

REQUEST FOR MODEL LAW DEVELOPMENT

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

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

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

Contingent Deferred Annuity (A) Subgroup of the Life Actuarial (A) Task Force at the request of the Contingent Deferred Annuity (A) Working Group of the Life Insurance and Annuities (A) Committee.

2. NAIC staff support contact information:

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

Standard Nonforfeiture Law for Individual Deferred Annuities (# 805)

Revise to exclude contingent deferred annuities (CDAs), which, due to their structure, cannot comply with the terms of the model.

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

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

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

If yes, please explain why

Due to increasing interest at state and federal levels in mitigating longevity risk, CDAs are likely to become increasingly prevalent. Therefore, state laws should be clear as to the applicability of their laws.

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

Yes or No (Check one)

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

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

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

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary: States will want to include this clarification, to acknowledge that nonforfeiture benefits for CDAs cannot currently be calculated under this model, but does not foreclose the possibility that a method for calculating nonforfeiture benefits for CDAs could be devised at some point in the future.

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

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

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

No

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

No

**STANDARD NONFORFEITURE LAW FOR
INDIVIDUAL DEFERRED ANNUITIES**

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Section 1. Title

This Act shall be known as the Standard Nonforfeiture Law for Individual Deferred Annuities.

Section 2. Applicability

- A. This Act shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.
- B. Sections 3 through 8 shall not apply to contingent deferred annuities.
- C. Notwithstanding Subsection B, the commissioner shall have the authority to prescribe, by regulation, nonforfeiture benefits for contingent deferred annuities that are, in the opinion of the commissioner, equitable to the policyholder, appropriate given the risks insured, and to the extent possible, consistent with general intent of this law.

Drafting Note: It is expected that any regulation prescribing specific nonforfeiture requirements for the CDAs and promulgated by the commissioner under Subsection C above would apply only to the CDA contracts issued subsequent to the effective date of such regulation.

Section 3. Nonforfeiture Requirements

- A. In the case of contracts issued on or after the operative date of this Act as defined in Section 13, no contract of annuity, except as stated in Section 2, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contractholder, upon cessation of payment of considerations under the contract:
 - (1) That upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in Sections 5, 6, 7, 8 and 10;

- (2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company shall pay in lieu of a paid-up annuity benefit a cash surrender benefit of such amount as is specified in Sections 5, 6, 8 and 10. The company may reserve the right to defer the payment of the cash surrender benefit for a period not to exceed six (6) months after demand therefor with surrender of the contract after making written request and receiving written approval of the commissioner. The request shall address the necessity and equitability to all policyholders of the deferral;
 - (3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits; and
 - (4) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.
- B. Notwithstanding the requirements of this section, a deferred annuity contract may provide that if no considerations have been received under a contract for a period of two (2) full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from prior considerations paid would be less than \$20 monthly, the company may at its option terminate the contract by payment in cash of the then present value of the portion of the paid-up annuity benefit, calculated on the basis on the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by this payment shall be relieved of any further obligation under the contract.

Section 4. Minimum Values

The minimum values as specified in Sections 5, 6, 7, 8 and 10 of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

- A. (1) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at rates of interest as indicated in Subsection B of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of Paragraphs (a) through (d) below:
 - (a) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in Subsection B;
 - (b) An annual contract charge of \$50, accumulated at rates of interest as indicated in Subsection B;
 - (c) Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in Subsection B; and

Drafting Note: The premium tax credit is only permitted if the tax is actually paid by the company. If the tax is paid and subsequently credited back to the company, such as upon early termination of the contract, the tax credit may not be taken.

- (d) The amount of any indebtedness to the company on the contract, including interest due and accrued.
 - (2) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent (87.5%) of the gross considerations credited to the contract during that contract year.
- B. The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent (3%) per annum and the following, which shall be specified in the contract if the interest rate will be reset:

- (1) The five-year Constant Maturity Treasury Rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest 1/20th of one percent, specified in the contract no longer than fifteen (15) months prior to the contract issue date or redetermination date under Section 4B(4);
 - (2) Reduced by 125 basis points;
 - (3) Where the resulting interest rate is not less than one percent (1%); and
 - (4) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year Constant Maturity Treasury Rate to be used at each redetermination date.
- C. During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in Subsection B(2) above by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.
- D. The commissioner may adopt rules to implement the provisions of Section 4C and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines adjustments are justified.

Section 5. Computation of Present Value

Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Present value shall be computed using the mortality table, if any, and the interest rates specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

Section 6. Calculation of Cash Surrender Value

For contracts that provide cash surrender benefits, the cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit that would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent (1%) higher than the interest rate specified in the contract for accumulating the net considerations to determine maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

Section 7. Calculation of Paid-up Annuity Benefits

For contracts that do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine maturity value, and increased by any additional amounts credited by the company to the contract. For contracts that do not provide any death benefits prior to the commencement of any annuity payments, present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

Section 8. Maturity Date

For the purpose of determining the benefits calculated under Sections 6 and 7, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

Section 9. Disclosure of Limited Death Benefits

A contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

Section 10. Inclusion of Lapse of Time Considerations

Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

Section 11. Proration of Values; Additional Benefits

For a contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of Sections 5, 6, 7, 8 and 10, additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this Act. The inclusion of such benefits shall not be required in any paid-up benefits, unless the additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

Section 12. Rules

The commissioner may adopt rules to implement the provisions of this Act.

Section 13. Effective Date

After the effective date of this Act, a company may elect to apply its provisions to annuity contracts on a contract form-by-contract form basis before the second anniversary of the effective date of this Act. In all other instances, this Act shall become operative with respect to annuity contracts issued by the company after the second anniversary of this Act.

PROJECT HISTORY

STANDARD NONFORFEITURE LAW FOR INDIVIDUAL DEFERRED ANNUITIES (#805)

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

In late 2012, the Life Insurance and Annuities (A) Committee charged the Contingent Deferred Annuity (A) Working Group with evaluating the adequacy of existing laws and regulations as applied to contingent deferred annuities (CDAs) and whether additional solvency and consumer protection standards are required. The Working Group submitted its report, findings and recommendations to the Committee at the 2013 Spring National Meeting. Among its findings, the Working Group found that: 1) CDAs do not easily fit into the category of fixed or variable annuity; 2) review of solvency and consumer protection standards are necessary; and 3) tools to assist states in reviewing CDA product filings and solvency oversight of CDAs should be established. The Working Group also identified issues that would be more appropriately addressed by other existing NAIC groups with the specific subject-matter expertise.

During the 2013 Fall National Meeting, the Life Insurance and Annuities (A) Committee gave the Life Actuarial (A) Task Force a charge to recommend a manner to specifically exempt CDAs from the *Standard Nonforfeiture Law for Individual Deferred Annuities* (#805). The Executive (EX) Committee approved the request for model law development to Model #805 at the 2016 Summer National Meeting.

At the 2016 Fall National Meeting, the Life Insurance and Annuities (A) Committee adopted amendments to Model #805 recommended by the Life Actuarial (A) Task Force to exempt CDAs from certain sections of Model #805, with which, due to their structure, they cannot comply. The revisions to Model #805 exempt CDAs from the sections of the Model #805 that prescribe computational methods and minimum nonforfeiture values for deferred annuities, but would allow the insurance commissioner to specify separate nonforfeiture standards, if needed, at a later time.

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

Contingent Deferred Annuity (A) Working Group of the Life Actuarial (A) Task Force. The following states participated: Tomasz Serbinowski (UT), Chair; Perry Kupferman (CA); Bob Chester (CT); Nicole Boyd (KS); Felix Schirripa (NJ); Mike Boerner, Jan Graeber and Phil Reyna (TX); and Craig Chupp and Ern Johnson (VA).

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

The charge was given to the Life Actuarial (A) Task Force at the 2013 Fall National Meeting to recommend a manner to specifically exempt CDAs from Model 805. The Task Force appointed the Contingent Deferred Annuity (A) Working Group to complete the charge. The Executive (EX) Committee approved the request for model law development to Model #805 at the 2016 Summer National Meeting.

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

The Contingent Deferred Annuity (A) Working Group, chaired by Mr. Serbinowski, completed the charge to exclude CDAs from the scope of Model #805.

In addition to the Working Group members, the following interested state insurance regulators participated: Mike Yanacheak (IA); Rhonda Ahrens (NE); and Pete Weber (OH).

The following interested parties participated: American Council of Life Insurers (ACLI); Center for Economic Justice (CEJ); American Academy of Actuaries (Academy); and Lewis & Ellis Inc.

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

The Working Group began working on the charge in open conference calls beginning in the spring of 2014. Draft recommendations were posted on the Working Group's web page, and comments were solicited. Draft revisions to Model #805 were adopted by the Life Insurance and Annuities (A) Committee at the 2016 Fall National Meeting.

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

The revisions sought to achieve two objectives: 1) exempt CDAs from the current nonforfeiture requirements; and 2) preserve state insurance commissioners' authority to prescribe CDA-specific nonforfeiture requirements in the future.

The Life Actuarial (A) Task Force received multiple comments to the effect that the revisions to Model #805 would likely result in a non-uniform treatment of CDAs across the country, with individual states establishing different nonforfeiture standards for CDAs. The Task Force noted that many NAIC model laws grant state insurance commissioners' rulemaking authority and that this has never been viewed as contrary to the NAIC's stated mission of encouraging uniformity.

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

None.