The Contingent Deferred Annuity (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Aug. 5, 2014. The following Working Group members participated: Ted Nickel, Chair (WI); Robert Chester (CT); and Jim Mumford (IA).

1. **Discussed Draft Guidelines for the Financial Solvency and Market Conduct Regulation of Insurers Who Offer Contingent Deferred Annuities**

   Commissioner Nickel explained that the Working Group has a charge to develop NAIC guidelines that can serve as a reference for states interested in modifying their annuity laws to clarify their applicability to contingent deferred annuities (CDAs). A draft **Guidelines for the Financial Solvency and Market Conduct Regulation of Insurers Who Offer Contingent Deferred Annuities** (Guidance Document) (Attachment 1) was distributed prior to the call. The Commissioner said that he was interested in receiving preliminary feedback on the document before releasing the **Guidance Document** and establishing a comment deadline.

   William O’Sullivan (National Organization of Life & Health Insurance Guaranty Associations—NOLHGA) said that he planned to submit clarifying comments to the paragraph in the **Guidance Document** addressing the application of the **Life and Health Insurance Guaranty Association Model Act** (#520). He said while it is true that individual guaranty fund coverage is ultimately a state-by-state determination and always has been, he did not want to give the impression that NOLHGA thought the issue of guaranty association coverage would likely vary from state to state. He said that it is too soon to know whether states are likely to vary, and, in fact, there is no reason to think it would vary.

   After discussion, the Working Group agreed to release the **Guidance Document** for comment with a comment deadline of Sept. 5.

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

   Commissioner Nickel reminded the Working Group that at the Spring National Meeting, draft revisions to the Model #245, Model #275, Model #570 and Model #613 were distributed for comment by April 21. The American Council of Life Insurers (ACLI) and the Insured Retirement Institute (IRI) submitted a comment letter suggesting revising the models to include drafting notes rather than referencing CDAs. Mr. Mumford said that he was leaning towards the ACLI and IRI suggested approach. He also said that the **Guidance Document** might provide sufficient information for states to be able to decide whether or not to revise their state laws to take into account CDAs. He said, for example, the models that refer to registered products arguably already include CDAs because CDAs are registered products. Commissioner Nickel said that the Working Group would continue this discussion at the Summer National Meeting.

3. **Discussed Next Steps**

   Commissioner Nickel discussed the Working Group agenda for the Summer National Meeting. He said that originally he was hoping to be able to adopt the **Guidance Document** and the draft model law revisions at the Summer National Meeting. However, in order to give Working Group members and interested parties sufficient time to review and discuss these important issues, he plans to continue discussions at the Summer National Meeting. He is hoping for adoption sometime prior to the Winter National Meeting.

   Additionally, at the Summer National Meeting, the Working Group will hear a brief presentation from Birny Birnbaum (Center for Economic Justice—CEJ) regarding consumer protection and CDAs. Commissioner Nickel said the Working Group also plans to discuss the issue of nonforfeiture benefits as applied to CDAs. The Working Group reached the conclusion that the **Standard Nonforfeiture Law for Individual Deferred Annuities** (#805) does not apply to CDAs. However, this does not resolve the large issue of nonforfeiture benefits for CDAs. He said the Working Group should consider making a recommendation to the Life Insurance and Annuities (A) Committee on the best way to resolve this issue.
Having no further business, the Contingent Deferred Annuity (A) Working Group adjourned.
Consumer Concerns with Contingent Deferred Annuities

Center for Economic Justice

Before the NAIC Contingent Deferred Annuity Working Group

August 16, 2014

The Center for Economic Justice (CEJ) has identified a number of concerns with Contingent Deferred Annuity (CDA) products and their regulation, including

1. Unfair and Deceptive Policy Provisions
2. Benefits Unreasonable in Relation to Premiums Charged
3. Absence of Nonforfeiture Benefit or Provisions
4. Filing as Group Contract, Not Individual Contract
5. Inadequate Regulatory Review
6. Systemic Risk of Product
7. Potential Guaranty Fund Coverage
8. CDA Specific Suitability and Agent / Broker Training
9. Appropriate Reserving Requirements
10. Absence of Data on Sales and Benefits

Overview

CEJ obtained and reviewed CDA filings by Transamerica from Delaware, Wisconsin, Iowa and Arkansas. We also reviewed the work of various NAIC committees and working groups on CDAs over the past few years.

The Delaware Filing

Cover Letter of Transamerica Delaware CDA filing, March 13, 2013

The Group Contract will be issued to either a Delaware domiciled entity that is licensed with the Delaware Department of Insurance as an insurance agency (“Agency”) or to a trust sitused in the state of Delaware. The Agency or Trust will hold the Group Contract on behalf of a discretionary group formed pursuant to Delaware Insurance Code Section 3109(b) (“Group”). Members of the Group are comprised of individual investors that (1) have entered into a contractual relationship with either (a) an investment advisor that is registered with a State Securities Regulation or the Securities and Exchange Commission (“RIA”) or (b) a registered representative of a broker-dealer (“Registered Representative”), (2) the RIA or Registered Representative has a contractual relationship with an insurance agency authorized to solicit and sell Certificates of the subject Group Contract, and (3) the RIA or Registered Representative has referred the individual investor to the authorized insurance agency for the purpose of discussing the possible purchase of coverage under the Group Contract.
The Group described above is created under Section 3108 of the Delaware Insurance Code and meets the Three Factors as required by Section 3109(b) as sets forth below:

1) The issuance of the Group CDA is not contrary to the best interests of the public;

2) The issuance of the Group CDA would result in economies of acquisition and administration; and

3) The benefits of the Group CDA are reasonable in relation to the premium charged.

CEJ Query to Delaware Department of Insurance:

Did the company submit any documents in support of these three requirements under Section 3109(b)? No

If no, what was the basis for the Department concluding that these three factors were met? The basis for the Department concluding that these three factors were met are due to the below:

1. Statutory reserves were calculated according to the methodology in Actuarial Guideline 43.
2. Policy specification pages with appropriate information were provided and reviewed for consistency with policy and/or rider provisions.
These items were reviewed and verified by the Department’s outside actuarial department.

Unfair and Deceptive Policy Provisions

The policy form contains a number of unfair and deceptive provisions (See pages 5 to 6 of these comments):

1. The cover page as well as the termination provision 7.1(h) call for the termination of the contract based on the third party lack of cooperation.

2. If misstatement of age results from the contract being void from inception (10.1) only last period charges are refunded. The Company has no incentive to verify the age. It can rescind the contract and retain virtually all fees.

3. Contract can be terminated based on the change in the capital or reserving requirements. 7.1(k)

4. Section 4.1 states that the company may at its own discretion change investment guidelines and the consumer would have 30 days to make changes.
Benefits Not Reasonable in Relation to Premiums Charged

The filing cover letter states:

Fees under the Group contract will vary based on the Covered Assets held by the Certificate Owner and the Fee Option they selected. Certificates will initially be offered at fees ranging from 0.80% to 2.35%. The maximum fee under the Certificates will be 3.00%. A Certificate will be issued to the Members (Certificate Owners) of the Group Contract.

Fees of up to 3% are likely to strip the consumer’s assets.

2012 Analysis by Felix Schirripa concluded virtually no benefit from CDA for portfolio invested 25% stocks/75% bonds. See page “12.”

Expected ratio of benefits to premium charges is unknown for CDAs, but it appears to be very low. Regulators would not approve an auto, homeowners, long-term care or credit insurance product if the expected benefit ratio was, say, 10%. The difference between a product that harms consumers by stripping assets and a product that provides substantial benefits to consumers is measured by the expected benefit ratio.

Absence of Nonforfeiture Benefits

This is a product requiring premium payments over a lengthy number of years to potentially receive a benefit far into the future. It is reasonable and necessary for regulators to require CDAs to include a nonforfeiture provision to recognize the long-term investment nature of the product.

Filing as a Group Contract

It is unclear why the product can be filed as a group contract when the group is essentially the broker who sells the product to individuals.

Inadequate Regulatory Review

There does not appear to ever have been an analysis or investigation of whether

1) The issuance of the Group CDA is not contrary to the best interests of the public;

2) The issuance of the Group CDA would result in economies of acquisition and administration; and

3) The benefits of the Group CDA are reasonable in relation to the premium charged.
Systemic Risk of Product

The alleged benefit of the product is that the insurer assumes the downside risk of investments, while the consumer retains the upside benefit of those investments. The product appears to provide virtually no value if investments are balanced/conservative. The potential benefit of the product is associated with consumers moving investments into riskier asset classes, as permitted by the insurer.

On the one hand, the insurer has complete control over its exposure by manipulating the permissible investment options. However, the higher fees associated with riskier asset classes are a powerful incentive for insurers to engage in behavior promoting short-term profits at the expense of long-term solvency.

On the other hand, consumers, consumers who are educated about the product and act rationally will invest in the riskiest assets permitted by the insurer with the result that potentially trillions of dollars of assets are moved from bonds to stocks. The insurance company is, consequently, guaranteeing market performance with CDAs, just as it does with many variable annuity products. Insurers have expertise in diversifying mortality risk and managing interest rate risk. Insurers have no special ability to manage market risk and the sale of CDAs is not diversification – it is not the creation of a risk pool – it is the concentration of market risk with the insurer, which we believe poses risk to the financial system.

Potential Guaranty Fund Coverage

There has been no definitive answer about whether CDAs are covered by state guaranty funds. Since the product is primarily insurance against market performance, guaranty funds should not cover CDAs and such non-coverage should be clearly disclosed to consumers.

A consumer purchasing a lifetime income product reasonably needs to know if the stream of lifetime income has any protection should the insurance company fail. The existence of the state guaranty fund system to provide such protection for a consumer who has purchased, say, a deferred income annuity is a great benefit to the consumer and is reasonably a factor in a consumer’s decision to purchase the product versus a speculative investment with no guarantees.

CDA Specific Suitability and Producer Training

As discussed on many occasions, the likelihood of a benefit payment under a CDA – and the availability of a benefit to a consumer compared to low-risk, standard investments – is almost wholly determined by type of asset classes in which the consumer invests the covered assets. Clearly, this key characteristic of CDAs needs to be included in suitability requirements for CDAs as well as in consumer disclosures. In addition, there should be CDA-specific producer training requirements related to the unique features and suitability requirements of the CDA.
Excerpts from Transamerica CDA Policy Form Approved by Delaware and other States

4.1 Composition Requirements

We may, in Our sole discretion, change Composition Requirements at any time. For example, We may add, modify, replace or delete Eligible Assets, Asset Class Categories, Asset Category Caps or Fee Factor ranges. In addition, We may reassign one or more Eligible Funds to different Asset Class Categories or change their Fund Factors. The change in one or more Eligible Funds’ Asset Class Categories or Fund Factors could cause the Covered Asset Pool to exceed an Asset Category Cap or highest Fee Factor range. If We change the Composition Requirements, You will be provided with written notice at least [thirty (30)] days before the change. If We notify You that Composition Requirements have changed, You will have [thirty (30)] days from the date of the notice to reallocate the Covered Asset Pool (if necessary). If You fail to reallocate to the then prevailing Composition Requirements within the Compliance Deadline, this Certificate will terminate and no benefits will be paid.

Except for circumstances provided in the immediately preceding paragraph or as outlined in Section 4.3, if at any time, the composition of the Covered Asset Pool does not meet Our then prevailing Composition Requirements, We will send notice of non-compliance and You will have [seven (7)] business days following the date of notice to reallocate to the then prevailing Composition Requirements. If You fail to reallocate to the then prevailing Composition Requirements within the Compliance Deadline, this Certificate will terminate and no benefits will be paid.

7.1 Certificate Coverage Termination

This Certificate terminates:

(c) upon the transfer, sale or other disposition of all or substantially all of the Covered Asset Pool into Ineligible Assets;

(d) upon non-payment of the Certificate Fee;

(g) if the composition of the Covered Asset Pool does not meet the then applicable Composition Requirements and non-compliance is not corrected within the Compliance Deadline;

(h) if the Financial Institution, the Third-Party Administrator, or You do not provide or give Us access to the information or data necessary for Us to monitor the composition of the Account;

(j) if You do not transfer the Account to a then approved Financial Institution within the prescribed time following removal of a Financial Institution as described in Section 7.2;

(k) change of Law as described in Section 10.4;
7.2 Disapproved Financial Institution

If, prior to the Insured Event, for any reason We remove a Financial Institution maintaining a Certificate Owner’s Account from our list of approved Financial Institutions, You must maintain compliance with the terms of this Certificate and transfer the Account from the disapproved Financial Institution to an approved Financial Institution within [ninety (90)] calendar days.

We will send You a notice upon disapproval of Your current Financial Institution.

This Certificate will terminate unless You:
(a) move the Account to another approved Financial Institution within [ninety 90] calendar days of the date We send notice of disapproval; Page 23
(b) comply with the Composition Requirements in Article IV and provide or give Us access to the information or data necessary to monitor the composition of the Account at all times; and
(c) comply with all other applicable terms of this Certificate.

10.1 Misstatement of Age

If any Covered Person's Attained Age is misstated, benefits will be adjusted to what the correct Attained Age of the Covered Person would provide. Any underpayment made by Us will be paid with the next payment. Any overpayment made by Us will be deducted from future payments. However, if this Certificate would not have been issued had such age(s) not been misstated, this Certificate will be treated as void from inception and no benefits will be paid. In this case, We will refund any unearned Certificate Fee. Certificate Fees will be refunded (subject to any applicable Certificate Fee Adjustment) on a prorated basis for the period beginning on the first day We discover the misstatement of age and ending on the last day of the Certificate quarter.

10.4  Our Right to Amend this Certificate

The Contract and Certificate are intended to qualify as annuity contracts for federal income tax purposes. The provisions of the Contract and Certificate are to be interpreted to maintain such qualification. To maintain such qualification, We may unilaterally amend the Contract and any Certificate to reflect clarifications which may be needed or are appropriate to maintain such tax qualification or to conform the Contract and Certificate to any applicable changes in tax qualification requirements. Please note that any impediment to Our ability to exercise this right may result in adverse tax consequences.

We may also amend or delete any term or provision of the Contract or Certificate based upon any change of law. A change of law may include, but is not limited to, any change in surplus or reserving requirements relating in any manner to this Contract as well as the application of any new or additional laws, regulations, bulletins, directives or official interpretations with respect to the Contract, Certificate or contingent deferred annuities, generally. We may terminate the Contract or the Certificate in any state if this type of Contract is considered to be financial guaranty insurance.
Summary of Key Statistics for Portfolio C (25S/75B)

I. Total number of 35-year hypothetical retirements

II. Total # of times portfolio assets are depleted
   - By Life Expectancy for Males (LE = 19 yrs) 0 0
   - By Life Expectancy for Females (LE = 22 yrs) 0 0
   - By Age 100 482 4

III. % of times portfolio assets are depleted
   - By Life Expectancy for Males (LE = 19 yrs) 0.0% 0.0%
   - By Life Expectancy for Females (LE = 22 yrs) 0.0% 0.0%
   - By Age 100 78.6% 0.7%

IV. # of times CDA assets are depleted due to market risk/fee drag
   - By Life Expectancy for Males (LE = 19 yrs) 0
   - By Life Expectancy for Females (LE = 22 yrs) 0

V. % times CDA is depleted due to longevity risk* (+market risk and/or fee drag)
   - By Age 100 (Male) 78.6%
   - By Age 100 (Female) 78.6%

VI. Ending Portfolio Assets (End of 35th Year, Age 100)

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<th>Lowest</th>
<th>Average</th>
<th>Highest</th>
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* Defined as the risk of living beyond life expectancy and reaching age 100
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 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. 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. 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 includes a checklist and regulatory guidance developed by the Life Risk-Based Capital (E) Working Group for states to use in evaluating the capital requirements and 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 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.

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 CDA’s 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 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 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.

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 SEC has not taken a position regarding

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1 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.
whether CDAs are required to be registered as securities. However, based on information the
SEC shared with the working group, it is the working group’s understanding that a product that
is a derivative of a registered security is also considered a security requiring registration. 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 should continue to discuss registration requirements for CDA products
with the SEC.

Products registered with the SEC may only be sold through a FINRA licensed broker dealer or a
registered investment advisor\(^2\). 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
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 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 insured varies according the market
performance of the underlying assets. For example, a large downturn in the stock market would
lower the value of the funds underlying the CDA while the benefit remains 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; 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

\(^2\) 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.
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, withdrawal timing and amounts, and investment decisions. In this regard, the value of the CDA to an insured 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 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. 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 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 the investment assets that an insured may hold in the underlying portfolio, limiting withdrawals amounts during the withdrawal phase, varying fees in accordance with the risk level of the underlying investments, and decreasing benefits for withdrawals above those allowed under the policy. 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 may use and gain value from a CDA.

Insurers who offer CDAs must also manage third party 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 benefit base), and to notify the insurer if the insured changes the assets contained in the underlying account (to determine if the insured 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.

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.
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 Checklist
   [In Development]

C. Reserve Requirements
   [In Development]

D. Capital Requirements
   [In Development]

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

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 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 and those covered by ERISA. See Sections 2B.(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. 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.

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 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 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. The working group concluded that the existing list of “suitability information” included in Section I 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 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 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.

**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 determined that this 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 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 working group concluded that the model regulation should be amended to make clear it applies to CDAs. 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 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 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 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 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 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.
In late-2012, the Life Insurance and Annuities (A) Committee (“Committee”) charged the Contingent Deferred Annuity (“CDA”) Working Group with evaluating the adequacy of existing laws and regulations as applied to CDAs and whether additional solvency and consumer protection standards are required. The CDA Working Group submitted its report and findings and recommendations to the Committee at the NAIC 2013 Spring National Meeting. Among its findings, the CDA Working Group found that CDAs do not easily fit into the category of fixed or variable annuity, that review of solvency and consumer protection standards are necessary and that tools to assist states in review CDA product filings and solvency oversight of CDAs should be established. The CDA Working Group also identified issues that would be more appropriately addressed by other existing NAIC groups with the specific subject-matter expertise.

Below are proposed charges to the various NAIC groups identified in the CDA Working Group’s report as having the specific subject matter expertise to implement its findings and recommendations. These charges were delegated to the listed groups and adopted by Executive Committee at the 2013 Fall National Meeting.

**Producer Licensing (EX) Task Force**

- Charge to review the types of producer licenses, including appropriate provisions in the *Producer Licensing Model Act* (#218), required to sell contingent deferred annuities (CDAs) to determine if those licenses are consistent with the licenses required to sell variable annuities and recommend any necessary changes and/or revisions.

July 2014 – On track for Task Force to adopt a recommendation on licensure requirements to sell CDAs at Summer National Meeting.

**Speed to Market (EX) Task Force, Operational Efficiencies (EX) Working Group**

- Create a separate type of insurance (TOI) category for contingent deferred annuities (CDAs) in SERFF and SBS systems, and any other relevant speed to market tools, as necessary.

Completed – As of July 7, 36 states implemented.

- 16 states declined implementation, of which
  - 13 do not allow CDAs or do not regulate them
  - 2 did not provide a reason
  - 1 said it would require system changes in their office (non-SERFF changes)
  - 1 said they looked for NAIC guidance/models before moving forward
- 3 jurisdictions do not use SERFF
- 1 state has never responded to any of our multiple inquiries on this subject

**Contingent Deferred Annuity (A) Working Group**

- Charge to serve as the coordinating body with all of the NAIC technical groups with projects related to contingent deferred annuities (CDAs).

- Charge to develop NAIC guidelines and/or model bulletin that can serve as a reference for states interested in modifying their annuity laws to clarify their applicability to contingent deferred annuities (CDAs) and, as part of this work, review existing NAIC model laws and regulations applicable to consumer protection issues associated with CDAs.

August 2014 – CDA Working Group has released a draft “Guidance Document” for comments by Sept. 5.

- Charge to develop a work plan that would allow Committee members, interested regulators and interested parties to easily track, monitor and coordinate the progress of the NAIC technical groups working on issues identified in the Contingent Deferred Annuity (A) Working Group report and recommendations concerning contingent deferred
annuities (CDAs). The work plan should include timelines and dates for expected completion of the work done by each NAIC technical group.

- Charge to review and consider revisions to the *Annuity Disclosure Model Regulation* (#245) to exempt SEC registered contingent deferred annuities (CDAs) and CDAs offered through ERISA retirement plans.

- Charge to review and consider revisions to the *Suitability in Annuity Transactions Model Regulation* (#275) to specifically reference its applicability to the sale of contingent deferred annuities (CDAs), including the one-time, four hour training and the product-specific training requirements.

- Charge to review and consider revisions to the *Advertisements of Life Insurance and Annuities Model Regulation* (#570) to specifically reference its applicability to contingent deferred annuities (CDAs).

- Charge to review and consider revisions to the *Life Insurance and Annuities Replacement Model Regulation* (#613) to specifically reference its applicability to contingent deferred annuities (CDAs).

August 2014 – Draft revisions to Models #245, #275, #570 and #613 to be discussed at Summer National Meeting.

**Life Actuarial (A) Task Force**

- Charge to evaluate Actuarial Guideline 43 to determine whether the reserve guidance as it applies for variable annuity guarantees would be deficient when applied to contingent deferred annuities (CDAs). Recommend changes, as appropriate, to address any deficiencies and determine whether clarifying guidance would be useful due to different nomenclature than variable annuities with guarantees.

August 2014 – LATF is waiting for ACLI to provide comments in relation to this charge

- Charge to consider revisions to the *Standard Nonforfeiture Law for Individual Deferred Annuities* (#805) to specifically exclude contingent deferred annuities (CDAs) from the scope of the model.

August 2014 – Revisions to Model #805 were completed by the CDA Subgroup, but have not yet been adopted by the Task Force

*NOTE: LATF is working on additional CDA-related charges at the request of the E Committee. See E Committee Charges.*

**Financial Condition (E) Committee**

- Charge to review and consider changes, as necessary, to the appropriate Annual Statement Blank to address financial reporting requirements for contingent deferred annuities (CDAs).

August 2014 – E-Committee has requested assistance from the Life Actuarial (A) Task Force in addressing this charge. Consideration of this issue is in progress.

- Charge to consider the development of a template/checklist of questions that state insurance departments could use to facilitate the review of an insurer’s risk management program at the time of a policy form filing related to a contingent deferred annuity (CDA) consistent with the recommendations from the Contingent Deferred Annuity (A) Working Group.

August 2014 – E-Committee has requested the coordinated assistance of the Life Actuarial (A) Task Force and the Examination Oversight (E) Task Force in addressing this charge. Consideration of this issue is in progress.

*NOTE: the following charge stayed on E-Committee’s list for 2014, as well, although E-Committee has requested assistance from the Life Actuarial (A) Task Force in addressing this charge:*

- Charge to review and determine whether revisions to the *Synthetic Guaranteed Investment Contracts Model Regulation* (#695) are needed to clarify its relationship with contingent deferred annuities (CDAs).
August 2014 – E-Committee has requested assistance from the Life Actuarial (A) Task Force in addressing this charge. Consideration of this issue is in progress.

**Blanks (E) Working Group**

- Consider adjusting the appropriate Annual Statement Blank and Instructions to replace the contingent deferred annuity (CDA) definition currently used with the CDA definition developed by the Contingent Deferred (A) Working Group.


**Life Risk Based Capital (E) Working Group**

- Develop guidance, for inclusion in the proposed NAIC contingent deferred annuity (CDA) guidelines, for states as to how current regulations governing risk-based capital requirements, including C-3 Phase II, should be applied to contingent deferred annuities (CDAs). Recommend a process for reviewing capital adequacy for insurers issuing CDAs and prepare clarifying guidance, if necessary, due to different nomenclature than used with regard to CDAs. The development of this guidance does not preclude the Working Group from reviewing CDAs as part of any ongoing or future charges where applicable and is made with the understanding that this guidance could change as a result of such a review.

July 2014 – The Life Risk-Based Capital (E) Working Group received proposed instructions related to contingent deferred annuities and C-3 Phase II from the American Council of Life Insurers. These were exposed for comment at the Spring National Meeting. One comment letter was received from the American Academy of Actuaries. This will be discussed at the Summer National Meeting.

**Receivership and Insolvency (E) Task Force**

- Review the definition of contingent deferred annuity (CDA), as proposed by the Contingent Deferred Annuity (A) Working Group, and determine whether amendments to the *Life and Health Insurance Guaranty Association Model Act* (#520) are needed and warranted in light of that proposed definition.

July 2014 – Receivership & Insolvency Task Force planned to discuss and review analysis that NOLHGA has done on the Model #520 prior to the Summer National Meeting. On track to complete by Summer National Meeting.
The NAIC solicits comments on this draft. Underlining and overstrikes show the changes from the existing model. Comments should be sent by email to Jennifer Cook at jcook@naic.org.

ANNUITY DISCLOSURE MODEL REGULATION

The NAIC amended this model during the 2013 Fall National Meeting. These amendments were adopted as guidelines under the NAIC’s model laws process. The December 2013 Guideline Amendments are highlighted in grey.

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Appendix A. Annuity Illustration Example

Section 1. Purpose

The purpose of this regulation is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. The regulation specifies the minimum information which must be disclosed, the method for disclosing it and the use and content of illustrations, if used, in connection with the sale of annuity contracts. The goal of this regulation is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

Section 2. Authority

This regulation is issued based upon the authority granted the commissioner under Section [cite any enabling legislation and state law corresponding to Section 4 of the NAIC Unfair Trade Practices Act].

Section 3. Applicability and Scope

This regulation applies to all group and individual annuity contracts and certificates except:

A. Immediate and deferred annuities that contain no non-guaranteed elements;
B. (1) Annuities used to fund:

NOTE TO WORKING GROUP: CONSIDERED ADDING THE PHRASE “INCLUDING CONTINGENT DEFERRED ANNUITIES” AFTER “ANNUITIES” IN B(1), BUT THIS EXEMPTION FOR ERISA PLANS SEEMS BROAD ENOUGH AS IS TO INCLUDE CONTINGENT DEFERRED ANNUITIES AND THIS SAME LANGUAGE IS IN THE SUITABILITY MODEL. ALSO, WE DO NOT WANT TO CREATE A SITUATION WHERE, UNLESS CDAS ARE SPECIFICALLY INCLUDED, IT IS PRESUMED THEY ARE EXCLUDED.

(a) An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA);
(b) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer,

(c) A governmental or church plan defined in Section 414 or a deferred compensation plan of a state or local government or a tax exempt organization under Section 457 of the Internal Revenue Code; or

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(2) Notwithstanding Paragraph (1), the regulation shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

C. Non-registered variable annuities issued exclusively to an accredited investor or qualified purchaser as those terms are defined by the Securities Act of 1933 (15 U.S.C. Section 77a et seq.), the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), or the regulations promulgated under either of those acts, and offered for sale and sold in a transaction that is exempt from registration under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.).

D. (1) Transactions involving variable annuities and other registered products, including contingent deferred annuities, 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.

(2) Notwithstanding Subsection D(1), the delivery of the Buyer’s Guide is required in sales of variable annuities, and when appropriate, in sales of other registered products, but not in connection with the sale of contingent deferred annuities.

(3) Nothing in this subsection shall limit the commissioner’s ability to enforce the provisions of this regulation or to require additional disclosure.

E. Structured settlement annuities;

F. [Charitable gift annuities; and]

G. [Funding agreements].
Drafting Note: States that regulate charitable gift annuities should exempt them from the requirements of this regulation. States that recognize or regulate funding agreements as annuities should exempt them from the requirements of this regulation.

Section 4. Definitions

For the purposes of this regulation:

A. “Buyer’s Guide” means the National Association of Insurance Commissioner’s approved Annuity Buyer’s Guide.

B. “[Charitable gift annuity” means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes, but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.]

C. “Contingent deferred annuity” means 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.

C. “Contract owner” means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

D. “Determinable elements” means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

E. “[Funding agreement” means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.]

F. “Generic name” means a short title descriptive of the annuity contract being applied for or illustrated such as “single premium deferred annuity.”

G. “Guaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are guaranteed or have determinable elements at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

H. “Illustration” means a personalized presentation or depiction prepared for and provided to an individual consumer that includes non-guaranteed elements of an annuity contract over a period of years.

I. “Market Value Adjustment” or “MVA” feature is a positive or negative adjustment that may be applied to the account value and/or cash value of the annuity upon withdrawal, surrender, contract annuitization or death benefit payment based on either the movement of an external index or on the company’s current guaranteed interest rate being offered on new premiums or new rates for renewal periods, if that withdrawal, surrender, contract annuitization or death benefit payment occurs at a time other than on a specified guaranteed benefit date.

J. “Non-guaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these, that are
subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

K. “Structured settlement annuity” means a “qualified funding asset” as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

Section 5. Standards for the Disclosure Document and Buyer’s Guide

A. (1) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall at or before the time of application be given both the disclosure document described in Subsection B and the Buyer’s Guide, if any.

(2) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the Buyer’s Guide no later than five (5) business days after the completed application is received by the insurer.

(a) With respect to an application received as a result of a direct solicitation through the mail:

(i) Providing a Buyer’s Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the Buyer’s Guide be provided no later than five (5) business days after receipt of the application.

(ii) Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

(b) With respect to an application received via the Internet:

(i) Taking reasonable steps to make the Buyer’s Guide available for viewing and printing on the insurer’s website shall be deemed to satisfy the requirement that the Buyer’s Guide be provided no later than five (5) business days after receipt of the application.

(ii) Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer’s website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

(c) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the insurance department of the state for a free annuity Buyer’s Guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity Buyer’s Guide.

(d) Where the Buyer’s Guide and disclosure document are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under state law or regulation.

B. At a minimum, the following information shall be included in the disclosure document required to be provided under this regulation:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity;
(2) The insurer’s legal name, physical address, website address and telephone number;

(3) A description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate:

(a) The guaranteed and non-guaranteed elements of the contract, and their limitations, if any, including for fixed indexed annuities, the elements used to determine the index-based interest, such as the participation rates, caps or spread, and an explanation of how they operate;

(b) An explanation of the initial crediting rate, or for fixed indexed annuities, an explanation of how the index-based interest is determined, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

(c) Periodic income options both on a guaranteed and non-guaranteed basis;

(d) Any value reductions caused by withdrawals from or surrender of the contract;

(e) How values in the contract can be accessed;

(f) The death benefit, if available and how it will be calculated;

(g) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(h) Impact of any rider, including, but not limited to, a guaranteed living benefit or long-term care rider;

(4) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

(5) Information about the current guaranteed rate or indexed crediting rate formula, if applicable, for new contracts that contains a clear notice that the rate is subject to change.

C. Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.
The NAIC solicits comments on this draft. Underlining and overstrikes show the changes from the existing model. Comments should be sent by email to Jennifer Cook at jcook@naic.org.

**SUITABILITY IN ANNUITY TRANSACTIONS**

**MODEL REGULATION**

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**Section 1. Purpose**

A. The purpose of this regulation is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

B. Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

**Drafting Note:** The language of subsection B comes from the NAIC Unfair Trade Practices Act. If a State has adopted different language, it should be substituted for subsection B.

**Section 2. Scope**

This regulation shall apply to any recommendation to purchase, exchange or replace an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase, exchange or replacement recommended.

**Section 3. Authority**

This regulation is issued under the authority of [insert reference to enabling legislation].

**Drafting Note:** States may wish to use the Unfair Trade Practices Act as enabling legislation or may pass a law with specific authority to adopt this regulation.

**Section 4. Exemptions**

Unless otherwise specifically included, this regulation shall not apply to transactions involving:

A. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;

B. Contracts used to fund:
Section 5. Definitions

A. “Annuity” means an annuity, including a contingent deferred annuity, that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.

B. “Contingent deferred annuity” means 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.

C. “Continuing education credit” or “CE credit” means one continuing education credit as defined in [insert reference in State law or regulations governing producer continuing education course approval].

D. “Continuing education provider” or “CE provider” means an individual or entity that is approved to offer continuing education courses pursuant to [insert reference in State law or regulations governing producer continuing education course approval].

E. “FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.

F. “Insurer” means a company required to be licensed under the laws of this state to provide insurance products, including annuities.

G. “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.

H. “Recommendation” means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, exchange or replacement of an annuity in accordance with that advice.

I. “Replacement” means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

NOTE TO WORKING GROUP: THIS EXEMPTION FOR ERISA PLANS SEEMS BROAD ENOUGH AS IS TO INCLUDE CONTINGENT DEFERRED ANNUITIES. SIMILAR LANGUAGE IS IN THE SUITABILITY MODEL. ALSO, WE DO NOT WANT TO CREATE A SITUATION WHERE, UNLESS CDAS ARE SPECIFICALLY INCLUDED, IT IS PRESUMED THEY ARE EXCLUDED.
(1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

(2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(4) Reissued with any reduction in cash value; or

(5) Used in a financed purchase.

**Drafting Note:** The definition of “replacement” above is derived from the NAIC Life Insurance and Annuities Replacement Model Regulation. If a State has a different definition for “replacement,” the State should either insert the text of that definition in place of the definition above or modify the definition above to provide a cross-reference to the definition of “replacement” that is in State law or regulation.

**J.** “Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(1) Age;

(2) Annual income;

(3) Financial situation and needs, including the financial resources used for the funding of the annuity;

(4) Financial experience;

(5) Financial objectives;

(6) Intended use of the annuity;

(7) Financial time horizon;

(8) Existing assets, including investment and life insurance holdings;

(9) Liquidity needs;

(10) Liquid net worth;

(11) Risk tolerance; and

(12) Tax status.

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**Section 6. Duties of Insurers and of Insurance Producers**

A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer’s suitability information, and that there is a reasonable basis to believe all of the following:
The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk;

Drafting Note: If a State has adopted the NAIC Annuity Disclosure Model Regulation, the State should insert an additional phrase in paragraph (1) above to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the NAIC Annuity Disclosure Model Regulation.

The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;

The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and

In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

(a) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

(b) The consumer would benefit from product enhancements and improvements; and

(c) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

B. Prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer’s suitability information.

C. Except as permitted under subsection D, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer’s suitability information.

D. (1) Except as provided under paragraph (2) of this subsection, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subsection A or C related to any annuity transaction if:

(a) No recommendation is made;

(b) A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;

(c) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or

(d) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

(2) An insurer’s issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.
E. An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:

(1) Make a record of any recommendation subject to section 6A of this regulation;

(2) Obtain a customer signed statement documenting a customer’s refusal to provide suitability information, if any; and

(3) Obtain a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer’s or insurer’s recommendation.

F. (1) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer’s and its insurance producers’ compliance with this regulation, including, but not limited to, the following:

   (a) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant insurance producer training manuals;

   (b) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of section 7 of this regulation;

   (c) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

   (d) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

   (e) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. This may include, but is not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming suitability information after issuance or delivery of the annuity; and

   (f) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(2) (a) Nothing in this subsection restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph (1). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer’s compliance with subparagraph (b) of this paragraph.
(b) An insurer’s supervision system under paragraph (1) shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:

(i) Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

(ii) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

(3) An insurer is not required to include in its system of supervision an insurance producer’s recommendations to consumers of products other than the annuities offered by the insurer.

G. An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

(1) Truthfully responding to an insurer’s request for confirmation of suitability information;

(2) Filing a complaint; or

(3) Cooperating with the investigation of a complaint.

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, contingent deferred 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.

(2) For paragraph (1) to apply, an insurer shall:

(a) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer’s business; and

(b) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

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.
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.

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.

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.

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].

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].

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 producer continuing education course approval].

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.

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.
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Section 1. Purpose

The purpose of this regulation is to set forth minimum standards and guidelines to assure a full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts.

Section 2. Definitions

For the purpose of this regulation:

A. (1) “Advertisement” means material designed to create public interest in life insurance or annuities or in an insurer, or in an insurance producer; or to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy including:

Comment: See drafting note caveat immediately following the definition of “insurance producer” in this section.

(a) Printed and published material, audiovisual material and descriptive literature of an insurer or insurance producer used in direct mail, newspapers, magazines, radio and television scripts, telemarketing scripts, billboards and similar displays, and the Internet or any other mass communication media.

(b) Descriptive literature and sales aids of all kinds, authored by the insurer, its insurance producers, or third parties, issued, distributed or used by the insurer or insurance producer; including but not limited to circulars, leaflets, booklets, web pages, depictions, illustrations and form letters;

(c) Material used for the recruitment, training and education of an insurer’s insurance producers which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy;

(d) Prepared sales talks, presentations and materials for use by insurance producers.

(2) “Advertisement” for the purpose of this regulation shall not include:
Communications or materials used within an insurer’s own organization and not intended for dissemination to the public;

Communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate or retain a policy; and

A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged; provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage.

B. “Annuity” means an annuity, including a contingent deferred annuity, that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.

C. “Contingent deferred annuity” means 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.

D. “Determinable policy elements” means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable policy elements only, or from both determinable and guaranteed policy elements.

E. “Guaranteed policy elements” means the premiums, benefits, values, credits or charges under a policy, or elements of formulas used to determine any of these that are guaranteed and determined at issue.

F. “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.

Drafting Note: Each jurisdiction may wish to revise the definition of “insurance producer” to reference the definition in that jurisdiction’s licensing law. This definition from the NAIC Producer Licensing Model Act, which also defines the terms “sell,” “solicit,” and “negotiate,” should be used. This term and words related thereto should not be included in life advertising regulations unless “insurance producer” also is statutorily defined and the definitions are identical.

G. “Insurer” means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd’s, fraternal benefit society, and any other legal entity which is defined as an “insurer” in the insurance code of this state or issues life insurance or annuities in this state and is engaged in the advertisement of a policy.

H. “Nonguaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

I. “Policy” means any policy, plan, certificate, including a fraternal benefit certificate, contract, agreement, statement of coverage, rider or endorsement which provides for life insurance or annuity benefits.

J. “Preneed funeral contract or prearrangement” means an arrangement by or for an individual before the individual’s death relating to the purchase or provision of specific funeral or cemetery merchandise or services.
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.

B. All advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the insurer, as well as the producer who created or presented the advertisement. Insurers shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. A system of control shall include regular and routine notification, at least once a year, to agents, brokers and others authorized by the insurer to disseminate advertisements of the requirement and procedures for company approval prior to the use of any advertisements that is not furnished by the insurer and that clearly sets forth within the notice the most serious consequence of not obtaining the required prior approval.

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The NAIC solicits comments on this draft. Underlining and overstrikes show the changes from the existing model. Comments should be sent by email to Jennifer Cook at jcook@naic.org.

### LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

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#### Section 1. Purpose and Scope

A. The purpose of this regulation is:

1. To regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities.
2. To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will:

   a. Assure that purchasers receive information with which a decision can be made in his or her own best interest;
   
   b. Reduce the opportunity for misrepresentation and incomplete disclosure; and
   
   c. Establish penalties for failure to comply with requirements of this regulation.

B. Unless otherwise specifically included, this regulation shall not apply to transactions involving:

1. Credit life insurance;

2. Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of Section 7;

3. Group life insurance and annuities used to fund prearranged funeral contracts;
(4) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;

(5) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(6) (a) Policies or contracts used to fund (i) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA); (ii) a plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer; (iii) a governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or (iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(b) Notwithstanding Subparagraph (a), this regulation shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two (2) or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;

(7) Where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;

(8) Existing life insurance that is a non-convertible term life insurance policy that will expire in five (5) years or less and cannot be renewed;

(9) Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this regulation;

(10) Structured settlements.

C. Registered contracts shall be exempt from the requirements of Sections 5A(2) and 6B with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

Section 2. Definitions

A. “Annuity” means an annuity, including a contingent deferred annuity, that is an insurance product under State law that is individually solicited, whether the product is classified as an individual or group annuity.

B. “Contingent deferred annuity” means 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.
“Direct-response solicitation” means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

“Existing insurer” means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of “replacement.”

“Existing policy or contract” means an individual life insurance policy (policy) or annuity contract (contract) in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

“Financed purchase” means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four (4) months before or thirteen (13) months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder’s intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in Section 4A(5) of this regulation.

“Illustration” means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in [insert reference to state law equivalent to the NAIC Life Insurance Illustrations Model Regulation].

“Policy summary,” for the purposes of this regulation:

1. For policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information: current death benefit; annual contract premium; current cash surrender value; current dividend; application of current dividend; and amount of outstanding loan.

2. For universal life policies, means a written statement that shall contain at least the following information: the beginning and end date of the current report period; the policy value at the end of the previous report period and at the end of the current report period; the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders); the current death benefit at the end of the current report period on each life covered by the policy; the net cash surrender value of the policy as of the end of the current report period; and the amount of outstanding loans, if any, as of the end of the current report period.

“Producer,” for the purpose of this regulation, shall be defined to include agents, brokers and producers.

“Replacing insurer” means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

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

“Replacement” means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
(2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(4) Reissued with any reduction in cash value; or

(5) Used in a financed purchase.

**KM.** “Sales material” means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract owner related to the policy or contract purchased.

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April 21, 2014

VIA E-MAIL

Commissioner Ted Nickel, Chair
Contingent Deferred Annuities (A) Working Group
c/o Jennifer Cook (jcook@naic.org)
National Association of Insurance Commissioners
444 North Capitol Street, NW
Suite 701
Washington, DC 20001

Re: Exposure of Staff 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 clients, Prudential Insurance Company of America, Transamerica Life Insurance Company and Great-West Life & Annuity Insurance Company (the “Companies”), we appreciate the opportunity to submit these comments to the Contingent Deferred Annuities (A) Working Group (the “CDA Working Group”) in response to staff proposed draft revisions to four NAIC consumer protection models.

The Companies appreciated the opportunity to discuss these draft revisions at the NAIC Spring national meeting. We hope that you will find our written comments helpful and constructive.

As part of the CDA Working Group’s ongoing dialogue on how best to provide guidance to state regulators in their review of CDAs, we believe it is important to consider not only the benefits of efficient, consistent guidance, but also the potential costs and inefficiencies of re-
opening an existing model regulation to explicitly reference and/or define CDAs and the potential precedent established on amending regulations for future innovative product solutions, especially when the clear implication of the existing language brings CDAs into its scope.

To that end, we offer for your consideration our review of four key model regulations and our suggestions on how they apply or could apply to CDAs. Those four regulations are:

1. Annuity Disclosure Model Regulation (Model 245);
2. Suitability in Annuity Transactions Model Regulation (Model 275);
3. Advertisements of Life Insurance and Annuities Model Regulation (Model 570); and
4. Life Insurance and Annuities Replacement Model Regulation (Model 613).

In clarifying how the four regulations apply to CDAs, we have made specific recommendations to serve as a basis for interpretative guidance and guideline amendments. Where, in the body of this letter, we recommend a guideline amendment, we believe that NAIC interpretative guidance could equally serve the purpose of explaining how the regulations apply to CDAs. We believe this interpretative guidance should be considered for inclusion within the CDA Working Group’s charge to develop NAIC guidelines for CDAs.

One important point that has prompted many of our comments, including the Companies’ testimony at the NAIC Spring national meeting, is the fact that CDAs, as currently designed, are either registered as securities with the U.S. Securities and Exchange Commission (the “SEC”) or they qualify 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. Under the federal securities laws, a CDA that provides guaranteed benefit payments based on the value of designated investments is itself treated as a security that must be registered or qualify for an exemption from SEC registration. To put it plainly, CDAs, as registered securities, are subject to the full range of investor protections found in the federal securities laws and should receive similar treatment to other registered annuities under the NAIC’s consumer protection laws identified in the CDA Working Group charges and discussed herein.

Registered CDAs are subject to regulation by the SEC and the Financial Industry Regulatory Authority (“FINRA”) in such areas as disclosure, suitability, supervision and advertising—in much the same way as any SEC registered annuity. CDAs that are exempt from SEC registration as funding vehicles for retirement plans generally are exempted from the NAIC Models discussed below.
I. Annuity Disclosure Model Regulation (Model 245)

Model 245 requires insurers selling annuities to provide a disclosure document and a buyer’s guide in connection with the sale of an annuity and it also regulates the design and presentation of annuity illustrations. The Model applies broadly to “all group and individual annuity contracts and certificates,” but exempts specific types of annuities from the regulation’s requirements. For instance, the Model exempts all “annuities” used to fund many retirement and certain nonqualified deferred compensation plans from its requirements.

Model 245 also exempts SEC registered annuities from its disclosure document requirements. Section 3D currently provides an exemption for sales involving “variable annuities and other registered products” that comply with the disclosure requirements of the SEC and FINRA.

Section 3D also makes clear, however, that “the delivery of the Buyer’s Guide is required in sales of variable annuities, and when appropriate, in sales of other registered products.”

In its April 7, 2013 Report to the (A) Committee (the “April 2013 Report” or the “Report”), the CDA Working Group recommended that Model 245 be revised to “exempt SEC registered CDAs and CDAs offered through an ERISA retirement plan.” The Report noted that Model 245 “does not apply to products that are also registered securities, like CDAs, and by its terms does not apply to variable annuities. The SEC prospectus preempts all other state disclosures, with the exception of the buyer’s guide.” The Report recommended that “[t]he requirement that buyer’s guides be provided at the time of sale probably shouldn’t apply to CDAs because the buyer’s guide doesn’t contain any information about CDAs and would be confusing.” We agree.

Notably, the CDA Working Group did not recommend that Model 245 be revised to specifically reference CDAs, presumably because the Model already applies to “all group and individual annuities.” This same logic can be used to interpret the exemption in Section 3B(1) for “annuities” used to fund certain retirement plans and the exemption in Section 3D for “other

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1 NAIC Annuity Disclosure Model Regulation (Model 245).
2 See id. § 3B(1).
3 Emphasis added. The 3D exemption is conditional on the SEC or FINRA taking actions to adopt streamlined disclosure regulations by a specified date. However, in December 2013, the NAIC Life and Annuities (A) Committee approved a guideline amendment to Section 3D to alert states that conditioning the exemption in Section 3D on certain actions being taken by federal regulators likely could be preempted by federal authorities.
4 Id. § 3D (emphasis added).
5 Memorandum from the Contingent Deferred Annuity (A) Working Group to the Life Insurance and Annuities (A) Committee (April 7, 2013).
registered products.” In both cases, the language currently in the model is sufficiently broad to include CDAs.

Given the broad exemption of Model 245 for “annuities” used to fund retirement plans and the broad exemption for “other registered products” in Section 3B(1) and Section 3D, respectively, the CDA Working Group could reasonably conclude that it is not necessary to single out CDAs, precisely because the language in those exemptions to the Model already covers CDAs. Here, we believe that adding a guideline amendment to clarify how the Model applies to CDAs should be sufficient. We recommend a guideline amendment to explain that the phrase “other registered products” in Section 3D includes CDAs and that Model 245’s Buyer’s Guide requirement does not apply to CDAs because the buyer’s guide does not contain any information about CDAs.

We recommend two guidelines amendments be added to the Model.

First, we recommend the following guideline amendment be added after Section 3D(1) of the Model:

“Contingent Deferred Annuities, where disclosure requirements are established pursuant to federal regulation, fall within the scope of “other registered products” for the purposes of Section 3D(1) and 3D(2).”

Second, we recommend the following guideline amendment be added after Section 3D(2) of the Model:

“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.”

II. Suitability in Annuity Transactions Model Regulation (Model 275)

Model 275 requires insurers to establish a system to supervise the suitability of annuity recommendations and it establishes standards and procedures for recommendations to consumers that result in transactions involving annuity products. Model 275 states that it “shall apply to any recommendation to purchase, exchange or replace an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved…” (emphasis added).
Section 6H(1) of the model provides a limited exemption for fixed and variable annuities that comply with FINRA suitability and supervision requirements “if the suitability and supervision is similar to those applied to variable annuity sales.”

In the April 2013 Report, the CDA Working Group observed that “the model currently applies to the sale of CDAs” and recommended that the NAIC reopen Model 275 to specifically reference the sale of CDAs. The Working Group also noted that Model 275 should clarify that the one-time, 4 hour training requirement and the product specific training requirement in Model 275 apply to CDAs.

As is the case with Model 245, Model 275, by its terms, applies to all annuities, including CDAs. Unless an exemption applies, sales of CDAs must comply with the requirements of Model 275. This is clear from the plain language of the Model.

Model 275 contains a safe harbor in Section 6H(1) for sales of fixed and variable annuities. Section 6H(1) states that: “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.”

Under Section 6H(1), if the FINRA broker-dealer applies the requirements in FINRA Rule 2330 to its sales of fixed annuities, the FINRA broker-dealer is deemed to have satisfied state law requirements under Model 275. This same logic should apply to CDAs. If a FINRA broker-dealer and its registered representatives apply FINRA Rule 2330 standards for CDA sales, then such compliance should satisfy state suitability regulations in the same fashion as is recognized today under the safe harbor for variable and fixed annuities. This interpretation would be consistent with the NAIC’s intent in amending Model 275, which was to align FINRA’s Rule 2330 with the Model.

We recommend that the CDA Working Group add a guideline amendment to Section 6H(1) to make clear that sales by FINRA broker-dealers of CDAs may rely upon the safe harbor if FINRA rule based suitability and supervision requirements are applied.

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8 Id. § 6H(1). In order to rely on the Section 6H(1) exemption, insurers must “monitor the FINRA member broker-dealer using information collected in the normal course of an insurer’s business” and “provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.” Id. § 6H(2).

9 FINRA Rule 2330 is titled “Members’ Responsibilities Regarding Deferred Variable Annuities” and specifies suitability, supervision and training requirements that apply to sales of variable annuities. Some broker-dealer firms apply the requirements of Rule 2330 to the sales of all annuities—fixed, CDAs and variable.
Section 7 of Model 275 sets forth the producer training requirements that apply to all annuity sales. Section 7A requires that the insurance producer have adequate knowledge of the product to recommend the annuity and that the producer be in compliance with the insurer’s standards for product-specific training. Section 7B(3)(c) of Model 275 requires that the training cover “[h]ow fixed, variable and indexed annuity contract provisions affect consumers.” To make clear that Section 7 applies to CDAs, we recommend adding a guideline amendment to Section 7 stating that the insurer’s standards for product specific training in Section 7A applies to sales of CDAs and that Section 7B(3) training must include how CDA contract provisions affect consumers.

We recommend two guidelines amendments be added to the Model.

First, we recommend the following guideline amendment be added after Section 6H(1):

“Sales of contingent deferred annuities through FINRA broker-dealers shall be treated like fixed annuities and variable annuities for the purposes of applying the exemption under Section 6H(1) if FINRA rule based suitability and supervision requirements are applied.”

Second, we recommend the following guideline amendment be added after Section 7:

“Section 7 applies to contingent deferred annuities (CDA) unless otherwise exempted. Insurer standards for product specific training in Section 7A apply to CDAs and Section 7B(3) training must include how CDA contract provisions impact customers.”

III. Advertisements of Life Insurance and Annuities Model Regulation (Model 570)

Model 570 sets out minimum standards and guidelines for disclosing material information in advertisements for life insurance policies and annuity contracts. Section 2G broadly defines “Policy” to include any annuity. Model 570 Section 3(a) provides an exemption for variable annuities:

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10 NAIC Advertisements of Life Insurance and Annuities Model Regulation (Model 570)

11 Section 2G of Model 570 defines “Policy” to include “any policy, plan, certificate, including a fraternal benefit certificate, contract, agreement, statement of coverage, rider or endorsement which provides for life insurance or annuity benefits” (emphasis added).
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.\textsuperscript{12}

In the April 2013 Report, the CDA Working Group concluded that Model 570 “currently applies to CDAs and therefore [should] be revised to specifically reference CDAs”. The recommendation also noted that the (A) Committee should consider an exemption for CDAs similar to the exemption for variable products found in Model 570 Section 3(a).

CDAs are within the scope of Model 570. The definition of “Policy” in Model 570 is sufficiently broad to include CDAs, whether individual or group, registered or unregistered. Amending the definition of “Policy” to specifically include CDAs would raise the question of whether the Model should be amended each time an innovative annuity, such as an indexed annuity or market value adjusted annuity, emerges on the market. Providing a guideline amendment that CDAs are covered by the definition of “Policy” would avoid that issue.

We also agree that CDAs that are registered as securities with the SEC should enjoy an exemption from the advertising requirements similar to the Section 3(a) exemption for variable contracts in order to avoid conflicts with federal advertising rules and regulation. Under this rationale, all registered annuities, whether CDAs, variable, indexed or fixed annuities, should be exempted from state advertising requirements.

To clarify the application of Model 570 to CDAs, including broadening the exemption for variable annuities to include registered CDAs, and possibly all registered annuities, we recommend that the CDA Working Group add a guideline amendment to Model 570 that would clarify that the exemption in Section 3(a) applies to all registered annuity contracts, including CDAs, where disclosure requirements are established pursuant to federal regulation.

We recommend the following guideline amendment be added after Section 3(a):

“\textit{Registered annuities, including contingent deferred annuities, where disclosure requirements are established pursuant to federal regulation, are within the scope of Section 3(a).}”

\textsuperscript{12} Id. § 3(a).
IV. Life Insurance and Annuities Replacement Model Regulation (Model 613)

Model 613 regulates the activities of insurers and producers with respect to the replacement of existing life insurance policies and annuity contracts. The scope of Model 613, as stated in Section 1, is very broad and applies to every “existing policy or contract,” unless an exemption in Section 1B or 1C applies.

Section 1C of the model exempts “registered contracts”, defined in Section 2I as “a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933” from the model’s illustration and policy summary requirements.

In the April 2013 Report, the Working Group observed that Model 613 “currently applies to CDAs and [should] be amended to make clear that it applies to CDAs.” The Working Group also noted that the definition of a “registered contract” currently applies only to variable annuity contracts, but should be broadened to include registered CDAs.

We agree with the Working Group’s observation that the scope of Model 613, as stated in Section 1 (“existing policy or contract”), is sufficiently broad to include CDAs.

And, as discussed above in regard to Model 570, we agree that CDAs that are registered as securities with the SEC should enjoy an exemption from the illustration and policy summary requirements in Model 613 similar to the Section 1C exemption for registered variable products. All registered annuities, whether or not variable, should be exempted from these requirements, since all registered annuities are subject to the prospectus delivery requirements of the Securities Act of 1933.

To clarify the application of Model 613 to CDAs, including broadening the exemption for registered contracts to include registered CDAs, and possibly all registered annuities, we recommend that the CDA Working Group add a guideline amendment, similar to recently adopted changes to Model 275, which would clarify that the exemption in 1C excludes all registered annuities and that the definition of “registered annuities” in 2I encompasses any registered annuity that is subject to the prospectus delivery of the Securities Act of 1933.

We recommend the following guideline amendment be added after Section 2I:

13 NAIC Life Insurance and Annuities Replacement Model Regulation (Model 613).
“The definition of ‘registered annuities’ includes any registered annuity, including contingent deferred annuities, that is subject to the prospectus delivery requirements of the Securities Act of 1933.

V. Conclusion

We hope you find helpful these observations on how four key NAIC model regulations currently apply, or could be modified to apply, to CDAs. We would be happy to address any questions you may have.

Sincerely,

Mary Jane Wilson-Bilik

Cc: Richard Wicka, Wisconsin Office of the Commissioner of Insurance
Stephen E. Roth, Sutherland Asbill & Brennan LLP
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Diana Marchesi, Transamerica Life Insurance Company
Keith Mancini, Great-West Life & Annuity Insurance Company
Overview of NAIC Discussions and Determinations Regarding Contingent Deferred Annuities and the NAIC Standard Nonforfeiture Law for Individual Deferred Annuities

At the NAIC Spring 2014 National Meeting, Commissioner Julie McPeak (TN), Chair of the NAIC Life & Annuities (A) Committee, acceded to a request by NAIC-funded consumer advocate Birny Birnbaum for additional discussion with respect to whether contingent deferred annuities (CDAs) should be subject to the NAIC Standard Nonforfeiture Law for Individual Deferred Annuities. The applicability of standard nonforfeiture rules to CDAs has been a topic of debate since the NAIC first initiated its evaluation of the product. The following is a summary of prior discussions and determinations:

- **October 2011**: The American Academy of Actuaries (AAA) submitted an analysis of CDAs to the A Committee.\(^1\) Nonforfeiture was a prominent topic within the Academy’s work, and a separate appendix was devoted to nonforfeiture considerations. The Academy concluded that CDAs should be exempt from the Standard Nonforfeiture Law.

- **December 2011**: The AAA made a presentation to the Contingent Deferred Annuity (A) Subgroup (CDA Subgroup) of the Life Actuarial (A) Task Force (LATF) to review their October 2011 analysis. Reiterating its October 2011 report, the AAA concluded “paid-up nonforfeiture benefits are not required since the premiums do not accumulate to determine a payout, but are in the nature of risk charges for a longevity contingency risk” and therefore comparable to products already exempted under the Standard Nonforfeiture Law, like Single Premium Immediate Annuities and Variable Annuities.\(^2\)

- **August 2012**: Consistent with the Academy’s conclusion, Tomasz Serbinowski (UT), Chair of the CDA Subgroup, recommended to the Contingent Deferred Annuity (A) Working Group (CDA Working Group) that either “an exemption from the law or special interpretation” be made to avoid ambiguity with respect to the application of the Standard Nonforfeiture Law.\(^3\)

- **February 2013**: In its draft report to the A Committee, the CDA Working Group recommended “that the Standard Nonforfeiture Law not apply to CDAs and the model be revised to make this clear”, in line with Mr. Serbinowski’s original proposal.\(^4\)

- **April 2013**: The CDA Working Group issued its final report to the A Committee maintaining its draft recommendation on nonforfeiture treatment. The Working Group provided its rationale for the recommendation stating that it “does not believe this model should apply to CDAs, amending the model to specifically exclude CDAs would avoid any possibly confusion”.\(^5\)

- **October 2013**: The A Committee adopted charges to various subgroups, task forces, and working groups based on the CDA Working Group’s report and recommendations, including a charge to LATF to consider revisions to the Standard Nonforfeiture Law to specifically exclude CDAs from its scope.

- **February 2014**: In response to the nonforfeiture-related charge, the CDA Subgroup exposed changes to exempt CDAs from the Standard Nonforfeiture Law. The comment period closed in mid-March. No written comments were submitted.

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\(^1\) [http://www.actuary.org/files/publications/CAWG_final_comment_Letter_to_A_Committee_111028.pdf](http://www.actuary.org/files/publications/CAWG_final_comment_Letter_to_A_Committee_111028.pdf) (p. 13, 26, 36-7)


\(^3\) [http://www.naic.org/documents/committees_a_contingent_deferred_annuity_wg_120829_nonforfeiture_cdas.pdf](http://www.naic.org/documents/committees_a_contingent_deferred_annuity_wg_120829_nonforfeiture_cdas.pdf)

\(^4\) [http://www.naic.org/documents/committees_a_contingent_deferred_annuity_wg_130225_cdawg_draft_rec_to_cmte_130213.pdf](http://www.naic.org/documents/committees_a_contingent_deferred_annuity_wg_130225_cdawg_draft_rec_to_cmte_130213.pdf) (p. 3)

\(^5\) [http://www.naic.org/meetings1304/committees_a_2013_spring_nm_additional_materials.pdf](http://www.naic.org/meetings1304/committees_a_2013_spring_nm_additional_materials.pdf) (p. 8)