuarial (A) Task Force met Aug. 4–5. During its meeting, the Task Force adopted its July 13, June 29, June 22, June 15, June 8, June 1, May 18, May 11 and May 4 minutes. He said the Task Force adopted the following items during those calls: 1) revisions to the *Valuation Manual* (VM) companywide exemption; 2) revisions to the timing for calculation of quarterly VM-20, Requirements for Principle-Based Reserves for Life Products, investment spread tables; 3) the proposal for the VM-22, Maximum Valuation Interest Rates for Income Annuities, method for determining the valuation interest rate for income annuities more responsive to the economic environment; 4) the proposal requiring the 2017 Commissioners' Standard Ordinary (CSO) mortality table when calculating the net premium reserve (NPR) in the actuarial method; and 5) revisions to VM-31, PBR Actuarial Report Requirements for Business Subject to a Principle-Based Reserve Valuation.

Mr. Boerner said the Task Force also adopted: 1) proposal 2017-6 to amend *Valuation Manual* Section II to reflect that the minimum requirements for fixed annuity contract valuation interest rates are defined in VM-22; and 2) VM-20 default cost tables updated using data through December 2016. He said the Task Force also exposed: 1) the American Academy of Actuaries (Academy) and Society of Actuaries (SOA) Joint Committee 2017 Guaranteed Issue Mortality Tables Report, the guaranteed issue mortality tables and an accompanying amendment proposal for incorporating the mortality tables into the *Valuation Manual*; 2) the Academy and SOA Joint Committee 2017 Simplified Issue Mortality Tables Report, the simplified issue mortality tables and an accompanying definition for simplified issue; and 3) the 2018 Generally Recognized Expense Tables (GRET). Mr. Boerner said the Task Force also adopted the reports of its subgroups and working groups, and heard various reports and updates.

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

12. Adopted Proposal 2017-6 to Amend Valuation Manual Section II

Mr. Boerner said that during its Aug 7 meeting, the Life Actuarial (A) Task Force adopted amendments to proposal 2017-6 to revise the *Valuation Manual* to point to VM-22 for the minimum requirements for fixed annuity contract valuation interest rates. He explained that this amendment goes with proposal 2016-2, which revises requirements in VM-22 for the maximum valuation interest rate for single premium immediate annuities (SPIAs) and similar contracts issued after Dec. 31, 2017, to be more responsive to the economic environment. He explained that proposal 2017-6 was inadvertently left out of the package of *Valuation Manual* amendments adopted by the Life Insurance and Annuities (A) Committee on its July 17 conference call.

Commissioner Altmaier made a motion, seconded to by Mr. Robinson, to adopt proposal 2017-6, revising *Valuation Manual* Section II (see *NAIC Proceedings – Summer 2017, Executive (EX) Committee and Plenary, Attachment Five*) The motion passed.

13. Heard an Update on the NAIC Life Insurance Policy Locator Service

Lois Alexander (NAIC) gave an update on the NAIC Life Insurance Policy Locator Service. She said the service was launched in November 2016 and, since that time, the service has received 26,333 requests and made 4,144 matches, with a total claim amount of \$41,712,670. She said 457 companies have accessed data via the industry portal. She said companies have been asked to enter matches only once per policy or annuity contract found. Ms. Alexander said two modifications were activated June 9: 1) mandatory inclusion of legal first and last name of the deceased; and 2) mandatory inclusion of the deceased's Social Security number, hidden when required by the state. She also said future modifications are being contemplated, including adding "annuities" to the title of the Life Insurance Policy Locator Service and having companies report when no match is found, as well as when a match is found.

Superintendent Vullo reported that New York mandates participation in its Life Insurance Policy Locator Service. New York has been working with the NAIC to address issues between the two services and progress has been made. Commissioner Jones said it would be helpful to know what percentage of premium volume is represented by the 457 companies using the NAIC Life Insurance Policy Locator. Ms. Alexander said she would look into getting that information.

14. Heard a Report on an Ambiguity Identified in Model #613

Jennifer Cook (NAIC) explained that a couple of states have contacted the NAIC regarding some ambiguous language in the *Life Insurance and Annuities Replacement Model Regulation* (#613). Ms. Cook summarized the issue outlined in the July 26 memorandum to Director Ramage (Attachment Thirteen).

She explained that the model defines "existing policy or contract" as "an individual life insurance policy (policy) or annuity contract (contract), in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period." Section 1B(9) exempts from the scope of the model, "immediate annuities purchased with proceeds from an existing contract," and then creates an exception to the exemption for "immediate annuities purchased with proceeds from an existing policy." Ms. Cook said the question is whether there is a need for clarification in the model if the intention in Section 1B(9) is to say using proceeds from an annuity to buy an immediate annuity is not a replacement, but using proceeds from life insurance policy to buy an immediate annuity is a replacement. She asked whether there is a rationale for this differentiation and if the original exemption from the replacement model is intended to be for deferred annuities when they are annuitized.

Director Ramage asked Working Group members, interested regulators and interested parties to review the issue, noting that the issue would be discussed further on the Committee's next conference call.

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

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