GUIDELINES GUIDANCE FOR THE FINANCIAL SOLVENCY AND MARKET CONDUCT REGULATION OF INSURERS WHO OFFER CONTINGENT DEFERRED ANNUITIES

Executive Summary

In late-2012, the Life Insurance and Annuities (A) Committee (the “A Committee”) charged the Contingent Deferred Annuity (“CDA”) Working Group with evaluating the adequacy of existing laws and regulations with regard to CDAs and whether additional solvency and consumer protection standards were required. The CDA Working Group determined that CDAs do not easily fit into the categories of fixed or variable annuities and, therefore, do not always easily fit in existing laws and regulations governing annuities.

The CDA Working Group developed these guidelines to serve as a reference for states interested in modifying their annuity laws to clarify their applicability to CDAs or to help states determine how to apply their existing annuity laws and rules to CDAs. These guidelines set forth what consumer protection and financial solvency model laws and regulations should be applied to CDAs and what model laws and regulations that would not apply to CDAs. These guidelines outlines what revisions, additions, and regulatory interpretations may be necessary for a state to clarify how existing state laws governing annuities apply to these products. These guidelines also includes a checklist and regulatory guidance developed by the Financial Condition (E) Committee, Life Risk-Based Capital (E) Working Group, and the Life Actuarial Task Force for states to use in evaluating the capital and reserving requirements and a checklist for reviewing the risk management capabilities of insurers seeking to offer CDAs in their state. These guidelines are intended to provide a general framework for the regulation of CDAs while work on specific issues involving CDAs continues at the NAIC.

In the course of completing its charges, the CDA Working Group met with and heard testimony from the life industry, interested trade groups, consumer representatives, the U.S. Securities and Exchange Commission (“SEC”), the Financial Industry Regulatory Authority (“FINRA”), the U.S. Department of Labor, the American Academy of Actuaries (“AAA”), U.S. Government Accountability Office and the National Organization of Life & Health Guaranty Associations (“NOLHGA”) among other interested parties. These guidelines are based on the information provided by these parties and the CDA Working Group’s review of existing NAIC model laws and regulations.

I. Background
   A. Classification of CDAs
CDAs are hybrid products which on their face appear to have elements of both annuities and financial guarantee products. In 2012, the CDA Subgroup reviewed CDAs to determine how the product should be classified. In March 2012, the A Committee and the Executive Committee and Plenary adopted the recommendations of the CDA subgroup that CDAs were a hybrid life product are annuities best written by life insurers.

B. Definition of CDAs

In this regard, while a CDA in its accumulation phase resembles a variable annuity, a CDA more resembles a fixed annuity in its payout phase. The working group determined that a distinct definition of CDAs was needed for regulators, the industry, and consumers. The CDA Working Group developed and the NAIC has adopted a definition of a CDA as “an annuity contract that establishes a life insurer’s obligation to make periodic payments for the annuitant’s lifetime at the time designated investments, which are not owned or held by the insurer, are depleted to a contractually-defined amount due to contractually-permitted withdrawals, market performance, fees and/or other charges.” Regulators may wish to include should consider this definition when determining whether a product is properly classified as a CDA. If revisions to statutes or regulations are contemplated, states may wish to add this definition in their statutes and/or regulations and use it in determining whether an annuity product would be considered a CDA.

C. Features of a CDA

CDAs are hybrid annuity products which transfer both investment risk and longevity risk to the insurers who issue them. A CDA can be generally thought of as a living benefit added to an underlying retirement investment account (“Covered Investments”), such as a mutual funds or a managed account. The underlying account is not held or managed by the insurer but is instead held by a related or unrelated third party entity. While the insurer may contractually restrict the type of investment assets and products Covered Investments that can be covered by the CDA, the insurer does not control the investments in the underlying account. An example of this would be a CDA attached to a mutual fund held in an individual or employer-sponsored retirement account. The CDA issuer can contractually limit the CDA’s attachment to certain types of allowable mutual funds, but would have no control over the assets that make up those mutual funds.

A CDA has three distinct phases during its life of the contract. First, the CDA goes through an accumulation phase. This phase occurs from the time date the CDA is purchased issued until the time the participant decides to take withdrawals from the separately-managed account Covered Investments, typically upon reaching a certain age such as retirement age. During this phase, the amount of the CDA benefit base is determined by the value of the assets in the underlying account. As those assets increase in value (for example through investment gains or additional deposits), the CDA benefit base amount increases. The CDA benefit base may also increase due to contractual features. The CDA benefit base is a notional amount used
for calculating permitted withdrawals and the benefit amount. Depending on the product design, the benefit base is calculated on a daily, monthly or annual basis. The more frequently the benefit base calculation is made, the more likely a consumer will realize investment gains in the benefit base.

Once a benefit base amount has been set, the CDA guarantees that the benefit amount can never decrease due to declines in the value of Covered Investments as the result of investment losses. In other words, should the underlying assets decrease in value due to poor market performance, the CDA’s benefit amount does not decline. This allows the insured to mitigate the risk that retirement payouts and future withdrawal amounts will decrease due to market conditions. The insurer assumes some of the market risk of the underlying asset Covered Investments by guaranteeing payments and periodic withdrawal amounts based on the underlying assets peak level benefit base, which may be greater than the actual amount of funds held in the value of the Covered Investments held at the time of withdrawal, the second phase of a CDA.

The withdrawal phase occurs when the participant begins to draw funds from the separately managed account the Covered Investments after reaching the age specified in the CDA contract, most typically upon retirement age. Some product designs may allow policyholders to elect to begin withdrawals at an earlier or later age, in which case, the withdrawal percentage may be adjusted up or down accordingly. The “guaranteed withdrawal amount” under the CDA is based, under current product designs, on a specified percentage of the value of the CDA benefit base at the time distributions begin. During the withdrawal phase no benefit payments are made under the CDA and the insured is receiving income making withdrawals solely from the funds in their underlying account Covered Investments. The CDA contract sets a maximum periodic guaranteed withdrawal amount that a participant may take. The withdrawal amount is a set percentage of the benefit base, for example five percent of the benefit base per year. Withdrawals at or below those permitted by the contract the guaranteed withdrawal amount do not affect the benefit base level established during the accumulation phase amount of future withdrawals. However, should a participant policyholder withdraw funds above the contractually permitted amount, the amount of benefits available under the CDA decreases, potentially all the way to zero, pro rata reduction of the CDA benefit base and/or guaranteed withdrawal amount may occur. Excessive withdrawals could also result in termination of the CDA. During the withdrawal phase, an insured still maintains the investments in an underlying fund its or her assets in the Covered Investment. Thus, the amount of funds value of the Covered Investments available to the insured may also decrease during the withdrawal phase due to market conditions. However, unlike in the accumulation phase, decreases in funds due to market changes do not reduce benefits the guaranteed withdrawal amount will not decrease due to loss of value of the Covered Investments though such losses could have the effect of triggering payments under the CDA. Consequently, insurers will typically offer CDAs in connection with Covered Investments that can be effectively hedged or limit the type of assets a policyholder may hold in the Covered Investments during the withdrawal phase to those with low volatility. It is likely that most...
insurers will address this issue by limiting the type of assets an insured may hold in the underlying account during the withdrawal phase to those with low volatility.

The third and final phase is the payout or settlement phase. Upon exhaustion of the underlying account Covered Investments, the CDA insurer begins making periodic benefit payments equal to the guaranteed withdrawal amount for the policyholder’s lifetime until the insured’s death. The amount of those payments is a percentage of the benefit base amount set during the accumulation phase less any penalties or reductions for withdrawals above the contractual limits during the withdrawal phase. If there are no penalties or reductions imposed, the periodic benefit payment is equal to the contractually permitted withdrawal amount during the withdrawal phase. In this way, the CDA guarantees level lifetime income payments during retirement. It is the Working Group’s understanding that CDA products sold to date do not include a death benefit. Since an insured a policyholder is limited in the amount of periodic withdrawals he or she may take during the withdrawal phase, whether or not a CDA will reach the payout or settlement phase is a function of the performance of the underlying investment assets Covered Investments, increases to the CDA benefit base, policyholder behavior, and the insured’s longevity.

For the CDA products that the Working Group reviewed, the fee for the CDA policy was calculated as a percentage of the underlying assets Covered Investments or benefit base. Generally, the fee is not paid directly from the insured but instead deducted and paid by the administrator of the underlying fund from the Covered Investments.

D. Federal Regulation of CDAs

There is a question as to whether CDAs are required to be registered as securities with the Securities and Exchange Commission (“SEC”). The Securities and Exchange Commission (“SEC”) has not taken a position regarding whether CDAs are required to be registered as securities under the Securities Act of 1933. However, based on information received from the SEC shared with the working group, it is the CDA Working Group’s understanding that a product that is whose value derivatives of a from a registered security (e.g., a retail mutual fund that is registered with the SEC under the Investment Company Act of 1940) is also considered a security requiring registration unless a specific registration exemption applies. Since a CDA’s value is derived from the value of an underlying registered security, it would appear that CDAs need to be registered with the SEC. It is the Working Group’s understanding, based on its discussions with the life industry, that insurers have been registering CDA products with the SEC to date unless the CDA qualifies for one of the designated exemptions from SEC registration in the federal securities laws. An important exemption, for instance, is the exemption from SEC registration for annuities that fund certain retirement plans.

1 A payout structure could alternatively be based upon a “life with period certain” structure.
2 Payments may be level or increasing depending upon product design.
3 For some CDA products an insured may elect to purchase spousal benefits. In these instances the CDA would be subject to the longevity of both spouses.
structured as group annuities offered to 401(k) plans and similar plans typically rely on this exemption. Companies should continue to discuss registration requirements for CDA products with the SEC.

Products registered with the SEC may only be sold by a registered financial professional through a FINRA licensed broker dealer or a registered investment advisor. Sales of CDAs by broker dealers are subject to FINRA’s general suitability requirements.

Investment advisors owe a fiduciary duty to their clients in recommending any investment product and a CDA purchase would be required to be made through a broker dealer. Registered CDAs are subject to SEC disclosure requirements, including the delivery of a prospectus, and FINRA’s advertising and marketing rules.

II. Financial Regulation of CDAs
   A. Risk Management

The design of CDAs and their attachment to funds outside of the insurer’s control create unique risks that necessitate strong and comprehensive risk management practices by insurers. These risks included longevity risk, market risk, policyholder behavior risk, and third party risk.

Longevity risk is one of the main risks that CDAs transfer from the insured to the insurer. This is the risk that policyholders will live longer than expected and trigger the CDA lifetime income benefit by depleting the funds in their retirement account. This risk can be managed by the insurer through product design, risk pooling, and risk management techniques that are similar to those used in other life products with longevity risk. Regulators reviewing an insurer’s handling of longevity risk should look to the company’s insurer’s actuarial opinions to ensure that insurers are properly reserving for longevity risk.

Another risk that is transferred to the insurer from the insured is market risk. The market risk associated with a CDA is that the amount of benefit to the policyholder varies inversely to the market performance of the Covered Investments. The value of the Covered Investments may decrease while the benefit base and guaranteed withdrawal amount are set at a higher level. Thus, when the policyholder takes the guaranteed withdrawal amount it will deplete the Covered Investments sooner than anticipated triggering the CDA benefit. Insurers can manage the market risk by developing comprehensive hedging strategies similar to those used to manage the market risk.

4 Investment advisors who manage less than $100 million in assets must register in the state of their principal place of business and investment advisors managing assets of $100 million or greater must register with the SEC.
associated with other life and annuity products; that is, investing in an offsetting position in related assets to those in which the insurer incurs the market risk, i.e., derivatives, etc. Of course, hedging cannot offset all market risks and is only a method for mitigating losses and results will vary depending upon hedge effectiveness. Further, in the event there is a significant, broad-based market downturn, such as the 2008 financial crisis, CDA issuers may see a greater than anticipated increase in the number of CDAs in the payout phase because of a high number of policyholders suffering losses in the underlying Covered Investments. Regulators may wish to review an insurer’s hedging strategy to verify that it is comprehensive, it appropriately addresses the insurer’s market risks under adverse scenarios, and that an insurer is making reasonable assumptions regarding the effectiveness of the hedging strategy. An insurer must have a “Clearly Defined Hedging Strategy” to take credit for hedging in reserving (pursuant to Actuarial Guideline 43 (“AG 43”)) and risk based capital calculations (pursuant to C-3Phase 2 (“C3P2”)).

CDA issuers also incur risks based on policyholder behavior, including lapse rates, investment decisions, and the amount and timing of withdrawals, timing and amounts, and investment decisions. In this regard, the value of the CDA to an insured policyholder and, correspondingly, the level of risk to the insurer are in many ways governed by policyholder behavior. For example, because CDAs take away some of the down-side market risks of the insured’s investments, a CDA may encourage an insured to invest in riskier investments. An insured policyholder can may wish to place his or her assets in more volatile investments because if the investments increase in value, the increase is added to the CDA’s benefit base, if the investments decrease in value, the benefit base is locked in at the portfolio’s peak. Thus, from the insured’s policyholders’ risk perspective, investment increases mean a higher benefit base and investment losses mean the CDA reaches the payout phase sooner.

Similarly, whether the payout phase will be reached also will depend in part on policyholder behavior, and in particular, when the policyholder commences withdrawals and whether the policyholder takes the maximum allowable withdrawal amount. To maximize benefits under the CDA, a reasonable insured policyholder should take the maximum allowable withdrawal amount each year every period of the withdrawal phase in order to draw down the underlying funds in the withdrawal phase and trigger the settlement payout phase of the CDA. To maximize benefits, the insured would take the allowable withdrawal limit absent a liquidity need.

Insurers can manage policyholder behavioral risk through product design including limiting restrictions on the type of investment assets that an insured may hold in the underlying portfolio with a CDA, limiting withdrawals amounts during the withdrawal phase, varying fees in accordance with the risk level of the underlying investments, and decreasing benefits in the payout phase for withdrawals above the guaranteed withdrawal amount.

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5 Please note that the Life Actuarial (A) Task Force is reviewing AG 43 and the Life Risk-Based Capital (E) Working Group is reviewing C3P2 as to how they will apply to CDAs.
during the withdrawal phase those allowed under the policy or for withdrawals made during the accumulation phase. Regulators should review CDA products with a balanced view, ensuring that CDAs are designed to manage policyholder behavior risks while not being overly restrictive in how insured’s policyholders may use and gain value from a CDA.

Insurers who offer CDAs must also manage third party relationships and risks. Insurers rely on third party non-insurers who manage the underlying assets. These third parties may collect the insurer’s fee, provide information regarding the assets’ performance (for determining the CDA benefit base), and to notify the insurer if the insured policyholder changes the assets contained in the underlying account (to determine if the insured policyholder is invested in assets allowed under the CDA contract). If an insurer does not receive timely information from the third party asset manager, it will be difficult for the insurer to administer the CDA. Insurers will need to contract with these third parties to clarify each party’s roles and responsibilities. Similarly, insurers face counterparty risks from the parties from whom they buy hedge instruments, specifically, whether the counterparty will back the guarantees they offer.

The Financial Condition (E) Committee is developing a checklist for state regulators to use in reviewing the risk management program of insurer’s wishing to offer CDAs. Regulators may also wish to consider reviewing the insurer’s risk management program within the framework of The Own Risk and Solvency Assessment (“ORSA”) Model Act as well.

B. Financial Risk Management Checklist
[The NAIC has not yet completed its work with respect to the development of a risk management checklist for CDAs. This document will be updated when the risk management checklist is complete. [In Development]]

C. Reserve Requirements
[The NAIC has not yet completed its work with respect to the development of a risk management checklist for CDAs. This document will be updated when the risk management checklist is complete. [In Development]]

D. Capital Requirements
[The NAIC has not yet completed its work with respect to the development of a risk management checklist for CDAs. This document will be updated when the risk management checklist is complete. [In Development]]

III. Non-Financial Regulation of CDAs

The CDA Working Group examined existing consumer protection laws and regulations to determine how CDAs best fit within the current regulations that apply to fixed and variable annuities. In conducting this review, the Working Group determined that CDAs do not fit neatly into either one of these categories. For example, the value of a CDA is determined, in part, by the market performance of the underlying assets, similar to how the value of a variable
A. Filing Requirements

Because CDAs do not fall easily into existing annuity categories, the CDA working group recommends that CDAs be filed with states as “Contingent Deferred Annuities” and not as fixed or variable annuities. Based on this recommendation, “Contingent Deferred Annuities” has been added as a filing category in the System for Electronic Rate and Form Filing (“SERFF”). In this regard, a group and individual category has been established for CDAs under type of insurance. (A07G Group Annuities – Special / A07G.003 Contingent Deferred and A07I Individual Annuities – Special / A.07I.003 Contingent Deferred.)

B. Application of NAIC Model Laws and Regulations

Because CDAs do not fit neatly within existing categories, the working group reviewed which non-financial model acts and regulations should apply, or not apply, to CDAs. The working group’s findings and how states may wish to amend their laws to apply to CDAs are outlined below along with recommendations about how states could interpret and/or amend their existing annuity laws and rules.

Producer Licensing Model Act (#218)

The Producer Licensing Model Act governs the qualification requirements and procedures for licensing insurance producers. Because CDAs are registered as securities, the working group reached a preliminary conclusion that the requirements for selling variable annuities should be applied to CDAs but determined that further review was warranted. As such, the working group recommended that this model be reviewed to determine if the license required to sell variable annuities would be appropriate for the sale of CDAs or whether revisions were necessary to apply the model act for the sale of CDAs. The A committee has tasked the Producer Licensing (EX) Task Force with reviewing this model with regard to CDAs. The Producer Licensing (EX) Task Force has reviewed this Model and determined that “producers selling CDAs should be required to obtain a securities and variable lines license.” The Task Force did not recommend any revisions to the Model. Because For CDAs that are registered as securities, regulators should verify that producers have the requisite licenses and registration required to sell securities.

Annuity Disclosure Model Regulation (#245)
The Annuity Disclosure Model Regulations requires insurers who sell annuities to provide a disclosure document and a buyer’s guide in connection with the sale of an annuity. The model applies broadly to all annuity contracts but exempts specific types of annuities including those registered with the SEC or issued to employer-sponsored retirement plans which may have their own disclosure requirements that preempt state law. See Sections 3B.1(a), (b), 3D.1. Since CDAs are being registered with the SEC, the federal prospectus and other disclosure requirements may preempt state disclosure requirements. Since CDAs generally fall within one of these two categories, The Working Group recommended that CDAs continue to be registered as securities and, as such, the working group found that the exemption in the annuity disclosure model regulation for registered products and employer-sponsored plans would apply to CDAs. To the extent there are any CDAs products that do not fall within one of these two exceptions, the disclosure requirements outlined in Section 5.B. of the Model Regulation would apply.

Under the Model Regulation, does provide that the NAIC buyer’s guide is required to be provided in the sales of variable annuities “and when appropriate, in sales of other registered products.” Currently, the NAIC does not have a buyer’s guide which addresses CDAs, and providing the current buyer’s guide for fixed and variable annuities, which is inapplicable, for CDAs may confuse consumers. Therefore, the Working Group concluded that the requirement to provide a buyer’s guide would not be appropriate for CDAs.

States should review their annuity disclosure laws and regulations to determine if they need to be revised to make clear the disclosure requirements do not apply to CDAs. The NAIC is currently considering changes to the model regulation that would clarify that the exemption for registered products would include CDAs. Alternatively, however, the model’s exemptions for registered products and products covered by ERISA employer-sponsored plans may be broad enough for states to interpret existing law to exclude CDAs without revision to existing regulations. States may wish to consider issuing guidance to insurers that the regulation does not apply if revisions to the regulations regarding CDAs are not contemplated.

Suitability in Annuity Transactions Model Regulations (Model # 275)

The CDA Working Group determined that the Suitability in Annuity Transactions Model Regulations should apply to CDAs and that suitability review for the sale of CDAs is an important consumer protection for these products. Section 6. H.1 of the Model Act has a “safe harbor” provision that provides that sales made in compliance with FINRA requirements “pertaining to suitability and supervision of annuity transactions” satisfy the requirements of the Model Act. The Working Group has recommended that this section of the model be revised to include CDAs in the safe harbor provision so that if FINRA’s variable annuity suitability rules are applied to registered CDAs or CDA specific suitability rules are developed by FINRA in the future, that suitability review would be considered to be in compliance with the Model Act.
That being said, FINRA indicated to the Working Group that it will not require that broker dealers apply the suitability standards for variable annuities to CDA sales, though FINRA general suitability requirements would apply. If a broker-dealer does not apply FINRA’s annuity suitability standards to the sale of a CDA than the safe harbor provision would not be applicable and the suitability requirements of the Model Act would apply. However, individual broker-dealers may apply FINRA annuity suitability standards to CDAs, despite FINRA not requiring it, and that would be sufficient for the safe harbor provision to apply. State regulators should ensure that sales of CDAs are subjected to suitability review either under FINRA standards or state standards. If suitability review is not conducted under FINRA’s suitability standards than the suitability requirements of the Model Act apply.

For sales governed by the Model Act, the Working Group concluded that the existing list of “suitability information” included in Section 5.1 of the Act contains all the information that is needed to examine the suitability of a CDA sale and that additional factors do not need to be added to the Model Act to specifically address CDAs. It should be noted that among the suitability information to be considered is the existing assets of the consumer “including investment and life insurance holdings.” The working group determined that, as a part of suitability review, it was important that the insured’s underlying assets be suitable for the addition of a CDA. For example, the addition of a CDA to a certificate of deposit may be unsuitable because the fees for the CDA might absorb an unreasonable amount of the certificate of deposits rate of return undermining the insured’s investment goals. The working group concluded that the category for existing investment assets would encompass suitability review of the investment funds underlying the CDA.

It should also be noted that Section H.1 of the suitability model act has a “safe harbor” provision that provides that sales made in compliance with FINRA requirements “pertaining to suitability and supervision of annuity transactions” satisfy the requirements of the model act. The working group has recommended that this section of the model be revised to include CDAs in the safe harbor provision because if FINRA’s variable annuity suitability rules are applied to CDAs or CDA specific suitability rules are developed by FINRA in the future, that suitability review would be considered to be in compliance with the model act.

That being said, FINRA indicated to the working group that it will not apply the suitability rule for variable annuities to CDAs. Because FINRA is not currently applying specific annuity suitability rules to the sale of CDAs, the working group believes CDAs fall outside the “safe harbor” provision and sales of CDAs would be governed by the suitability requirements of the model act. This interpretation will avoid any regulatory gaps between state and federal law. The safe harbor provision may be applicable in the future if FINRA applies specific annuity suitability rules to CDAs.

Life and Health Insurance Guaranty Association Model Act (#520)
The working group reviewed the issue of guaranty fund coverage but did not determine whether CDAs are covered under state guaranty funds. The National Organization of Life & Health Guaranty Associations (“NOLHGA”) testified before the working group that their review of CDAs was not complete but stated that it appeared that CDAs were eligible for coverage under the Model Act subject to a number of caveats and possible limitations. The working group also notes NOLHGA’s statement that individual guaranty fund coverage is ultimately a state by state determination.

The working group found that the issue of guaranty association coverage would likely vary from state to state. On one hand, a CDA is sold by life companies and would seem to be covered under guaranty funds like other life products. On the other hand, some guaranty funds exclude coverage for products that involve the transfer of investment risks or guarantees of employer retirement plans. CDAs would arguably fit into these categories. Each state should review its guaranty fund coverage laws to determine whether CDAs are covered by those funds.

The committee has tasked the Receivership and Insolvency (E) Task Force (“RITF”) with determining whether revisions to the model act are needed and warranted to address CDAs. After presentations from the National Organization of Life & Health Guaranty Associations (“NOLHGA”), discussions with taskforce members, and comments from interested parties, the RITF found that CDAs would fall within the definition of “annuity” in the Model Act and be subject to the same provisions for coverage, group and individual, and subject to the same limitations and broad exclusions, as other annuities. This finding was based on the assumption that CDAs are considered annuities under state law and the issuer is a member insurer under state guaranty association law.

Subject to the fact that individual state guaranty associations always have the ultimate decision of what contracts are covered, RITF has determined that, in those states that meet the above assumptions, CDAs should be covered annuities, both in the pre-payout phrase and the pay-out phrase, subject to all of the other statutory limits and exclusions that apply generally to annuities.

Advertisements of Life Insurance and Annuities Model Regulation (#570)

The Advertisements of Life Insurance and Annuities Model Regulations set forth standards for the advertisement of life products. The CDA working group determined that this regulation should also be applicable to CDAs. This regulation currently applies to “annuities” which may be broad enough to include application to CDAs. The working group has recommended that the regulation be amended to specifically include CDAs to make clear the regulation would apply to these products. Section 3, A. of the model regulation states that for “variable contracts” where federal regulations establish disclosure requirements, this regulation is interpreted to avoid conflicts with federal regulation. The working group believes this section should also apply to CDAs which are registered and subject to federal...
disclosure requirements. States should review their existing regulations and consider clarifying their regulations or issuing guidance that this regulation would apply to CDAs. States may also wish to clarify that application of these regulations to registered CDAs is not intended to conflict with federal disclosure requirements to avoid issues of preemption.

**Life Insurance and Annuities Replacement Model Regulation (#613)**

The Life Insurance and Annuities Replacement Model Regulation regulates insurers and producers with respect to the replacement of existing life insurance plans and annuity contracts. The CDA Working Group concluded that the Model Regulation should be amended to make clear it applies to CDAs. Section 1.C. of the Model Regulation exempts “registered contracts” with respect to the provision of illustrations and policy summaries because those products are subject to federal prospectus and disclosure requirements. “Registered contracts” is defined in the regulation as a variable annuity contract or variable life insurance policy “subject to the prospectus delivery requirements of the Securities Act of 1933.” Because registered contracts are defined narrowly as variable products, the Working Group concluded that the term “registered contracts” should be amended to include registered CDAs that are subject to federal prospectus requirements.

**Synthetic Guaranteed Investment Contracts Model Regulation (#695)**

The Synthetic Guaranteed Investment Contracts Model Regulation prescribes terms and conditions under which life insurance companies can issue contracts that “establish the insurer’s obligation by reference to a segregated portfolio of assets that is not owned by the insurer.” The Working Group made no findings regarding whether this model regulation would apply to CDAs but did note that CDAs share certain characteristics with Synthetic Guaranteed Investment Contracts. For example, the obligations under the CDA are tied to a separately managed investment account. The Working Group recommended that this model regulation be subject to further review to clarify its relationship to CDAs. The Committee has tasked the Life Actuarial Task Force with reviewing this model and its relations to CDAs and further guidance will be forthcoming from this group.

**Standard Nonforfeiture Law for Individual Deferred Annuities (#805)**

The Standard Nonforfeiture Law for Individual Deferred Annuities sets requirements and minimum values for surrender benefits due to a contract holder upon non-payment or cancellation of an annuity contract. The law applies broadly to individual annuities unless specifically exempted. Because the law broadly applies to annuities and CDAs are not specifically exempted, this law would arguably apply to CDAs. However, the Working Group determined that it was unclear how nonforfeiture benefits would be calculated for CDAs under the current law as CDAs do not contain paid-up annuity, cash surrender, or death benefits,
for example. Therefore, the CDA Working Group recommended that the current model be amended to specifically exclude CDAs as there is no method in the law for calculating nonforfeiture benefits as they would apply to CDAs. Thus, inclusion of CDAs in this model would cause confusion. The CDA Working Group made no recommendations as to whether nonforfeiture benefits should be required for CDAs. The A Committee is considering whether a referral is appropriate for further review of the application of nonforfeiture benefits to CDAs.