September 5, 2014

Commissioner Ted Nickel, Chair
Contingent Deferred Annuities (A) Working Group
Wisconsin Office of the Commissioner of Insurance
125 South Webster Street
Madison, Wisconsin 53703-3474

Via email: ted.nickel@wisconsin.gov

Re: Draft Guidelines for the Financial Solvency and Market Conduct Regulation of Insurers who offer Contingent Deferred Annuities (“CDAs”)

Draft Revisions to Annuity Disclosure Model Regulation (#245); Suitability in Annuity Transactions Model Regulation (#275); Advertisements of Life Insurance and Annuities Model Regulation (#570); Life Insurance and Annuities Replacement Model Regulation (#613)

Dear Commissioner Nickel:

On behalf of our members, the American Council of Life Insurers (“ACLI”) and the Insured Retirement Institute (“IRI”) appreciate the opportunity to comment on (a) the draft Guidelines for the Financial Solvency and Market Conduct Regulation of Insurers who offer Contingent Deferred Annuities (the “Guidelines”) exposed for public comment by the NAIC Contingent Deferred Annuities (A) Working Group (the “Working Group”) on August 5, 2014, and (b) the draft revisions to the NAIC Annuity Disclosure Model Regulation (#245), the NAIC Suitability in Annuity Transactions Model Regulation (#275), the NAIC Advertisements of Life Insurance and Annuities Model Regulation (#570), and the NAIC Life Insurance and Annuities Replacement Model Regulation (#613) (collectively, the “Consumer Protection Models”) re-exposed for comment by the Working Group on August 16, 2014.

We greatly appreciate the Working Group’s efforts to develop the Draft Guidelines, and believe it provides a helpful foundation for resolving questions individual states may have about the regulatory framework for CDAs. We have enclosed as Attachment A to this letter a mark-up of the
Draft Guidelines in which we propose what we believe are necessary and appropriate clarifications. In Part 1 of this letter, we describe and explain the substantive changes we are recommending.¹

We also greatly appreciate the efforts of the NAIC staff to develop the draft revisions to the Consumer Protection Models. While we continue to believe that NAIC drafting notes or alternatively interpretative guidance in the CDA Guideline Document could serve the purpose of explaining how these regulations apply to CDAs, we acknowledge that the Working Group has requested public input on technical revisions to these models. We have enclosed as Attachment B to this letter a mark-up of the relevant sections of each of the Consumer Protection Models, which reflect an alternate approach to that taken in the draft revisions exposed for comment by the Working Group on March 29, 2014. In Part 2 of this letter, we describe and explain our proposed approach.

As a preliminary matter, we'd like to briefly reiterate the comments we made regarding consumers’ retirement income challenges during the in-person meeting of the Working Group on August 16 at the NAIC Summer 2014 National Meeting (the “Summer Meeting”).

Seventy-nine million Baby Boomers today face immediate and unprecedented retirement income challenges that simply did not exist in earlier generations. The number of 60-64 year old Americans has increased substantially in recent years, as have the odds that a 65 year old will live to see age 90. Simply put, individuals today are living longer than their parents and grandparents and can no longer rely on traditional pension plans and Social Security to fund their retirement. As a result, American consumers must take a much longer-term approach to planning and saving in order to support themselves through retirements that can span 20-30 years or more.

There are a wide variety of products currently available in the market to help consumers effectively manage these risks, and CDAs represent another such option. They include many of the same key features as traditional annuities, and operate and afford protections similar to guaranteed lifetime withdrawal benefits. The key distinction is that the assets do not reside with the insurer. CDAs are a way to make lifetime income guarantees available to consumers who, for any number of reasons, may choose not to purchase traditional annuities.

With this context in mind, ACLI and IRI respectfully offer the following comments on the draft Guidelines and the draft revisions to the Consumer Protection Models:

¹ Please note that, in addition to the substantive changes described in this letter, the enclosed mark-up suggests using more consistent terminology throughout the Draft Guidelines (e.g., benefit base, policyholder, Covered Investments, etc...), and includes a number of grammatical changes and other non-substantive revisions. These suggested changes are not discussed in this letter.
Part 1: Comments on Draft Guidelines for the Financial Solvency and Market Conduct Regulation of Insurers who offer Contingent Deferred Annuities

Executive Summary

Our mark-up includes an alternate version of the second paragraph of the Executive Summary, which we believe more precisely describes the purpose of the Guidelines. In addition, we continue to prefer (as we indicated in our remarks at the Summer Meeting) the NAIC finalize its positions on important charges before final issuance of the Guidelines. We appreciate that the Working Group has expressed a desire to issue the Guidelines in the near-term to reflect the work that has already been completed, and to revise the Guidelines when the remaining work is completed. We remain committed to working with the various NAIC groups to provide technical input and assistance in the evaluation and adoption of recommendations relating to their charges. We have provided suggested language to clarify this plan.

Furthermore, regardless of whether or not the Working Group decides to wait for this work to be completed before issuing the Guidelines, we respectfully urge the Working Group, as part of its charge, to continue coordinating with the other NAIC committees and working groups responsible for these important tasks to ensure their timely completion. We believe this is a critical assignment, and we stand ready to do whatever we can to help the Working Group fulfill this charge.

Section I.A and B – Classification of CDAs and Definition of CDAs

It is our understanding that the Working Group’s goal in developing the Guidelines was to provide clear and straightforward guidance for the states. We share that goal, and to that end, our suggested revisions to these sections would remove some of the procedural background information that states would not need in order to determine how to regulate CDAs. With our suggested changes, we believe these sections will provide greater clarity as to the NAIC’s position on the classification and definition of CDAs.

Section I.C – Features of a CDA

We believe it will be very helpful to the state insurance departments to have a concise description of the product included in the Draft Guidelines. Our mark-up includes an alternative version of this section to better reflect the design of CDA products currently available in the market. In addition, we believe our mark-up is appropriately broad that it should encompass new CDA product designs in the future.
Section I.D – Federal Regulation of CDAs

As we indicated in our remarks at the Summer Meeting, we have offered suggested revisions to this section to more accurately reflect the technical nuances of the federal securities laws. In particular, we have provided language to clarify that, while insurers often do register their CDAs with the SEC, some products are not registered because they qualify for an exemption from the registration requirements in the federal securities laws. The most common exemption is for annuities that fund certain retirement plans.

Section II – Financial Regulation of CDAs

As with our comments on Section I.C (as described above), many of our suggested changes in Section II.A are intended to more concisely describe how CDAs work, and to be appropriately broad so as to avoid the need to revise the Guidelines to reflect future CDA product designs.

In addition, we note that Sections B., C., and D. are currently listed as “In Development.” While we are hopeful that the work on these items will be completed in the near future, if the Working Group chooses to issue the Guidelines prior to the NAIC completing all charges, we believe it would be appropriate to provide more specificity in these sections as to the current status of this work and the Working Group’s plans to revise the Guidelines when the work is completed. Our mark-up offers suggested language that we believe would provide such specificity.

Section III.B – Non-Financial Regulation of CDAs – Application of NAIC Model Laws and Regulations

This section is intended to provide guidance as to how states can interpret or amend their laws and regulations to clarify their application to CDAs based on the conclusions reached by various NAIC committees, task forces and working groups as to how eight different model laws and regulations apply to CDAs. To date, the necessary work has been completed with respect to two of those eight models – the Producer Licensing Model Act (#218) and the Life and Health Insurance Guaranty Association Model Act (#520). – and our mark-up reflects the conclusions reached by the groups charged with reviewing those Models (the Producer Licensing Task Force and the Receivership and Insolvency Task Force, respectively).

With respect to the other Models included in this section of the draft Guidelines, the applicable NAIC groups are still considering whether to recommend any changes to those Models. However, as reflected in the CDA Working Group’s April 2013 report to the A Committee, the Working Group has already reached conclusions as to whether the Models apply to CDAs. Therefore, our mark-up offers
proposed changes to more clearly delineate the Working Group’s conclusions, and added language indicating that the NAIC is considering whether and how each Model should be revised.

To assist states in interpreting or revising the Models, we have incorporated suggested language on: (a) interpretative guidance clarifying the applicability of existing laws and regulations to CDAs and (b) revisions to existing laws and regulations. Our suggested language with respect to the Consumer Protection Models is consistent with the revisions we are recommending to those Models, as described in greater detail in Part 2 below.

Part 2: Comments on Draft Revisions to Annuity Disclosure Model Regulation (#245); Suitability in Annuity Transactions Model Regulation (#275); Advertisements of Life Insurance and Annuities Model Regulation (#570); Life Insurance and Annuities Replacement Model Regulation (#613)

Given that the Consumer Protection Models can, in their current forms, be interpreted in a manner consistent with the CDA Working Group’s conclusions as to their applicability to CDAs, it seems clear that revising these Models to specifically reference the product is unnecessary. Furthermore, we remain concerned that revising these Models to address CDAs could create a presumption that the Models will also have to be revised to address existing or future innovative product solutions. Such a process would significantly interfere with the industry’s ability to develop and sell new products that can help consumers better prepare for retirement.

Nevertheless, we acknowledge that the Working Group request for input on revisions to the Consumer Protection Models, and we have therefore in response to this request developed proposed revisions to each Model to clarify whether and how they apply to CDAs. While the March 29, 2014 draft revisions exposed for public comment purport to accomplish this objective by explicitly defining and indicating whether CDAs are or are not covered, our recommendations take a different approach. We recommend that the Models be revised to generally define what types of products are covered or excluded from each Model. We believe our suggestions provide an effective and efficient way to achieve the desired outcome (i.e., clarity as to whether and how each Model applies to CDAs).

Conclusion

Again, ACLI and IRI appreciate the opportunity to comment on the draft Guidelines and the draft revisions to the Consumer Protection Models. In closing, we’d like to reiterate our appreciation to the CDA Working Group, Chairman Nickel, and the staff at the NAIC and the Wisconsin Office of the Commissioner of Insurance for all their hard work in developing these drafts. With our suggested revisions, we believe the Draft Guidelines will be a very effective tool for insurance departments to consult as they consider how to regulate CDAs in their states. Furthermore, we believe our
proposed revisions to the Consumer Protection Models provide the most simple, effective and efficient way to incorporate the Working Group's determinations regarding the applicability of the Consumer Protection Models to CDAs.

We hope you find our comments helpful. Please feel free to contact the undersigned if you have any questions or would like to discuss this matter further.

Sincerely,

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Enclosures
GUIDELINES 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 help states determine how to apply their existing annuity laws and rules to CDAs or, if necessary, how to amend their existing annuity laws and rules to clarify how they apply to CDAs. These guidelines set forth what the NAIC’s views as to whether certain consumer protection and financial solvency model laws and regulations apply to CDAs. At the time these guidelines are being issued, the Financial Condition (E) Committee, the Life Risk-Based Capital (E) Working Group, and the Life Actuarial (A) Task Force are still working to develop should be applied to CDAs and what model laws and regulations that would not apply to CDAs. The guidelines outline 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 include a checklist and regulatory guidance developed by the Life Risk-Based Capital (E) Working Group for states to use in evaluating the reserving and capital requirements for CDAs, and a checklist for reviewing the risk management capabilities of insurers seeking to offer CDAs in their state. In addition, several other NAIC Committees and Working Groups are still working to determine whether certain NAIC model laws and regulations need to be revised to clarify how they apply to CDAs, and if so, how this should be accomplished. The CDA Working Group will issue a revised version of these guidelines when this work is complete. 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 working group’s 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. The CDA subgroup reviewed CDAs to determine how the product should be classified. In March 2012, the A Committee adopted the recommendations of the CDA subgroup that CDAs were a hybrid life product best written by life insurers. The NAIC has determined that CDAs are annuities best written by life insurers, and are therefore subject to state laws and regulations applicable to annuities.¹

B. Definition of CDAs

During the course of its review, the working group determined that CDAs did not neatly fit into the categories of fixed or variable annuities. 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 NAIC has adopted a definition of CDAs 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.”² Regulators should consider using this definition when determining whether a product is properly classified as a CDA under their laws and regulations. Regulators may wish to include this definition in their statutes and regulations and use it in determining whether an annuity product would be considered a CDA.

C. Features of a CDA

CDAs are hybrid 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 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 related to a CDA, it 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

¹ Adopted by NAIC Executive Committee and Plenary, March 6, 2012.
² CDA Working Group Recommendations to the Life and Annuities (A) Committee, April 7, 2013, p. 1.
the CDA’s attachment to certain types of mutual funds, but would have no control over the assets that make up that mutual fund.

A CDA has three distinct phases during its lifespan. First, the CDA goes through an accumulation phase. This phase occurs from the time the CDA is purchased until the time the participant decides to take withdrawals from the separately managed account. 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. 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 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 will decrease due to market conditions. The insurer assumes some of the market risk of the underlying asset by guaranteeing payments based on the underlying assets peak level, which may be greater than the actual amount of funds held at withdrawal, the second phase of a CDA.

The withdrawal phase occurs when the participant begins to draw funds from the separately managed account most typically upon retirement. During the withdrawal phase no benefit payments are made under the CDA and the insured is receiving income solely from the funds in their underlying account. The CDA contract sets a maximum periodic 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 do not affect the benefit base level established during the accumulation phase. However, should a participant withdraw funds above the contractually permitted amount, the amount of benefits available under the CDA decreases, potentially all the way to zero. During the withdrawal phase, an insured still maintains the investments in an underlying fund. Thus, the amount of funds available to the insured may also decrease during the withdrawal phase due to market conditions. However, like in the accumulation phase, decreases in funds due to market changes do not reduce benefits. 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, the CDA begins making periodic benefit payments 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 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 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 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.

CDAs are products which provide policyholders protection from outliving their assets due to living beyond a normal life expectancy and/or market performance. A CDA can be generally thought of as a guaranteed lifetime withdrawal benefit (GLWB) added to an investment, such as a mutual fund or managed account, that is neither owned nor maintained by the insurer (“Covered Investments”). Like traditional variable annuities with a GLWB, the insurer may contractually restrict the type of covered investments eligible for use with a CDA.

A CDA has three distinct phases during the life of the contract. The following is a description of a typical CDA product available in the market today. The initial phase is the accumulation period which is measured from the date the CDA is issued until the time the policyholder begins taking withdrawals from the Covered Investments, typically after reaching a specified age. During the accumulation period, a “benefit base” maintained under the CDA tracks increases in the value of the Covered Investments which may occur through investment gains or additional deposits. Depending on the design of the CDA, the CDA benefit base may also increase due to contractual features. The CDA benefit base is a notional amount that does not have cash value. Depending on the product design, the CDA benefit base is calculated on a daily, monthly or annual basis. The more frequently the CDA benefit base calculation is made, the more likely a policyholder will realize increases in the CDA benefit base. The CDA benefit base will not decrease in value if the corresponding Covered Investments decline due to poor market performance. The “guaranteed withdrawal amount” under the CDA is based on a specified percentage of the value of the CDA benefit base at the time distributions begin, typically normal retirement age.

Once the guaranteed withdrawal amount is determined, the CDA guarantees that it will never decrease due to declines in the value of Covered Investments as a result of investment losses. This allows the policyholder to mitigate the risk that withdrawal amounts will decrease due to market conditions. The insurer assumes some of the market risk of the Covered Investments by guaranteeing periodic withdrawal amounts based on the CDA benefit base, which may be greater

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Footnote:

For some CDA products an insured may elect to purchase spousal benefits so in these instances the CDA would be subject to the longevity of both spouses.
than the actual value of the Covered Investments at the time of withdrawal, the second phase of a CDA.

The second phase of the CDA occurs when the policyholder begins taking periodic withdrawals from the Covered Investments after reaching a specified age described in the CDA. 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 accordingly. Withdrawals are first taken from the Covered Investments. Annual withdrawals at or below the guaranteed withdrawal amount under the CDA do not impact the guaranteed withdrawal amount available in future years, i.e., they are not cumulative. However, should a policyholder take withdrawals in excess of the annual guaranteed withdrawal amount, a reduction in the guaranteed withdrawal amount available in the future years will likely result. Certain withdrawals in excess of the guaranteed withdrawal amount may result in termination of the CDA. Depending on the design of the CDA, withdrawals in excess of the guaranteed withdrawal amount may result in a pro rata reduction of the CDA benefit base and/or guaranteed withdrawal amount. During the withdrawal phase, the fluctuation in value of the Covered Investments due to market performance will not impact the guaranteed withdrawal amount available under the CDA. Decreases in the value of the Covered Investment during the withdrawal phase could have the effect of triggering the guaranteed payments under the CDA. Consequently, for risk management purposes, insurers will typically offer CDAs in connection with on Covered Investments that can be effectively hedged.

The third and final phase of the CDA is the payout or settlement phase. Upon exhaustion of the Covered Investments, the insurer will begin making periodic payments equal to the guaranteed withdrawal amount under the CDA for the remainder of the policyholder’s lifetime. In this way, the CDA guarantees level lifetime income payments during retirement. It is the CDA Working Group’s understanding that CDA products sold to date do not include a death benefit. Since a policyholder is limited in the amount of periodic withdrawals he or she may take during the withdrawal phase for purposes of preserving the guarantee, whether or not a CDA will reach the payout or settlement phase is a function of the performance of the Covered Investments, increases to the CDA benefit base (as applicable), policyholder behavior and the insured’s longevity.

For the CDA products that the CDA Working Group reviewed, the fee for the CDA was calculated as a percentage of the Covered Investments or CDA benefit base. Generally, the fee is deducted 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”) under the Securities Act of 1933. The SEC has not taken a position regarding whether CDAs are required to be registered as securities this question. However, based on information received from the SEC shared with the working group,
it is the working group’s understanding that a product that is a derivative of guarantee associated with 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 registration exemption applies. Since a CDA’s value derives 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. Companies 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. CDAs structured as group annuities offered to 401(k) plans and similar plans typically rely on this exemption. Insurers 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 advisor⁴. Sales of CDAs through 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 relationship to investments 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 policyholder 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 outlive their investments as a result of living beyond their normal life expectancy and/or market performance. Under the CDA, the insurer is guaranteeing a lifetime withdrawal benefit in the event the Covered Investments are depleted during the policyholder’s lifetime. 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 actuarial opinions to ensure that insurers are properly reserving for longevity 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.
Another risk that is transferred to the insurer from the insured under a CDA is market risk. The market risk associated with a CDA is that the amount of benefit to the insured varies according to the market performance of the underlying assets. For example, a large downturn in the stock market would lower the value of the funds Covered Investments underlying the CDA while the CDA benefit base would remain locked in at a higher value, thus increasing the likelihood that a CDA will reach the payout phase. Insurers can manage the market risk by developing comprehensive hedging strategies similar to those used to manage the market risk 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 will vary depending upon hedge effectiveness. Regulators may wish to review an insurer’s hedging strategy to verify that it is comprehensive, it appropriately addresses the insurer’s market risks, 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, withdrawal timing and amounts, and the timing of withdrawals. In this regard, the value of the CDA to an insured and, correspondingly, the level of risk assumed by 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 can place his or her assets in more volatile investments because if the investments increase in value, the increase is added to the CDAs benefit base, if the investments decrease in value, the benefit base is locked in at the portfolio’s peak. Thus, from the insured’s 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. To maximize benefits under the CDA, a reasonable insured should take the maximum allowable withdrawal amount every period of the withdrawal phase in order to draw down the underlying funds and trigger the settlement and ultimately triggers the payout phase of the CDA. To maximize benefits, the insured would take the allowable withdrawal limit absent a liquidity need. To take full advantage of the guarantee, the policyholder would take the maximum allowable withdrawal limit each year.

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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 would apply to CDAs.
Insurers can manage policyholder behavioral risk through product design including limiting the investment assets that an insured may hold in the underlying portfolio, limiting withdrawals amounts, types of investments an insured may use with the CDA, assigning withdrawal percentages to specific age groups during the withdrawal phase, varying fees in accordance with the risk level of the underlying investments Covered Investments, and decreasing benefits for withdrawals above those allowed under the policy the assigned withdrawal percentages. 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 establish the functionality of the CDA benefit base, its terms and conditions and work with rely on third party non-insurers who manage the underlying assets Covered Investments. These third parties may collect the insurer’s fee on behalf of the insurer, provide information regarding the Covered Investments’ 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.

The Financial Condition (E) Committee is developing a checklist for state regulators to use in reviewing the risk management program of insurers 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
   [In Development 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.]

C. Reserve Requirements
   [In Development The NAIC has not yet completed its analysis as to whether applicable reserve requirements should be modified with respect to CDAs. This document will be updated when the NAIC completes this work.]

D. Capital Requirements
   [In Development The NAIC has not yet completed its analysis as to whether applicable capital requirements should be modified with respect to CDAs. This document will be updated when the NAIC completes this work.]

III. Non-Financial Regulation of CDAs
The 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 annuity is determined by the performance of a separate portfolio. Further, CDAs, if registered with the SEC, are subject to federal securities regulation. On the other hand, a CDA resembles a fixed annuity in that a CDA benefit consists of fixed, periodic payments upon annuitization. Additional confusion has been caused by CDA products being filed with states as both fixed and variable annuities. Because a CDA shares qualities of both a fixed and variable annuity, the working group concluded that a CDA should not be classified in either category but instead belongs in its own category.

A. Filing Requirements

Because CDAs do not fall easily into existing annuity categories, the 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

The CDA Working Group recognizes that states may wish to issue formal interpretive guidance and/or amend their existing annuity laws and rules to clarify how they apply to CDAs. The NAIC’s views as to the applicability of certain NAIC Model Laws and Regulations to CDAs are outlined below, along with recommendations about how states could interpret and/or amend their existing annuity laws and rules. 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.

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. Because 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. For CDAs that are registered as securities, regulators should verify that producers have the requisite licenses and registration required to sell securities.

Recommended Language for States Wishing to Issue Interpretive Guidance:

“The [insert name of insurance department] has determined that producers must obtain a securities and variable lines license in order to sell Contingent Deferred Annuities (as defined by the NAIC).”

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 and those covered by ERISA. Since CDAs are being registered with the SEC, the federal prospectus and other disclosure requirements may preempt state disclosure requirements. 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 would apply to CDAs issued to employer-sponsored retirement plans, whether or not covered by ERISA. CDAs generally fall within one of these two categories, and therefore, the CDA Working Group has determined that CDAs should be covered by these exemptions.

The Model Regulation does provide that, the NAIC buyer’s guide is required to be provided in connection with 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 in connection with sales of CDAs will likely cause confusion. Therefore, the CDA Working Group concluded that it would not be appropriate to require that the current buyer’s guide be provided in connection with sales of CDAs.

The CDA Working Group believes states can interpret their existing annuity disclosure laws and rules to exclude CDAs without revision. States that choose not to revise their existing laws and rules may wish to consider issuing formal interpretive guidance to insurers to clarify that the existing laws and rules do not apply to CDAs.

Recommended Language for States Wishing to Issue Interpretive Guidance:

6 Minutes of Producer Licensing (EX) Task Force Meeting, August 17, 2014.
7 NAIC Annuity Disclosure Model Regulation (#245), Sections 2B.(1)(a) and (b), and Section 3D.(1).
“With respect to Contingent Deferred Annuities (as defined by the NAIC) (“CDAs”), the [insert name of insurance department] has determined that (1) where disclosure requirements are established pursuant to federal regulation, CDAs fall within the scope of “other registered products” for the purposes of [Sections 3.D(1) and 3.D(2)], and (2) CDAs are exempt from the requirement under [Section 5.A] to deliver a Buyer’s Guide until such time an NAIC Buyers Guide is amended to include specific disclosure information about the product.”

Recommended Language for States Wishing to Revise their Annuity Disclosure Regulation:

Section 3.D(1): Strike the phrase “variable annuities and other” in the first sentence, which will then read “Transactions involving registered products in compliance with…”

NOTE: The NAIC is currently considering changes to the Model to clarify that CDAs are covered by the exemptions for registered products and products covered by ERISA plans, and that CDAs are exempt from the buyer’s guide delivery requirement until such time as a buyer’s guide is amended to include specific information about CDAs, 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 regulations to determine if they need to revise the regulation 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, the model’s exemptions for registered products and products covered by ERISA 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 has 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. The working group CDA Working Group has concluded that the existing list of “suitability information” included in Section I of the Act Model 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 specifically address CDAs. It should be noted that among the categories of suitability information to be considered is the existing assets of the consumer, “including investment and life insurance holdings.” The working group CDA Working Group determined that, as a part of

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8 Please note that section references are to the NAIC Annuity Disclosure Model Regulation. States that choose to issue interpretive guidance should revise the recommended language to refer to the corresponding sections in their annuity disclosure laws or regulations.
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, use with a CDA. The CDA Working Group concluded that the category for existing investment assets would encompass suitability review of the investment funds underlying to be used with the CDA.

It should also be noted that section H.1 of the suitability model act has this Model provides a “safe harbor” provision that provides that under which sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions” satisfy the requirements of the Model. While FINRA’s suitability requirements currently apply only to variable annuities, the Model extends the safe harbor to any sales of fixed annuities that are made in compliance with the FINRA rules. Following the same reasoning, sales of CDAs made in compliance with FINRA’s suitability rules would also be covered by the safe harbor.

The CDA Working Group believes states can interpret their existing annuity suitability laws and rules to apply to CDAs without revision. States that choose not to revise their existing laws and rules may wish to consider issuing formal interpretive guidance to insurers to clarify that the existing laws and rules do apply to CDAs.

Recommended Language for States Wishing to Issue Interpretive Guidance:

“With respect to Contingent Deferred Annuities (as defined by the NAIC) (“CDAs”), the [insert name of insurance department] has determined that (1) sales of CDAs through FINRA broker-dealers shall be treated like fixed annuities and variable annuities for the purposes of applying the exemption under [Section 6.H(1)] if FINRA rule based suitability and supervision requirements are applied, and (2) the producer training requirements set forth in [Section 7] apply to CDAs unless otherwise exempted. Insurer standards for product specific training in [Section 7.A] apply to CDAs and [Section 7.B(3)] training must include how CDA contract provisions impact customers.”

Recommended Language for States Wishing to Revise their Annuity Suitability Regulation:

Section 6.H(1): Strike the phrase “variable annuities and fixed” in the second sentence, which will then read “This subsection applies to FINRA broker-dealer sales of annuities if...”

Section 7.B(3)(c): Strike the phrase “fixed, variable and indexed” from this clause, which will then read “How annuity contract provisions affect consumers.”

9 Please note that section references are to the NAIC Suitability in Annuity Transactions Model Regulation. States that choose to issue interpretive guidance should revise the recommended language to refer to the corresponding sections in their annuity suitability laws or regulations.
**NOTE:** The NAIC is currently considering changes to the Model to clarify that CDAs are subject to the Model, and that the FINRA safe harbor applies to sales of CDAs made in compliance with FINRA’s suitability rules.

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—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 A committee has tasked the Receivership and Insolvency (E) Task Force with determining whether revisions to the model act are needed and warranted to address CDAs. The Receivership and Insolvency (E) Task Force (RIITF) has determined that, assuming CDAs are considered annuities under state law and the issuer is a member insurer under state guaranty association law, CDAs would fall within the definition of “annuity” in the Model 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 determination was based on a presentation and

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10 Memorandum from Receivership and Insolvency (E) Task Force to A Committee, September 4, 2014.
input by the National Organization of Life and Health Guaranty Associations (NOLHGA) representatives, phone conversations with some RITF members and NOLHGA experts, and discussion by the members of the RITF.

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 working group CDA Working Group has determined that this Model is applicable to CDAs, regulation should also be applied 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 to be interpreted to avoid conflicts with federal regulation. The working group CDA 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.

The CDA Working Group believes states can interpret their existing annuity advertisement laws and rules to apply to CDAs without revision. States that choose not to revise their existing laws and rules may wish to consider issuing formal interpretive guidance to insurers to clarify that the existing laws and rules do apply to CDAs, and that application of their existing rules to registered CDAs is not intended to conflict with federal disclosure requirements to avoid issues of preemption.

Recommended Language for States Wishing to Issue Interpretive Guidance:

“The [insert name of insurance department] has determined that registered annuities, including Contingent Deferred Annuities (as defined by the NAIC) (“CDAs”), where disclosure requirements are established pursuant to federal regulation, are within the scope of [Section 3.A].”

Recommended Language for States Wishing to Revise their Annuity Illustrations Regulation:

Please note that section references are to the NAIC Advertisements of Life Insurance and Annuities Model Regulation. States that choose to issue interpretive guidance should revise the recommended language to refer to the corresponding sections in their annuity advertisement laws or regulations.
Section 3.A: Strike the word “variable” in the second sentence, which will then read “In contracts where disclosure requirements are established pursuant to federal regulation…”

NOTE: The NAIC is currently considering changes to the Model to clarify that CDAs are subject to the Model.

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 working group concluded that the model regulation should be amended to make clear it applies to CDAs—The model regulation—The CDA Working Group has determined that the Model is applicable to CDAs. The Model 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.”

The CDA Working Group believes states can interpret their existing annuity replacement laws and rules to apply to CDAs without revision. States that choose not to revise their existing laws and rules may wish to consider issuing formal interpretive guidance to insurers to clarify that the existing laws and rules do apply to CDAs.

Recommended Language for States Wishing to Issue Interpretive Guidance:

“The [insert name of insurance department] has determined that the definition of ‘registered annuities’ includes any registered annuity, including ContingentDeferred Annuities (as defined by the NAIC), that is subject to the prospectus delivery requirements of the Securities Act of 1933.”

Recommended Language for States Wishing to Revise their Annuity Replacement Regulation:

Section 2.1: Strike the word “variable” in two places in this section, which will then read “‘Registered contract’ means an annuity contract or life insurance policy subject to …”

NOTE: Because registered contracts are defined narrowly as variable products, the working group concluded that the term “registered contracts” should be amended to include NAIC is currently considering changes to the Model to clarify that the term “registered contract” includes 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 CDA 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 CDA Working Group recommended that this model regulation be subject to further review to clarify its relationship to CDAs. The A Committee has tasked that 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 CDA 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.
Proposed Amendments to NAIC Model Regulations to Address CDAs

Model 245- ANNUITY DISCLOSURE MODEL REGULATION

Section 3. Applicability and Scope
This regulation applies to all group and individual annuity contracts and certificates except:

D. (1) Transactions involving variable annuities and other registered products in compliance with Securities and Exchange Commission (SEC) rules and Financial Industry Regulatory Authority (FINRA) rules relating to disclosures and illustrations, provided that compliance with Section 5 shall be required after January 1, 2014, unless, or until such time as, the SEC has adopted a summary prospectus rule or FINRA has approved for use a simplified disclosure form applicable to variable annuities or other registered products.

Drafting Note: States should be aware that the provision in paragraph (1) above requiring transactions involving variable annuities and other registered products to comply with the requirements of Section 5 of the regulation after Jan. 1, 2014 unless the U.S. Securities and Exchange Commission (SEC) adopts a summary prospectus rule or the Financial Industry Regulatory Authority (FINRA) approves for use a simplified disclosure form applicable to variable annuities or other registered products could be preempted by the National Securities Markets Improvement Act of 1996 (NSMIA). NSMIA prohibits the States from making laws establishing record-making or record-keeping requirements for broker-dealers. Given this, in adopting this regulation, States may want to omit the language in paragraph (1) above that eliminates the exemption for these transactions after Jan. 1, 2014 and, as a consequence, would require broker-dealers to comply with Section 5 of this regulation unless or until the SEC or FINRA takes the delineated action. States should consider only adopting the language from paragraph (1) above that exempts transactions involving variable annuities and other registered products in compliance with the SEC and FINRA rules relating to disclosures and illustrations from having to comply with the regulation.

Drafting Note: Contingent Deferred Annuities shall be exempt from the requirement to deliver a Buyers Guide until such time an NAIC Buyers Guide is amended to include specific disclosure information about the product.
Model 275 - SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

Section 6. Duties of Insurers and of Insurance Producers

H. (1) Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce (including investigate) the provisions of this regulation.

Drafting Note: Non-compliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of this regulation.

Section 7. Insurance Producer Training

A. An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

B. (1) (a) An insurance producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider.

(b) Insurance producers who hold a life insurance line of authority on the effective date of this regulation and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this regulation. Individuals who obtain a life insurance line of authority on or after the effective date of this regulation may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

(2) The minimum length of the training required under this subsection shall be sufficient to qualify for at least four (4) CE credits, but may be longer.

(3) The training required under this subsection shall include information on the following topics:

(a) The types of annuities and various classifications of annuities;

(b) Identification of the parties to an annuity;

(c) How fixed, variable and indexed annuity contract provisions affect consumers;

(d) The application of income taxation of qualified and non-qualified annuities;

(e) The primary uses of annuities; and

(f) Appropriate sales practices, replacement and disclosure requirements.

(4) Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific
information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

(5) A provider of an annuity training course intended to comply with this subsection shall register as a CE provider in this State and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in [insert reference to State law or regulations governing producer continuing education course approval].

(6) Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with [insert reference to State law or regulations governing producer continuing education course approval].

(7) Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with [insert reference to State law or regulations governing to producer continuing education course approval].

(8) The satisfaction of the training requirements of another State that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this State.

(9) An insurer shall verify that an insurance producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Model 570 - ADVERTISEMENTS OF LIFE INSURANCE AND ANNUITIES MODEL REGULATION

Section 3. Applicability
A. This regulation shall apply to any life insurance or annuity advertisement intended for dissemination in this state. In variable contracts where disclosure requirements are established pursuant to federal regulation, this regulation shall be interpreted so as to eliminate conflict with federal regulation.

Model 613 - LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

Section 2. Definitions

I. “Registered contract” means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.