

**Agenda Item #1**

**Hear a Federal Legislative Update**

**(No Materials)**

**Agenda Item #2**

**Consider Adoption of its October 19 Minutes**

Draft: 11/1/16

Life Insurance and Annuities (A) Committee  
Conference Call  
October 19, 2016

The Life Insurance and Annuities (A) Committee met via conference call Oct. 19, 2016. The following Committee members participated: Nick Gerhart, Chair (IA); Bruce R. Ramage, Vice Chair (NE); Jim L. Ridling represented by Steven Ostlund (AL); Dave Jones represented by Ahmad Kamil (CA); Stephen C. Taylor represented by Philip Barlow (DC); David Altmaier (FL); Ralph T. Hudgens (GA); Dean L. Cameron represented by Donna Daniel (ID); Ken Selzer represented by Julie Holmes (KS); James J. Donelon (LA); Maria T. Vullo represented by William Carmello (NY); Mary Taylor represented by Jill Froment and Laura Miller (OH); and Elizabeth Kelleher Dwyer (RI).

1. Adopted its Summer National Meeting Minutes

Commissioner Donelon made a motion, seconded by Director Ramage, to adopt the Committee's Aug. 27 minutes (*see NAIC Proceedings – Summer 2016, Life Insurance and Annuities (A) Committee*). The motion passed unanimously.

2. Adopted its 2017 Proposed Charges

Commissioner Gerhart reviewed the Committee's 2017 proposed charges. Birny Birnbaum (Center for Economic Justice—CEJ) asked whether including only the model number in a charge rather than the full name of the model was significant. The model was named in full in a previous charge, so the NAIC editors require only the model number when the model is mentioned in subsequent charges. Mr. Birnbaum suggested adding more specificity to the charge to "review and revise the *Life Insurance Buyer's Guide* in conjunction with Appendix A of the *Life Insurance Disclosure Model Regulation (#580)*." He suggested referring to consumer testing and developing a guide that could be made available electronically online and on mobile devices. Mr. Gerhart expressed support for consumer testing and making the guide available electronically, but did not think the charge needed to be revised. Mr. Ostlund suggested that the charge should stay broad, so the Working Group would have leeway to decide how best to accomplish the charge. Mr. Birnbaum suggested that a charge should be added for the development of a buyer's guide on contingent deferred annuities. Commissioner Gerhart pointed out that the Committee has a charge to "Oversee outstanding issues related to contingent deferred annuities (CDAs)." Commissioner Donelon made a motion, seconded by Director Ramage to add a reference to a buyer's guide to the existing charge on CDAs.

Commissioner Donelon made a motion, seconded by Director Ramage, to adopt the Life Insurance and Annuities (A) Committee's 2017 proposed charges, as amended (Attachment One-A). The motion passed unanimously.

3. Adopted the Life Actuarial (A) Task Force's 2017 Proposed Charges

Mr. Boerner said the Life Actuarial (A) Task Force adopted its 2017 proposed charges (*see NAIC Proceedings – Fall 2016, Life Actuarial (B) Task Force, Attachment \_\_\_*) Sept. 29 via conference call. Mr. Boerner pointed out that the charge to "study the feasibility of a new nonforfeiture law for life insurance and annuities to replace the existing nonforfeiture standards" has been deleted. He explained that the reason for deleting this charge was both the complexity of the issues and the lack of regulator interest in moving forward.

Mr. Ostlund made a motion, seconded by Director Ramage, to adopt the Life Actuarial (A) Task Force's 2016 proposed charges. The motion passed unanimously.

7. Adopted the 2017 GRET

Mr. Boerner said that, as in previous years, the Society of Actuaries (SOA) Committee on Life Insurance Company Expenses submitted its Generally Recognized Expense Table (GRET) analysis to the Life Actuarial (A) Task Force for the upcoming year. He said the SOA followed the same methodology in developing the 2017 GRET as last year for the 2016 GRET. Director Ramage made a motion, seconded by Commissioner Donelon, to adopt the 2017 GRET (Attachment One-B). The motion passed unanimously.

5. Adopted Revisions to Model #200

Mr. Boerner said there is a request for model law development to revise the *Separate Accounts Funding Guaranteed Minimum Benefits Under Group Contracts Model Regulation* (#200) (Attachment One-C). He said the revisions to Model #200 make it consistent with revisions made to the *Synthetic Guaranteed Investment Contracts Model Regulation* (#695).

Commissioner Donelon made a motion, seconded by Commissioner Hudgens, to adopt the revised Model #200. The motion passed unanimously.

6. Discussed Revisions to Model #805

Commissioner Gerhart said the request for model law development to revise the *Standard Nonforfeiture Law for Individual Deferred Annuities* (#805) was adopted by the Executive (EX) Committee at the Summer National Meeting. Mr. Gerhart said the Life Actuarial (A) Task Force was asked by the Contingent Deferred Annuity (A) Working Group to revise Model #805 to clarify that the model, in its current form, does not apply to CDAs. He said the Task Force appointed the Contingent Deferred Annuity (A) Subgroup, which drafted revisions to Model #805 and submitted them to the Committee in June. The revisions to Model #805, along with the referral memo from Subgroup, are posted for public comment on the Committee's page on the NAIC website.

7. Discussed its New Working Groups

Commissioner Gerhart said he is soliciting volunteers for the Committee's three new working groups: 1) the Annuity Disclosure (A) Working Group, which is working on illustration standards; 2) the Preventing Abuses in Life Insurance and Annuities (A) Working Group, which is working on updating the *Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities* (#278), the bulletin and consumer alert; and 3) the Life Insurance Buyer's Guide (A) Working Group, which is working on revising the buyer's guide.

He said the Annuity Disclosure (A) Working Group has volunteers from Iowa, Idaho, Kansas and Missouri. Iowa has agreed to chair the Working Group, but a few more members would be ideal. The Preventing Abuses in Life Insurance and Annuities (A) Working Group has volunteers from Colorado, Idaho, Ohio, Oregon, Tennessee and Wisconsin, but needs a chair. He said Missouri is the only member of the Life Insurance Buyer's Guide (A) Working Group at this time, noting that it needs additional members and a chair. Commissioner Gerhart asked for regulators to email Jennifer Cook (NAIC) by the end of the week to volunteer. He said he would appoint regulators next week to fill the vacancies. Commissioner Hudgens said Georgia would volunteer to participate on the Life Insurance Buyer's Guide (A) Working Group.

8. Discussed the ACGA Rates Paper on Gift Annuities

Commissioner Gerhart said the American Council on Gift Annuities (ACGA) has updated its rates paper. He said the suggested rate schedule for gift annuities has not changed since Jan. 1, 2012; however, the rates paper was updated in several ways, including to reflect the 2012 Individual Reserving Table (the 2012 IAR) for use in calculating the suggested rates. Commissioner Gerhart said the ACGA would like to share the updated rates paper with commissioners and asked Ms. Cook to facilitate its distribution to the NAIC membership.

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

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**Agenda Item #3**

**Hear Update on Life Insurance Policy Locator Service Project**

**(No Materials)**

**Agenda Item #4A**

**Model Law Review (A) Subgroup**

Conference Call

**MODEL LAW REVIEW (A) SUBGROUP  
November 17, 2016**

**Summary Report**

The Model Law review (A) Subgroup met Nov. 17, 2016. During this meeting, the Subgroup:

1. Agreed to make the following recommendations to the Life Insurance and Annuities (A) Committee regarding the models it was assigned to review for compliance with the NAIC Model Law Procedures:
  - a. *Annuity Disclosure Model Regulation (#245)*  
The Subgroup suggests that no recommendation is needed, as addressing Model #245 is part of the 2017 charges of the Life Insurance and Annuities (A) Committee.
  - b. *Variable Annuity Model Regulation (#250)*  
The Subgroup recommends retaining Model #250 as is.
  - c. *Modified Guaranteed Annuity Regulation (#255)*  
The Subgroup recommends that Model #255 be retained, but also recommends that the Committee consider: 1) looking into whether states have not adopted the model because the requirements contained in #255 are contained elsewhere in their laws; and 2) looking into whether there is a need for the development of a similar law for modified guaranteed annuities offered through general accounts products.
  - d. *Suitability in Annuity Transactions Model Regulation (#275)*  
The Subgroup recommends that Model #275 be retained, but also recommends that in the event that Model #275 is opened in the future, the modifications to #275 in California law that are more consumer-friendly should be reviewed.
  - e. *Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (#278)*  
The Subgroup suggests that no recommendation is needed, as addressing Model #278 is part of 2017 charges of the Life Insurance and Annuities (A) Committee.
  - f. *Life Insurance and Annuities Replacement Model Regulation (#613)*  
The Subgroup recommends retaining Model #613 as is.
  - g. *Viatical Settlements Model Act (#697)*  
The Subgroup recommends retaining Model #697 as is.
  - h. *Annuity Nonforfeiture Model Regulation (#806)*  
The Subgroup recommends that Model #806 should be retained until additional research can be undertaken to consider whether it is more appropriate as an actuarial guideline. (The Subgroup agrees that additional direction from the Committee is necessary before this additional research can be done.)
  - i. *Standard Nonforfeiture for Life Insurance (#808)*  
The Subgroup recommends retaining Model #808 as is.
  - j. *Model Regulation Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities (#815)*  
The Subgroup recommends retaining Model #815 as is.
  - k. *Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values Model Regulation (#817)*  
The Subgroup recommends retaining Model #817 as is.

1. *Valuation of Life Insurance Policies Model Regulation (#830)*  
The Subgroup recommends retaining Model #830 as is.

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Draft: 12/6/16

Model Law Review (A) Subgroup  
Conference Call  
November 17, 2016

The Model Law Review (A) Subgroup met via conference call Nov. 17, 2016. The following Subgroup members participated: Michael Kakuk, Chair (MT); Perry Kupferman and Leslie Tick (CA); Chris Struck and James Walker (FL); Rhonda Ahrens (NE); and Kathleen Dixon (TN).

1. Reviewed its Work Plan

Mr. Kakuk explained that the Subgroup was formed to assist the Life Insurance and Annuities (A) Committee in reviewing designated models for compliance with the NAIC's *Procedures for Model Law Development* and recommend whether they be retained as a model, amended, converted to a guideline or archived. To assist the Subgroup with this task, the NAIC Legal Division provided Model Law Review Criteria Worksheets for each of the assigned models that includes state adoption data to aid in the identification of which models continue to meet NAIC model law criteria by being uniformly enacted in a majority of states within three years after its adoption by the NAIC membership. Mr. Kakuk said the Subgroup should be able to have recommendations to present to the Committee prior to the Fall National Meeting.

Mr. Kakuk reminded the Subgroup of the progress made with respect to having a recommendation for the Committee regarding several of the models. He said the Subgroup was able to conclude that the majority of the models assigned met the criteria outlined in the NAIC's *Procedures for Model Law Development*, and, as a result, agreed to recommend to the Committee that they be retained. Those models are: the *Variable Annuity Model Regulation* (#250); the *Life Insurance and Annuities Replacement Model Regulation* (#613); the *Viatical Settlements Model Act* (#697); the *Standard Nonforfeiture Law for Life Insurance* (#808); the *Model Regulation Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities* (#815); and the *Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values Model Regulation* (#817).

2. Discussed Model #245 and Model #278

Mr. Kakuk reminded the Subgroup that the Committee at the Summer National Meeting had adopted charges to review two of the models the Subgroup was assigned to review: the *Annuity Disclosure Model Regulation* (#245); and the *Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities* (#278). The Subgroup agreed that, as a result of the Committee's charges, no recommendations need to be made regarding these models.

3. Discussed Model #255

Mr. Kakuk reminded the Subgroup that it discussed the *Modified Guaranteed Annuity Model Regulation* (#255) during its Aug. 2 conference call. He reminded the Subgroup that only 12 states have adopted this model. He said the Subgroup had requested additional information before making a recommendation. He said Ms. Cook asked the Interstate Insurance Product Regulation Commission (IIPRC) about the potential effect of changing a model that is related to a uniform compact standard. He said the IIPRC responded with a memo explaining that the status of models—whether an NAIC model or guideline – does not have an impact on the requirements in its uniform standards. He said the IIPRC memo explained that, should a model be discontinued or deleted, the IIPRC would likely change applicable references or insert the relevant language from the models directly into its uniform standards.

Ms. Ahrens reminded the Subgroup that she had wondered whether the low adoption rate of Model #255 could be attributed to the fact that this model applies to a specific separate account product, the modified guaranteed annuity (MGA). She explained that, in her experience, this product is more commonly offered through general accounts. She said she does not have a problem with how Model #255 addresses MGAs offered through separate accounts, but asked if there is a need for a similar model to address MGAs offered through general accounts. Reggie Mazyck (NAIC) said he had inquired with a state that has not adopted Model #255 and learned that it had incorporated Model #255 into its law. He asked whether this approach has been taken in other states, which could explain the low adoption numbers associated with the model.

The Subgroup agreed to recommend to the Committee that Model #255 be retained, but also recommend that the Committee look into whether states have not adopted the model because the requirements contained in Model #255 are contained elsewhere in their laws, and to look into whether there is lack of uniformity at the state level such that there is a need for the development of a similar law for MGAs offered through general accounts products.

4. Discussed Model #275

The Subgroup discussed the *Suitability in Annuity Transactions Model Regulation* (#275). Mr. Kakuk reminded the Subgroup that the model has been adopted in almost all of the states. Mr. Kakuk reminded the Subgroup that Mr. Kupferman had said that California has adopted some modifications that address certain aspects of suitability more stringently than Model #275 and asked the Subgroup to consider recommending retaining and revising this model in light of the changes made in California. He said Mr. Kupferman had provided a comparison of the California suitability standard to Model #275 to assist the Subgroup with its decision. Birny Birnbaum (Center for Economic Justice—CEJ) said Model #275 was revised rather recently and there are at least two different versions of the model currently being enacted in the states. Ms. Cook said there is a push to get the states to adopt Model #275. Mr. Birnbaum expressed concern with revising the model again in the current environment. The Subgroup agreed to recommend that Model #275 be retained, while bringing to the Committee's attention that California adopted Model #275 with some additional consumer protections that the Committee may want to consider if Model #275 is opened in the future.

5. Discussed Model #806

The Subgroup discussed the *Annuity Nonforfeiture Model Regulation* (#806). Mr. Kakuk reminded the Subgroup that the model has only been adopted in three states. Mr. Kakuk said Subgroup asked Ms. Cook to look into possible explanations for the low numbers. Mr. Mazyck said this model implements Model #805, and there is a question as to what the states are using to implement Model #805, if it is not Model #806. Mr. Kakuk asked whether this model should be downgraded to a guideline, given the low adoption numbers. Mr. Mazyck said guidelines do not have the same weight as models. Mr. Birnbaum said he is not sure if retaining model status is critical for Model #806, especially given its actuarial nature. He asked whether Model #806 would be more appropriate as an actuarial guideline that could be incorporated into the *Valuation Manual*. Mr. Mazyck said not all actuarial guidelines are incorporated into the *Valuation Manual*, although Model #806 probably would be. Notwithstanding, he said he was not comfortable with recommending downgrading the model without further information. He said Model #806 was adopted after the NAIC's *Procedures for Model Law Development* was developed, so there must have been a reason this was adopted as a model and not a guideline. Mr. Mazyck said it is important to know why the NAIC decided to elevate Model #806 to a model law before undoing that decision by recommending downgrading it. The Subgroup agreed to recommend to the Committee that the model should be retained until additional research could be undertaken to determine whether this model is more appropriate as an actuarial guideline. The Subgroup agreed to leave it to the Committee as to whether the Subgroup, or another group at some point in the future, should undertake this task.

6. Discussed Model #830

The Subgroup discussed the *Valuation of Life Insurance Policies Model Regulation* (#830). Mr. Kakuk reminded the Subgroup that Mr. Kupferman had raised a concern that the title of the model does not accurately reflect its scope. Ms. Cook explained that a Request for Model Law Development would have to be adopted by Executive (EX) Committee in order to open the model to change its title. Once the title is changed, the *Accounting Practices and Procedures Manual* would have to be revised to reflect the new title, as well. The Subgroup agreed that the model should be retained as-is.

The Subgroup agreed to make its recommendations, as discussed during the call, to the Committee at the Fall National Meeting.

Having no further business, the Model Law Review (A) Subgroup adjourned.

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**Agenda Item #4B**

**Unclaimed Life Insurance Benefits (A) Working Group**

*Conference Call*

**UNCLAIMED LIFE INSURANCE BENEFITS (A) WORKING GROUP  
November 10, 2016**

**Summary Report**

The Unclaimed Life Insurance Benefits (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Nov. 10, 2016. During this call, the Working Group:

1. Reviewed and discussed the comments received on the draft proposed Unclaimed Life Insurance and Annuities Model Act developed by the Unclaimed Benefits Model Drafting (A) Subgroup.
2. Decided to permit stakeholders to submit additional comments on the draft NAIC model for the Working Group to consider and vote on, if necessary during its next conference call.

Draft: 12/1/16

Unclaimed Life Insurance Benefits (A) Working Group  
Conference Call  
November 10, 2016

The Unclaimed Life Insurance Benefits (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Nov. 10, 2016. The following Working Group members participated: Nick Gerhart, Chair (IA); Steve Ostlund (AL); Lisbeth Landsman-Smith (CA); Anoush Brangaccio (FL); Debra Peirce (GA); Anne Marie Skallerup (IL); Tom Travis (LA); Matthew Holman (NE); Jeff Ubben (ND); Denise Lamy (NH); Tyler Laughlin (OK); Michael Humphreys (TN); Tomasz Serbinowski (UT); and Richard Wicka (WI).

1. Discussed Comments Received on Draft Unclaimed Life Insurance and Annuities Model Act

Commissioner Gerhart said the Working Group set a public comment deadline ending Oct. 25 to receive comments on the draft Unclaimed Life Insurance and Annuities Model Act, which the Unclaimed Benefits Model Drafting (A) Subgroup developed to address the issue of unclaimed death benefits. He said that in response to the Working Group's request for comments, the Working Group received comments from the American Council of Life Insurers (ACLI), the California Department of Insurance, the Consumer Credit Industry Association (CCIA), the Center for Insurance Research (CIR) and Kemper Home Service Companies.

Ms. Landsman-Smith said that as chair of the Unclaimed Benefits Model Drafting (A) Subgroup, she knows that the Subgroup thoroughly reviewed and negotiated the provisions in the draft model during weekly meetings via conference call for more than a year. She said the draft model's provisions are largely the product of Subgroup consensus and of much hard work on the part of its members. Ms. Landsman-Smith also noted that while the draft model's provisions may be similar to the National Conference of Insurance Legislators' (NCOIL) Model Unclaimed Life Insurance Benefits Act, the draft model's provisions differ in several important ways because it addresses problems that were discovered during multi-state examinations conducted by the lead states for the NAIC Investigations of Life/Annuities Claims Settlement Practices (D) Task Force. She noted that many of the comments submitted have already been discussed by the Subgroup. Ms. Landsman-Smith said the draft model is workable and urged the Working Group to forward the draft model to the Life Insurance and Annuities (A) Committee without substantive change.

Michael Lovendusky (ACLI) expressed disagreement with Ms. Landsman-Smith's comments. He said the draft model needs more work in order for it to be uniformly adopted by the states. Mr. Lovendusky noted that three years ago, the ACLI requested the NAIC to develop guidance for life insurance company use of the U.S. Social Security Administration's Death Master File (DMF) for the administration of unclaimed life insurance and annuity benefits. He said the Unclaimed Benefits Model Drafting (A) Subgroup completed its work and submitted the draft model to the Working Group for its consideration July 29. Mr. Lovendusky said 23 states have enacted laws on the topic, a sufficiently large number to question the need for a NAIC model. He said two other states have legislation pending. Mr. Lovendusky further noted that all but one of these state laws and legislation is based on the NCOIL model. He also said the Uniform Law Commission (ULC) approved revisions to the federal Uniform Unclaimed Property Act in July, which include provisions expressly establishing rules for using the DMF equally applicable to unclaimed property administrators and life insurance companies and, in the absence of a relevant state law, the rule is to respect NCOIL's model provisions. Mr. Lovendusky said substantial controversial topics remain unresolved in the draft model. He said there are deviations from norms and ambiguities within the draft, which, if sustained, will undermine insurance standards and national uniformity to the detriment of the reputation of the NAIC as the national insurance standard-setting organization.

Brendan Bridgeland (Center for Insurance Research—CIR) noted the Subgroup's thorough work on the draft model. He said the goal of any NAIC model should be to put the life insurance or annuity benefits or proceeds into the hands of the beneficiaries. He said that from a consumer perspective, not everything asked for was included in the draft model. Mr. Bridgeland said the CIR particularly objects to the exclusion of credit life or mortgage life insurance in Section 3H(2)(c) from the draft model's provisions. Beth Pearce (Vermont State Treasurer, Office of the State Treasurer, State of Vermont) said, like Mr. Bridgeland, she did not get all that she requested included in the draft model. She said the Subgroup developed the draft model using an open and thorough process. Ms. Pearce urged the Working Group to forward the draft model to the Life Insurance and Annuities (A) Committee for its consideration without further delay. She said, however, that if the Working Group decides to open the draft model for additional revisions, she would want the Working Group to revisit certain

issues of concern to her. John Camillo (Kemper Home Service Companies) said the Working Group needs to consider the necessity of moving forward with the draft model given the number of states that have adopted the NCOIL model. He also wondered if the draft model in its current form could obtain the necessary number of Plenary and Executive (EX) Committee votes to be adopted as an NAIC model. Mr. Camillo suggested that if the Working Group decides to move forward with the draft model, it should consider amending Section 4—Applicability and Scope—to give the states three options—prospective, retrospective and asymmetrical—as to the draft model’s applicability. Ms. Pearce expressed support for Mr. Camillo’s suggested amendment, noting that the motion to apply the draft model’s provisions retroactively passed by one vote. She said, however, reopening the entire model would be a mistake. Mr. Lovendusky expressed confusion related to the comments on reopening the entire draft model for revision. He said that in its comment letter, the ACLI included suggested revisions to specific provisions of particular concern.

Ms. Landsman-Smith reiterated that the draft model’s provisions, including Section 4—Applicability and Scope, were carefully negotiated. She said that if that provision and others are revised, the entire draft model could unravel. Ms. Landsman-Smith said moving forward with the draft model is important, particularly because it includes provisions not included in the NCOIL model. She believes the draft model enhances the NCOIL model’s provisions instead of conflicting with them. Mr. Lovendusky disagreed with Ms. Landsman-Smith. He said the draft model includes misleading, erroneous and ambiguous provisions. As such, Mr. Lovendusky urged the Working Group to review the comments received to see if improvements can be made.

Mr. Ostlund expressed concern on whether the draft model in its current form could achieve the necessary Executive (EX) Committee and Plenary votes to be adopted as a NAIC model given that 23 states have already enacted laws addressing unclaimed life insurance and annuity benefits. Mr. Ostlund made a motion, seconded by Mr. Travis, for the Working Group to consider possible revisions to the draft model as presented by the Unclaimed Benefits Model Drafting (A) Subgroup. The motion passed, with Iowa voting in favor of the motion to break a tie vote.

Commissioner Gerhart agreed to let stakeholders submit additional comments on the draft model to NAIC staff within the next seven days to provide sufficient time for the Working Group before its next conference call Nov. 28 to review and be prepared to vote, if necessary, on any revisions to the draft model.

Having no further business, the Unclaimed Life Insurance Benefits (A) Working Group adjourned.

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## REQUEST FOR MODEL LAW DEVELOPMENT

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

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

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

TBD

**2. NAIC staff support contact information:**

Jolie H. Matthews, Senior Health and Life Counsel  
Email: jmatthews@naic.org

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

The proposed title of the new model law is the Unclaimed Life Insurance Benefits Act. This Act shall require all authorized insurers regulated by the state's insurance department to undertake good faith efforts, as to be specified in the Act, to locate and pay beneficiaries proceeds under unclaimed life insurance policies, annuity contracts, and retained asset accounts issued in the state or remit such proceeds as unclaimed property to the appropriate jurisdiction if the beneficiaries are unable to be located or paid.

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

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

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

**If yes, please explain why**

Currently, there are conflicting court decisions and differing state laws and regulations on the subject resulting in an inconsistent regulatory framework. This model law will provide the necessary consistency and uniformity among the states in handling unclaimed benefits.

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

**Yes**            or             **No**            **(Check one)**

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

**1**             **2**             **3**             **4**             **5**            **(Check one)**

**High Likelihood**

**Low Likelihood**

**Explanation, if necessary:**

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

1       2       3       4       5      (Check one)

**High Likelihood**

**Low Likelihood**

**Explanation, if necessary:**

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

1       2       3       4       5      (Check one)

**High Likelihood**

**Low Likelihood**

**Explanation, if necessary:**

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

No

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

No

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**Agenda Item #4C**

**Life Insurance Illustration Issues (A) Working Group**

*Conference Calls*

**LIFE INSURANCE ILLUSTRATION ISSUES (A) WORKING GROUP**  
**November 15, 2016 / October 20, 2016 / September 20, 2016**

**Summary Report**

The Life Insurance Illustration Issues (A) Working Group met via conference call Nov. 15, Oct. 20 and Sept. 20, 2016. During these meetings, the Working Group:

1. Continued to work on a one- to two-page policy overview document to help consumers better understand specific life insurance policies. The Working Group agreed on draft list of key components that would be included in a policy overview document for term products.
2. Agreed to begin work on key components in a policy overview of whole life policies. The Working Group agreed to address key components of universal life policies after addressing whole life policies.
3. Agreed to meet via conference call Jan. 9, 2017.

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Date: 12/5/16

Life Insurance Illustration Issues (A) Working Group  
Conference Call  
November, 15 2016

The Life Insurance Illustration Issues (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Nov. 15, 2016. The following Working Group members participated: Richard Wicka, Chair, and Jennifer Stegall (WI); Jodi Lerner and Perry Kupferman (CA); Chris Struk (FL); Teresa Winer (GA); Mike Yanacheak (IA); Mary Mealer (MO); Matthew Holman (NE); Tynesia Dorsey (OH); and Jan Graeber (TX).

1. Continued to Discuss the Compilation Document and Comments Received

Mr. Wicka reminded the Working Group that, at the Summer National Meeting, the Life Insurance and Annuities (A) Committee directed the Working Group to move forward with the development of a one- or two-page consumer-oriented policy overview document to promote consumer readability and understandability of life insurance policy summaries. He said the purpose of this call is to continue discussing feedback received on the compilation document of suggested elements to include in a term life insurance policy overview document.

a. Discussed “Client Information” Category

Mr. Wicka said he asked the American Council of Life Insurers (ACLI) to look into developing a standard description of “risk class illustrated” under the “client information” section so that consumers might be able to better understand what a named risk class means. Emily Micale (ACLI) suggested cross-referencing the location in the policy summary or illustration where risk classifications are defined. Ms. Lerner said a cross-reference might be appropriate, but there should also be an explanation of what the term “risk class” means. She suggested something similar to “people are placed into a certain risk class based on things like age, weight and smoking status.” Mr. Birnbaum said the purpose of the policy overview document is to assist consumers in comparing products across companies. He said, given that purpose, the information included about risk class should be a non-exhaustive list of some of the factors that companies consider when risk classifications are determined, such as weight, age and whether someone is a smoker. Mr. Wicka said the Working Group would keep the term “risk class illustrated” for now, and decide later whether it can come up with an illustrative list, cross-reference to the summaries or both.

b. Discussed “Cost Information” Category

Mr. Wicka said he also asked the ACLI to clarify which informational elements in the “cost information” category of the compilation document were included within the scope of “initial premium mode.” Paul Skalecki (Northwestern Mutual Life Insurance Company) said “initial premium mode” is intended to encompass the 3–4 elements identified in the compilation document applicable to term products: “frequency and length of premium payments”; “cost of monthly payments annual percentage rates”; “is the premium level or variable”; and “how does premium vary (min/max).” Ms. Lerner said the term “initial premium mode” is not something that consumers are going to understand, and she preferred listing the questions because they are more easily understood. Mr. Birnbaum agreed with Ms. Lerner and suggested that “initial premium mode” may mean something to insurers who will fill out the form, but, at some point, the Working Group will need to see the concept illustrated so it is clear what is being included. He also said including information so a consumer could compare premiums if paid annually, as opposed to premiums paid monthly, or however a company may allow payments to be made, would be important to include. Mr. Wicka said there seemed to be general agreement as to the information that should be disclosed, and the Working Group would work on exact language in the future. He asked Mr. Birnbaum to raise his issue about annual versus monthly payments again when the Working Group begins drafting.

c. Discussed “Policy Information” Category

The Working Group agreed to the suggested changes proposed by the ACLI to include “policy/product type,” “product name,” “state of issue,” “initial death benefit” and “illustrated policy effective date” in the “policy information” category. The compilation document has also included “living benefit,” “guaranteed or non-guaranteed benefits” and “policy may accumulate cash value (Y/N).” The ACLI said “living benefit” should be in the “additional policy benefits” section and “guaranteed and non-guaranteed benefits” and “cash value” are not included in term products.

d. Discussed “Additional Policy Benefits” Category

The Working Group discussed the “additional policy benefits” category. The compilation document had suggested including “does the policy qualify for possible dividend payments?,” “conversion option available,” “extend the policy past initial term” and “optional riders and costs.” The Mr. Struck said Florida had suggested including, “does the policy qualify for possible dividend payments? Y/N.” He said that even if this is not included in term policies, the Working Group may want to consider listing elements if they may be in whole life policies or universal life policies, and include “not applicable to this policy.” He suggested the information may be helpful to consumers who are comparing different types of policies from the same company. The Working Group discussed this approach. Mr. Birnbaum said he understood what Mr. Struck was saying, but that he still preferred tailoring the policy overview document to the policy being described. Ms. Micale said the ACLI agrees with Mr. Birnbaum on this point. Mr. Wicka said he would keep this item open for discussion once the Working Group starts drafting. He said the Working Group’s conclusion on this point may change depending on if there is one disclosure for term and whole life, or separate disclosures for all lines. Ms. Lerner said the question “conversion option available” needs additional explanation for consumers to understand what is meant. Brenda Cude (University of Georgia) offered to assist the Working Group with drafting consumer-friendly language once the content has been decided. Mr. Wicka suggested including information on how consumers may be able to reduce their premiums, whether by reducing benefits or some other means. He suggested that this may be information that falls under “optional riders and costs.” Mr. Birnbaum said he does not believe this is an option with term policies, or perhaps is an option only after the term expires. Ms. Lerner said she believes consumers would like to know if there is a way to reduce premiums, or not. Mr. Yanacheak suggested phrasing the question as “what choices does a consumer have to reduce premiums?”

e. Discussed “General Information” Category

The Working Group discussed the “general information” category. The compilation document suggested including “disclaimer,” “name and contact information of agent preparing the document,” “date prepared” and “name of the insurer and contact information.” Mr. Wicka explained that he believes the disclaimer would caution consumers that this is a summary of their policy, and the policy document should be consulted for a complete list of benefits and features. Ms. Mealer and Mr. Struck agreed that a disclaimer is a good idea. Mr. Birnbaum suggested that the disclaimer should state that the purpose of the policy overview document is to help consumers compare products across companies and it is not intended to include every detail of the policy. He said this kind of disclaimer would be useful to include rather than a boilerplate “check your policy for details” type of disclaimer. The Working Group discussed the suggestion made by Ms. Winer to include a signature line for the consumer and their agent. Ms. Winer explained that some disclosures are signed by consumers and their agent and kept on file by the insurer. The Working Group discussed whether the policy overview document is the kind of disclosure that insurers need to verify that consumers have received. Mr. Birnbaum said he does not believe a policy overview document is the kind of disclosure that insurers need to verify has been received or read by consumers.

f. Discussed How to Implement One- to Two-Page Policy Overview Documents

Mr. Wicka reminded the Working Group and interested parties that they were asked to consider what the best approach for implementing a policy overview document might be (model law amendment/guideline amendment to the model/best practices document/or some other option) in preparation to have a discussion on this call. Mr. Wicka asked for feedback on whether the Working Group and interested parties prefer a template or a list of informational elements. Ms. Lerner said she prefers a template in order to ensure consumer readability. Ms. Mealer agreed and said a template would make comparing policies easier. Mr. Struck said he was in favor of a template. Mr. Wicka then asked whether the Working Group and interested parties support making the template a requirement in the model, or whether the template should be a guideline amendment.

Michael Lovendusky (ACLI) said the narrative summary required by Section 7B of the *Life Insurance Illustrations Model Regulation* (#582) is required to be delivered with the policy and the policy summary required by Section 5A(2) of the *Life Insurance Disclosure Model Regulation* (#580) is required to be delivered with the buyer’s guide to all prospective purchasers, either before accepting the first premium, or if there is a 10-day refund policy, at the time of policy delivery. He said neither model contemplates a shopping tool. Mr. Wicka mentioned that Section 5B in the *Annuity Disclosure Model Regulation* (#245) lists information to be included in a disclosure document to be distributed to consumers along with the annuity buyer’s guide. He said the ACLI has developed annuity disclosure templates to be used by insurers to comply with the requirement of Section 5B in Model #245, and had them consumer-tested.

Mr. Lovendusky said that if the revisions to the Model #580 and Model #582 are going to be done by guideline amendment, meaning the Working Group will set forth an optional template to be used as a guideline for insurers, but not a required format, the ACLI may be OK with that. However, a template that imposes a required format that insurers have to use will not provide insurers with the necessary flexibility to reflect the variety of products that are in the marketplace today.

Ms. Lerner said she would prefer to develop the template before deciding whether it should be a model law revision or a guideline amendment. Mr. Birnbaum agreed that a template was a better approach. He said each model currently includes a list of the elements to include in the summaries, which is what has resulted in the Working Group's current charge to make those documents more understandable. He said the Life Insurance and Annuities (A) Committee directed the Working Group to move forward with the development of a one- or two-page consumer-oriented policy overview document to promote consumer readability and understandability of life insurance policy summaries. He said it makes sense to continue with developing a template and decide the best way to implement it later.

Jennifer Cook (NAIC) explained that the model law review procedures adopted by the NAIC membership in 2007 require approval of a parent committee and the Executive (EX) Committee prior to beginning work on revising a model law. Ms. Cook said the procedures state that an NAIC group may discuss the issue of developing a model law or amendments to a model law, but is not supposed to devote resources to actual development or drafting until it receives approval of the parent committee and the Executive (EX) Committee. She said that in order to get this approval, a Request for Model Law Development must be created demonstrating that the proposed revisions meet a two-pronged test, also known as the model law development criteria, as follows: 1) The issue that is the subject of the model law or amendment necessitates a minimum national standard and/or requires uniformity amongst all states; and 2) where NAIC members are committed to devoting significant regulator and association resources to educate, communicate and support a model or amendment that has been adopted by the membership.

Ms. Cook explained that there is a different process for guideline amendments. The procedures state that if an NAIC group determines the proposal does not meet the criteria for development of a model law, or if the parent committee and/or the Executive (EX) Committee determines the criteria is not met, the NAIC group may proceed with efforts to address the issue through guidelines, provided these efforts are consistent with the NAIC group's charges. She said guidelines are not considered model laws of the NAIC; however, they are considered regulatory best practices such as laws, regulations, handbooks, guidance, white papers and/or bulletins.

Ms. Cook said, given the approach set forth in the model law review procedures, the Working Group may not be able to put off the decision of whether to pursue a model law as opposed to guideline until after a template is developed, but she would discuss the issue with NAIC Legal Division. Mr. Wicka said the Working Group would not have a recommendation for the Life Insurance and Annuities (A) Committee at the Fall National Meeting, but would continue discussions via conference call following the Fall National Meeting.

Having no further business, the Life Insurance Illustration Issues (A) Working Group adjourned.

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Date: 11/9/16

Life Insurance Illustration Issues (A) Working Group  
Conference Call  
October 20, 2016

The Life Insurance Illustration Issues (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Oct. 20, 2016. The following Working Group members participated: Richard Wicka, Chair, and Jennifer Stegall, (WI); Jodi Lerner and Perry Kupferman (CA); Chris Struk and Eric Johnson (FL); Teresa Winer (GA); Mary Mealer (MO); Bruce R. Ramge (NE); Jana Jarrett (OH); Chlora Lindley-Meyers (TN); and Jan Graeber and Phil Reyna (TX).

1. Discussed the Compilation Document and Comments Received

Mr. Wicka reminded the Working Group that at the Summer National Meeting, the Life Insurance and Annuities (A) Committee directed the Working Group to move forward with the development of a one- or two-page consumer-oriented policy overview document to promote consumer readability and understandability of life insurance policy summaries. He said a compilation document of suggested elements to include in a term life insurance policy overview document was posted to the Life Insurance Illustration Issues (A) Working Group website. Mr. Wicka said that comments on the compilation document were requested by Oct. 11 and that the purpose of this conference call is to discuss the feedback that was submitted.

a. Purpose of Policy Overview Document

The Working Group discussed the purpose of the policy overview document. Birny Birnbaum (Center for Economic Justice—CEJ) suggested that the policy overview document should be a tool to aid consumers in comparing plans across companies, but not to choose between types of plans. He said it is important to have an understanding of the purpose of the policy overview to inform the Working Group’s decisions about what information should be included. Mr. Wicka explained that he envisions the policy overview as being a high-level document including the basic elements of the plan. He said the policy overview should enhance consumer understanding, but not replace the buyer’s guide or the details in the illustrations. Ms. Mealer said she agrees with Mr. Wicka’s description of the intended purpose of the policy overview document. Emily Micale (American Council of Life Insurers—ACLI) said she generally agrees with Mr. Wicka; the policy overview should make the narrative summary required by Section 7B of the *Life Insurance Illustrations Model Regulation* (#582) and the policy summary required by Section 5A(2) of the *Life Insurance Disclosure Model Regulation* (#580) more understandable. She cautioned against mandating the use of certain language or a template because the insurers need flexibility to accurately explain their plans. Mr. Birnbaum said it was premature to discuss the issue of format.

b. “Client Information” Category

The Working Group discussed the “client information” category in the compilation document and the comments received. The compilation document suggested including the following information: “name,” “male/female,” “date of birth,” “age,” “height,” “weight,” “smoker (Y/N)” and “physical (Y/N).” Mr. Wicka reviewed the suggestion from Ms. Winer to include information on whether a policy is a single or joint term policy, and if joint, then the client information would include both persons. The Working Group agreed this was a good suggestion.

The Working Group discussed the ACLI feedback on the information to include in the “client information” category. Ms. Micale said the ACLI suggests including the following information: “name,” “gender,” “date of birth,” “issue age illustrated” and “risk class illustrated.” Mr. Birnbaum said including the name of the risk class (e.g., preferred/standard/ super preferred) is not helpful and suggested including a list of the elements that go into placing a consumer in a particular risk class. Mr. Wicka asked Ms. Micale what the ACLI meant by “risk class illustrated.” Ms. Micale said the ACLI gave this issue careful consideration. She explained that the ACLI is concerned with violating federal Health Insurance Portability and Accountability Act (HIPAA) privacy rules or revealing underwriting guidelines and suggested naming the risk class rather than including the risk factors, such as height, weight or smoking status. Mr. Wicka suggested that a compromise might be to name the risk classification and include a reference to the place in the policy summary or illustration where risk classifications are defined. Mr. Birnbaum suggested that a list of the types of things that are considered when risk classifications are determined would give information in the overview. Ms. Mealer suggested including the risk classification

and a general description of what that means. Mr. Wicka asked Ms. Micale to bring this issue back to the ACLI to see if it can come up with a standard description of the different risk classes.

The Working Group discussed including a “yes or no” question regarding whether a physical is required. Mr. Wicka said this was a Wisconsin suggestion. Sean Bell (Prudential) said that this is not always a “yes or no” question; sometimes it is a “maybe.” Ms. Mealer mentioned that in some situations, it may be a blood draw and not a physical. Mr. Birnbaum said information about whether a person is going to need to have a physical is useful to consumers, especially if they are comparing quotes from more than one company, and one requires a physical exam and another does not. The Working Group agreed that it is useful to include this information in some form. The Working Group discussed whether to include “age.” The ACLI suggested including “issue age.” Mr. Wicka agreed that issue age makes more sense to include, as most people know their own age.

c. “Cost Information” Category

The Working Group discussed the “cost information” category of information in the compilation document and comments received. The feedback from the ACLI suggested including “initial premium,” “initial premium mode” and “level premium period (if applicable, then list number of years.)” Mr. Wicka said it was unclear what information from the compilation document was intended to be encompassed within “initial premium mode.” Mr. Wicka said the compilation document listed “frequency and length of premium payments,” “cost of monthly payments annual percentage rates,” “is the premium level or variable,” “how does premium vary (min/max),” and “expense ratio: surrender charge, length and amount.” Ms. Micale said the ACLI did not think everything in the compilation document was applicable to term life insurance policies, so it used the term “initial premium mode” so that companies would be able to include the applicable information. Mr. Struck suggested that a data element, such as “surrender charge,” should be included even if a policy did not include it to help consumers who may be comparing different types of policies from the same company. Mr. Birnbaum disagreed and said including data that does not apply is confusing. Mr. Wicka suggested, and the Working Group agreed, to not include information that does not apply for now, with the understanding that if there is a strong objection later, it can be put back in. Mr. Birnbaum said that cost information about riders should be included. Ms. Micale explained that the ACLI feedback suggests including that information under a separate category.

d. “Policy Information” Category

The Working Group discussed the “policy information” category in the compilation document and the comments received. The compilation document listed “policy/product type,” “policy name,” “policy form number,” “policy term,” “state of issue,” “death benefit,” “living benefit,” “guaranteed or non-guaranteed benefit,” “assumed policy effective date” and “policy may accumulate cash value (Y/N).” The ACLI feedback suggested including “policy/product type,” “product name,” “state of issue,” “initial death benefit” and “illustrated policy effective date.” Ms. Micale explained that “living benefits” were relocated to another category and that “guaranteed and non-guaranteed benefits” and “cash value” are not included in term products. Mr. Wicka suggested including a question about whether benefits can be reduced to reduce premiums. Ms. Micale said that the ACLI feedback added a category of additional policy benefits options and that the question Mr. Wicka suggested could go in that section, along with anything else that is not the “initial death benefit.” Mr. Birnbaum said he is concerned about focusing on what category information falls under.

The Working group agreed to meet via conference call Nov. 15 to finish going through the compilation document and the comments received. Mr. Wicka asked the Working Group and interested parties to consider what the best approach for implementing a policy overview document might be (model law amendment/guideline amendment to the model/best practices document/or some other option) and be prepared to have a discussion on the next call

Having no further business, the Working Group adjourned.

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Date: 10/3/16

Life Insurance Illustration Issues (A) Working Group  
Conference Call  
Sept 20, 2016

The Life Insurance Illustration Issues (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Sept. 20, 2016. The following Working Group members participated: Richard Wicka, Chair, and Jennifer Stegall, (WI); Jodi Lerner and Perry Kupferman (CA); Chris Struk and Eric Johnson (FL); Teresa Winer (GA); Mary Mealer (MO); Bruce R. Ramage (NE); Jana Jarrett (OH); Chlora Lindley-Meyers (TN); and Jan Graeber and Phil Reyna (TX).

1. Discussed a Work Plan for the Working Group

Mr. Wicka explained that the Working Group had originally formed a small ad hoc group to develop a recommendation for fulfilling the Working Group's charge to: "Explore how the narrative summary required by Section 7B of the *Life Insurance Illustrations Model Regulation* (#582) and the policy summary required by Section 5A(2) of the *Life Insurance Disclosure Model Regulation* (#580) can be enhanced to promote consumer readability and understandability of these life insurance policy summaries, including how they are designed, formatted and accessed by consumers. The Working Group should present a report to the Committee, with preliminary recommendations on enhancements to the narrative and policy summaries by the 2016 Summer National Meeting."

The ad hoc group recommended that the Working Group develop a one- or two-page consumer-oriented policy overview that would satisfy its charge to promote consumer readability and understandability of life insurance policy summaries. At the Summer National Meeting, the Working Group presented this recommendation to the Life Insurance and Annuities (A) Committee. The Committee approved the recommendation and directed the Working Group to move forward with the policy overview, with the additional direction that the Working Group work on the one- or two-page policy overview before considering if more should be done.

Mr. Wicka said that the American Council of Life Insurers (ACLI) had provided some sample policy and narrative summaries to the ad hoc group. The ad hoc group has disbanded, and Mr. Wicka discussed making those summaries available to the Working Group and interested parties that are working to develop the one- or two-page policy overview document. Emily Micale (ACLI) explained that the technology ACLI used to share the summaries requires names and email addresses for access to be granted. Mr. Wicka asked regulators and interested parties who plan to participate in the Working Group to send Jennifer Cook (NAIC) an email request for access to the summaries that she will forward to ACLI.

Mr. Wicka suggested that work on the policy overview should start with term life policies before tackling the more complex whole and universal life products. He said that the Working Group will need to consider whether the policy overview will amend the models or could be implemented as best practices. He also said that consumer-testing the policy overview will need to be discussed. Ms. Micale said the ACLI is not opposed to the policy overview and wants to be involved in the development of the content. Mr. Wicka said the Working Group wants industry input.

2. Discussed the Compilation Document of Information to Include in a Term Life Policy Overview

Mr. Wicka said the ad hoc group had brainstormed suggestions for key information to include in a policy overview document for term life policies. The compiled suggestions were posted on the Working Group's web page. Mr. Wicka asked for comments on the compiled list to be emailed to Ms. Cook by Oct. 11. He said the Working Group would meet via conference call to discuss the comments received.

Having no further business, the Working Group adjourned.

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**Agenda Item #4D**

**Life Insurance Buyer's Guide (A) Working Group**

*Conference call*

**LIFE INSURANCE BUYER'S GUIDE (A) WORKING GROUP  
November 29, 2016**

**Summary Report**

The Life Insurance Buyer's Guide (A) Working Group met via conference call Nov.29. During its meeting, the Working Group:

1. Discussed a work plan for revising the Life Insurance Buyer's Guide.
2. Asked the Working Group, interested regulators and interested parties to submit via email to NAIC staff any examples of life insurance guides that might be helpful for the Working Group to review for inspiration on format and content.
3. Agreed to meet via conference call every other week beginning Jan. 2017.

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Date: 12/6/16

Life Insurance Buyer's Guide (A) Working Group  
Conference Call  
November 29, 2016

The Life Insurance Buyer's Guide (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Nov. 29, 2016. The following Working Group members participated: Mary Mealer, Chair (MO); Jodi Lerner (CA); Teresa Winer (GA); Matthew Holman (NE); James Regalbuto (NY); and Matthew Gendron (RI).

1. Discussed its Work Plan to Revise the *Life Insurance Buyer's Guide*

Ms. Mealer said the Working Group has a charge to update and revise the *Life Insurance Buyer's Guide*. The buyer's guide is currently Appendix A to the *Life Insurance Disclosure Model Regulation* (#580). Ms. Mealer asked for feedback on the existing buyer's guide and whether it provides a good starting point.

Karrol Kitt (University of Texas at Austin) said that she and Brenda Cude (University of Georgia) suggest that the first thing that should be decided is the purpose of the buyer's guide and whether it should be paper or electronic. Ms. Mealer said the charge does not contemplate changing the purpose and required delivery of the guide as set forth in Model #580. Jennifer Cook (NAIC) explained that the annuity buyer's guide was updated a few years ago. She said the annuity buyer's guide was an appendix to the *Annuity Disclosure Model Regulation* (#245). She said that the decision was made to remove the annuity buyer's guide from Model #245 and make it a free-standing guide—available online and in paper format—so that revisions to it in the future would be easier to make. Ms. Mealer asked for feedback from the Working Group on the *Life Insurance Buyer's Guide*.

Mr. Gendron said the current buyer's guide is not structured well. He recommended looking at the annuity buyer's guide for guidance on how the *Life Insurance Buyer's Guide* could be structured. Ms. Mealer said she also believes the *Life Insurance Buyer's Guide* needs to be restructured. She said she did some research on the internet, looking at websites with buyer's guides that she thought would be helpful for the Working Group to review. Mr. Regalbuto said New York recently drafted a regulation for illustrations that included content for the buyer's guide on universal life products.

Ms. Mealer asked the Working Group, interested regulators and interested parties to email any materials that might be helpful to the Working Group to Ms. Cook for distribution. The Working Group agreed to start meeting via conference call every other week starting in January 2017. Ms. Mealer suggested that the Working Group should be prepared on the next call to decide on a structure for the *Life Insurance Buyer's Guide* and to start developing an outline.

Having no further business, the Life Insurance Buyer's Guide (A) Working Group adjourned.

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**Agenda Item #4E**

**Annuity Disclosure (A) Working Group**

*Conference call*

**ANNUITY DISCLOSURE (A) WORKING GROUP  
November 22, 2016**

**Summary Report**

The Annuity Disclosure (A) Working Group met via conference call Nov.22. During its meeting, the Working Group:

1. Discussed a work plan for completing its charge to review and revise, as necessary, Section 6—Standards for Illustrations in the *Annuity Disclosure Model Regulation* (#245) to take into account disclosures necessary to inform consumers in light of the innovations in products currently in the marketplace.
2. Discussed feedback regulators have received about issues with Section 6.
2. Asked the Working Group, interested regulators and interested parties to review Section 6 and submit additional comments about ways the model could be improved.
3. Agreed to meet via conference call January 2017.

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Date: 12/7/16

Annuity Disclosure (A) Working Group  
Conference Call  
November 22, 2016

The Annuity Disclosure (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Nov. 22, 2016. The following Working Group members participated: Mike Yanacheak, Chair (IA); Jodi Lerner (CA); Chris Struk (CO); Craig Van Aalst (KS); Devin L. Rhoad, Sr. (MD); John Robinson (MN); Frank Stone (OK); Sarah Neil (RI); and Doug Danzeiser (TX).

1. Discussed its Work Plan

Mr. Yanacheak said the Working Group has a charge to review and revise, as necessary, Section 6—Standards for Illustrations in the *Annuity Disclosure Model Regulation* (#245) to take into account disclosures necessary to inform consumers in light of the innovations in products currently in the marketplace. Mr. Yanacheak asked for feedback from regulators and interested parties on what is, and is not, working in Model #245. He said he was particularly interested in hearing from the states that have not adopted Section 6. Ms. Mealer said Missouri has been interested in adopting Section 6, but procedural roadblocks have prevented it from doing so. Mr. Van Aalst said Kansas has significant concerns with certain provisions in Model #245. He mentioned that Section 6F(9) does not include an alternative for carriers to illustrate fixed indexed annuities that have not been in existence for the previous 10 years. Mr. Yanacheak said this issue has been brought to his attention in Iowa. He said Iowa has not allowed new indexes to illustrate, but he understands the issue. He said this is an example of an innovation in the marketplace that is not accounted for in Model #245. He asked the Working Group to review Section 6F(9) and be prepared to discuss on the next call whether a complete prohibition is necessary, or whether some exceptions or changes are appropriate.

Mr. Yanacheak shared concerns submitted by Birny Birnbaum (Center for Economic Justice—CEJ). He said Mr. Birnbaum made two suggestions. First, because Section 6 is lengthy and detailed, it is difficult to evaluate the requirements without seeing how they are being implemented. Mr. Birnbaum suggested looking at some sample illustrations and associated documents to determine if insurers are following the format of the illustration example and if the requirements need tweaking or simplification. Second, Mr. Birnbaum urged the Working Group to consider consumer testing to ensure that the disclosure requirements are actually producing useable and useful information for consumers. Brenda Cude (University of Georgia) agreed with Mr. Birnbaum's suggestions.

Mr. Rhoad said Maryland has heard concerns from insurers that the definition of “non-guaranteed elements” is overly broad. He said one company raised the concern that non-guaranteed elements could be construed to include participant income annuities because of the formula used to calculate the dividend scale. Mr. Yanacheak said he has also heard of this concern, because underlying investment assumptions may include elements that include reversion to mean in areas. Ron Perkins (American Council of Life Insurers—ACLI) said he would look into whether the issue of non-guaranteed elements is a concern for other companies. Mr. Perkins also suggested that Model #245 include some acknowledgment that the U.S. Department of Labor fiduciary rule does not consider illustrations to be “investment advice” subject to the rule.

Ms. Cude said the Working Group should consider the fact that illustrations are quantitative and numerical, which are not easily understood by most people. Mr. Lapham said the Working Group should keep in mind that if companies are not allowed to illustrate, then that could lead to other types of visual representations of the information that are unregulated, which could be problematic.

Mr. Yanacheak asked the Working Group, in addition to considering whether and how changes might be made to Section 6F(9), to consider how the issues with the definition of “non-guaranteed element” in Section 4J might fit into the Working Group's charge. He asked for Working Group members, interested regulators and interested parties to review Section 6 again and to submit any other comments about ways Model #245 could be improved to Jennifer Cook (NAIC) prior to the Fall National Meeting. The Working Group agreed to continue discussions and develop a work plan on its next call.

Having no further business, the Annuity Disclosure (A) Working Group adjourned.

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## **Agenda Item #5**

***Consider Adoption of Actuarial Guideline XLVIII—Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued Under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation (AG 48)***



## Actuarial Guideline XLVIII

### **Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation (Model 830)**

#### **Background**

The NAIC Principle-Based Reserving Implementation (EX) Task Force (“PBRI Task Force”) serves as the coordinating body for all NAIC technical groups involved with projects related to the Principle-Based Reserves (PBR) initiative for life and health policies. The PBRI Task Force was also charged with further assessing, and making recommendations regarding, the solvency implications of life insurance reserve financing mechanisms addressed in the June 6, 2013 NAIC White Paper of the Captives and Special Purpose Vehicle Use (E) Subgroup of the Financial Condition (E) Committee. Some of these reinsurance arrangements have been referred to as “XXX/AXXX Captive arrangements,” although not all such arrangements actually involve reinsurers organized as captives. In this connotation, XXX denotes the reserves prescribed by Section 6 of the NAIC *Valuation of Life Insurance Policies Model Regulation* (Model 830) while AXXX denotes the reserves prescribed by Section 7 of the NAIC *Valuation of Life Insurance Policies Model Regulation* (Model 830) and by Actuarial Guideline XXXVIII, *The Application of the Valuation of Life Insurance Policies Model Regulation* (AG 38). On June 30, 2014, the PBRI Task Force adopted a framework as found in Exhibits 1 and 2 of the June 4, 2014 report from Rector & Associates, Inc. (the “June 2014 Rector Report”). Exhibit 2 of the report included a charge to the Life Actuarial (A) Task Force (LATF) to develop a level of reserves (the “Required Level of Primary Security”) that must be supported by certain defined assets (“Primary Security”). The level of reserves is to be calculated by a method referred to as the “Actuarial Method.” Another charge to LATF was to promulgate an actuarial guideline specifying that, in order to comply with the NAIC *Actuarial Opinion and Memorandum Regulation*, Model 822 (“AOMR”) as it relates to XXX/AXXX reinsurance arrangements, the opining actuary must issue a qualified opinion as to the ceding insurer’s reserves if the ceding insurer or any insurer in its holding company system has engaged in a XXX/AXXX reserve financing arrangement that does not adhere to the Actuarial Method and Primary Security forms adopted by the NAIC. The initial version of Actuarial Guideline XLVIII, *Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation* (AG 48) was developed in response to that charge, with an effective date of January 1, 2015.

#### **Coordination between this Actuarial Guideline and the NAIC Term and Universal Life Insurance Reserve Financing Model Regulation (Model ###)**

Subsequently, on January 8, 2016 the NAIC adopted revisions to the *Credit for Reinsurance Model Law* (Model 785). Among other things, the revisions to the NAIC *Credit for Reinsurance Model Law* (Model 785) provide commissioners with the authority to enact, by regulation, additional requirements for ceding insurers to claim credit for reinsurance with respect to certain XXX/AXXX financing arrangements. On MM/DD/YYYY the NAIC adopted the *Term and Universal Life Insurance Reserve Financing Model Regulation* (Model ###) as the regulation permitted by the NAIC *Credit for Reinsurance Model Law* (Model 785). LATF subsequently received a charge to redraft AG 48 to make it as consistent as possible with the provisions of the NAIC *Term and Universal Life Insurance Reserve Financing Model Regulation* (Model ###). The current version of this Actuarial Guideline is the result.

The following is an overview of the interrelationship between this Actuarial Guideline and the NAIC *Term and Universal Life Insurance Reserve Financing Model Regulation* (Model ###), and the regulatory strategy that led to the adoption of each:

1. The initial version of this Actuarial Guideline immediately established national standards for the use of XXX/AXXX financing arrangements in an attempt to quickly set minimum standards based on the framework adopted by the PBRI Task Force on June 30, 2014. This initial version applied to such reinsurance arrangements entered into on or after 1/1/2015.
2. The revised statute (the NAIC *Credit for Reinsurance Model Law* (Model 785) and a new regulation (the NAIC *Term and Universal Life Insurance Reserve Financing Model Regulation* (Model ###)) were then developed and adopted by the NAIC.

3. Except as noted in #4 below, this Actuarial Guideline will cease to be effective, on a state by state basis, as individual states enact the NAIC *Credit for Reinsurance Model Law* (Model 785) and adopt the NAIC *Term and Universal Life Insurance Reserve Financing Model Regulation* (Model ###) to replace it.
4. Notwithstanding, it is anticipated that in a small number of states, the NAIC *Term and Universal Life Insurance Reserve Financing Model Regulation* (Model ###) will need to be adopted on a “prospective” basis only (that is, it will only apply to ceded policies issued on or after the effective date thereof). In those cases, this Actuarial Guideline will remain as the authority for ceded policies subject to this Actuarial Guideline but to which the NAIC *Term and Universal Life Insurance Reserve Financing Model Regulation* (Model ###), as adopted in a given state, does not apply. So although its role might diminish, this Actuarial Guideline will remain an essential part of the regulatory framework for a small number of states for many years to come.
5. To ensure uniformity of treatment between states, companies, and ceded policies (whether governed by this Actuarial Guideline or by the NAIC *Term and Universal Life Insurance Reserve Financing Model Regulation* (Model ###) and to avoid confusion, this Actuarial Guideline is being updated, effective as of January 1, 2017, to make it as substantively identical to the NAIC *Term and Universal Life Insurance Reserve Financing Model Regulation* (Model ###) as possible.

### **Authority, Avoidance, and Purpose**

The requirements in this Actuarial Guideline derive authority from Section 3 of the AOMR, or, after the Operative Date of the Valuation Manual, from Section 1 of VM-30 of the Valuation Manual. Both Section 3 of the AOMR and Section 1 of VM-30 provide that the commissioner has the authority to specify specific methods of actuarial analysis and actuarial assumptions when, in the commissioner's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items. As contained in the framework adopted by the PBRI Task Force on June 30, 2014, this Actuarial Guideline defines new terms, such as Primary Security and Required Level of Primary Security, specifies the Actuarial Method used to calculate the Required Level of Primary Security, and specifies other requirements that must be followed when reinsurance is involved in order for the appointed actuary to render an actuarial opinion that is not qualified.

No statute, regulation or guideline can anticipate every potential XXX/AXXX captive arrangement. Common sense and professional responsibility are needed to assure not only that the text of this Actuarial Guideline is strictly observed, but also that its purpose and intent are honored scrupulously. To that end, and to provide documentation to the appointed actuary as to the arrangements that are subject to review under this Actuarial Guideline, the appointed actuary may request from each ceding insurer, and may rely upon, the certification by the Chief Financial Officer or other responsible officer of each ceding insurer filed with the insurer's domiciliary regulator that the insurer has not engaged in any arrangement or series of arrangements involving XXX or AXXX reserves that are designed to exploit a perceived ambiguity in, or to violate the purpose and intent of, this Actuarial Guideline.

The purpose and intent of this Actuarial Guideline are to establish uniform, national standards governing XXX or AXXX reserve financing arrangements<sup>1</sup> in conformity with the PBRI Task Force framework and, in connection with such arrangements, to ensure that Primary Security, in an amount at least equal to the Required Level of Primary Security, is held by or on behalf of the ceding insurer. As described further in Section 4.B., the provisions of this Actuarial Guideline are not intended to apply to policies that were issued prior to 1/1/2015 if those policies were included in a captive reserve financing arrangement as of 12/31/2014. Further, the requirements of this Actuarial Guideline should be viewed as minimum standards and are not a substitute for the diligent analysis of reserve financing arrangements by regulators. A regulator should impose requirements in addition to those set out in this Actuarial Guideline if the facts and circumstances warrant such action.

### **Text**

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<sup>1</sup> In general, reserve financing arrangements are those where the security/assets backing part or all of the reserves have one or more of the following characteristics: such security/assets (1) are issued by the ceding insurer or its affiliates; and/or (2) are not unconditionally available to satisfy the general account obligations of the ceding insurer; and/or (3) create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any of its affiliates (other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance arrangement).

1. Authority

Pursuant to Section 3 of the AOMR or, after the Operative Date of the Valuation Manual, to Section 1 of VM-30 of the Valuation Manual, the commissioner shall have the authority to specify specific methods of actuarial analysis and actuarial assumptions when, in the commissioner's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.

2. Scope

This Actuarial Guideline applies to reinsurance contracts that cede liabilities pertaining to Covered Policies as that term is defined in Section 4.

3. Exemptions

This Actuarial Guideline does not apply to the situations described in Subsections A through F.

A. Reinsurance of:

- (1) Policies that satisfy the criteria for exemption set forth in Section 6F or Section 6G of the NAIC *Valuation of Life Insurance Policies Model Regulation* (Model 830); and which are issued before the later of:
  - (a) The effective date of the NAIC *Term and Universal Life Insurance Reserve Financing Model Regulation* (Model ###) in the state of domicile of the ceding insurer, and
  - (b) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than Jan 1, 2020;
- (2) Portions of policies that satisfy the criteria for exemption set forth in Section 6E of the NAIC *Valuation of Life Insurance Policies Model Regulation* (Model 830) and which are issued before the later of:
  - (a) The effective date of the NAIC *Term and Universal Life Insurance Reserve Financing Model Regulation* (Model ###) in the state of domicile of the ceding insurer, and
  - (b) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than Jan. 1, 2020;
- (3) Any universal life policy that meets all of the following requirements:
  - (a) Secondary guarantee period, if any, is five (5) years or less;
  - (b) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the CSO valuation tables and valuation interest rate applicable to the issue year of the policy; and
  - (c) The initial surrender charge is not less than one hundred percent (100%) of the first year annualized specified premium for the secondary guarantee period;
- (4) Credit life insurance;
- (5) Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; or

- (6) Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year; or
- B. Reinsurance ceded to an assuming insurer that meets the applicable requirements of Section 2D of the NAIC *Credit for Reinsurance Model Law* (Model 785); or
- C. Reinsurance ceded to an assuming insurer that meets the applicable requirements of Sections 2A, 2B or 2C, of the NAIC *Credit for Reinsurance Model Law* (Model 785), and that, in addition:
  - (1) Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual, without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to Statement of Statutory Accounting Principles No. 1 ("SSAP 1"); and
  - (2) Is not in a Company Action Level Event, Regulatory Action Level Event, Authorized Control Level Event, or Mandatory Control Level Event as those terms are defined in the NAIC *Risk-Based Capital (RBC) for Insurers Model Act* (Model 312) when its RBC is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation; or
- D. Reinsurance ceded to an assuming insurer that meets the applicable requirements of Sections 2A, 2B or 2C, of the NAIC *Credit for Reinsurance Model Law* (Model 785), and that, in addition:
  - (1) Is not an affiliate, as that term is defined in Section 1A of the NAIC *Insurance Holding Company System Regulatory Model Act* (Model 440), of:
    - (a) The insurer ceding the business to the assuming insurer; or
    - (b) Any insurer that directly or indirectly ceded the business to that ceding insurer;
  - (2) Prepares statutory financial statements in compliance with the NAIC *Accounting Practices and Procedures Manual*;
  - (3) Is both:
    - (a) Licensed or accredited in at least 10 states (including its state of domicile), and
    - (b) Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and
  - (4) Is not, or would not be, below 500% of the Authorized Control Level RBC as that term is defined in the NAIC *Risk-Based Capital (RBC) for Insurers Model Act* (Model 312) when its Risk-Based Capital (RBC) is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus; or
- E. Reinsurance ceded to an assuming insurer that meets the requirements of either Section 5B(4)(a) of the NAIC *Credit for Reinsurance Model Law* (Model 785), pertaining to certain certified reinsurers or Section 5B(4)(b) of the NAIC *Credit for Reinsurance Model Law* (Model 785), pertaining to reinsurers meeting certain threshold size and licensing requirements; or

- F. Reinsurance not otherwise exempt under Subsections A through E if the commissioner, after consulting with the NAIC Financial Analysis Working Group (FAWG) or other group of regulators designated by the NAIC, as applicable, determines under all the facts and circumstances that all of the following apply:
- (1) The risks are clearly outside of the intent and purpose of this Actuarial Guideline (as described in the Authority, Avoidance and Purpose section above);
  - (2) The risks are included within the scope of this Actuarial Guideline only as a technicality; and
  - (3) The application of this Actuarial Guideline to those risks is not necessary to provide appropriate protection to policyholders. The commissioner shall publicly disclose any decision made pursuant to this Section 3F to exempt a reinsurance treaty from this Actuarial Guideline, as well as the general basis therefor (including a summary description of the treaty).

**Drafting Note:** The exemption set forth in Section 3F was added to address the possibility of unforeseen or unique transactions. This exemption exists because the NAIC recognizes that foreseeing every conceivable type of reinsurance transaction is impossible; that in rare instances unanticipated transactions might get caught up in this Actuarial Guideline purely as a technicality; and that regulatory relief in those instances may be appropriate. The example that was given at the time this exemption was developed pertained to bulk reinsurance treaties where the ceding insurer was exiting the type of business ceded. The exemption should not be used with respect to so-called “normal course” reinsurance transactions; rather, such transactions should either fit within one of the standard exemptions set forth in Sections 3A, B, C, D, or E or meet the substantive requirements of this Actuarial Guideline.

#### 4. Definitions

- A. “Actuarial Method” means the methodology used to determine the Required Level of Primary Security, as described in Section 5.
- B. “Covered Policies” means the following: Subject to the exemptions described in Section 3, Covered Policies are those policies, other than Grandfathered Policies, of the following policy types:
- (1) Life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or,
  - (2) Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

***Note:** Although “Covered Policies” is defined to include all the policies described in Subsections B1 and B2 above, it is noted that whether a given “Covered Policy” is subject to this Actuarial Guideline or, instead, to the NAIC Term and Universal Life Insurance Reserve Financing Model Regulation (Model ###) should be determined under Section 8 (Sunset).*

- C. “Grandfathered Policies” means policies of the types described in Subsections B1 and B2 above that were:
- (1) Issued prior to January 1, 2015; and
  - (2) Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in Section 3 had that section then been in effect.
- D. “Non-Covered Policies” means any policy that does not meet the definition of Covered Policies, including Grandfathered Policies.
- E. “Required Level of Primary Security” means the dollar amount determined by applying the Actuarial Method to the risks ceded with respect to Covered Policies, but not more than the total reserve ceded.

- F. “Primary Security” means the following forms of security:
- (1) Cash meeting the requirements of Section 3A of the NAIC *Credit for Reinsurance Model Law* (Model 785);
  - (2) Securities listed by the Securities Valuation Office meeting the requirements of Section 3B of the NAIC *Credit for Reinsurance Model Law* (Model 785), but excluding any synthetic letter of credit, contingent note, credit-linked note or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates; and
  - (3) For security held in connection with funds-withheld and modified coinsurance reinsurance treaties:
    - (a) Commercial loans in good standing of CM3 quality and higher;
    - (b) Policy Loans; and
    - (c) Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.
- G. “Other Security” means any security acceptable to the commissioner other than security meeting the definition of Primary Security.
- H. “Valuation Manual” means the valuation manual adopted by the NAIC as described in Section 11B(1) of the Standard Valuation Law, with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.
- I. “VM-20” means “Requirements for Principle-Based Reserves for Life Products,” including all relevant definitions, from the Valuation Manual.

## 5. The Actuarial Method

### A. Description of Actuarial Method

The Actuarial Method to establish the Required Level of Primary Security for each reinsurance treaty subject to this Actuarial Guideline shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the Valuation Manual as then in effect, applied as follows:

- (1) For Covered Policies described in Section 4B(1) above, the Actuarial Method is the greater of the Deterministic Reserve or the Net Premium Reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if the Covered Policies do not meet the requirements of the Stochastic Reserve exclusion test in the Valuation Manual, then the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR. In addition, if such Covered Policies are reinsured in a reinsurance treaty that also contains Covered Policies described in Section 4B(2) above, the ceding insurer may elect to instead use paragraph 2 below as the Actuarial Method for the entire reinsurance agreement. Whether Paragraph 1 or 2 are used, the Actuarial Method must comply with any requirements or restrictions that the Valuation Manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.

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- (2) For Covered Policies described in Section 4B(2) above, the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR regardless of whether the criteria for exemption testing can be met.
- (3) Except as provided in Paragraph (4) below, the Actuarial Method is to be applied on a gross basis to all risks with respect to the Covered Policies as originally issued or assumed by the ceding insurer.
- (4) If the reinsurance treaty cedes less than one hundred percent (100%) of the risk with respect to the Covered Policies then the Required Level of Primary Security may be reduced as follows:
  - (a) If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the Covered Policies, the Required Level of Primary Security, as well as any adjustment under Subparagraph (c) below, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;
  - (b) If the reinsurance treaty in a non-exempt arrangement cedes only the risks pertaining to a secondary guarantee, the Required Level of Primary Security may be reduced by an amount determined by applying the Actuarial Method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the Covered Policies, except that for Covered Policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the Required Level of Primary Security may be reduced by the statutory reserve retained by the ceding insurer on those Covered Policies, where the retained reserve of those Covered Policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;
  - (c) If a portion of the Covered Policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the Required Level of Primary Security may be reduced by the amount resulting by applying the Actuarial Method including the reinsurance section of VM-20 to the portion of the Covered Policy risks ceded in the exempt arrangement, except that for Covered Policies issued prior to Jan 1, 2017, this adjustment is not to exceed  $[c_x / (2 * \text{number of reinsurance premiums per year})]$  where  $c_x$  is calculated using the same mortality table used in calculating the Net Premium Reserve; and
  - (d) For any other treaty ceding a portion of risk to a different reinsurer, including but not limited to stop loss, excess of loss and other non-proportional reinsurance treaties, there will be no reduction in the Required Level of Primary Security.

It is possible for any combination of Subparagraphs (a), (b), (c), and (d) above to apply. Such adjustments to the Required Level of Primary Security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the Required Level of Primary Security due to the cession of less than one hundred percent (100%) of the risk.

The Adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

- (5) In no event will the Required Level of Primary Security resulting from application of the Actuarial Method exceed the amount of statutory reserves ceded.
- (6) If the ceding insurer cedes risks with respect to Covered Policies, including any riders, in more than one reinsurance treaty subject to this Actuarial Guideline, in no event will the aggregate Required Level of Primary Security for those reinsurance treaties be less than the Required Level of Primary Security calculated using the Actuarial Method as if all risks ceded in those treaties were ceded in a single treaty subject to this Actuarial Guideline.
- (7) If a reinsurance treaty subject to this Actuarial Guideline cedes risk on both Covered and Non-Covered Policies:
  - (a) The Actuarial Method shall be used to determine the Required Level of Primary Security for the Covered Policies; and
  - (b) Any Primary Security and/or Other Security used to meet any requirements pertaining to the Non-Covered Policies may not be used to satisfy any requirements related to the Required Level of Primary Security and/or Other Security for the Covered Policies.

**B. Valuation used for Purposes of Calculations**

For the purposes of both calculating the Required Level of Primary Security pursuant to the Actuarial Method and determining the amount of Primary Security and Other Security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

- (1) For assets, including any such assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and
- (2) For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the Actuarial Method if adopted by the NAIC's Life Actuarial (A) Task Force no later than the Dec. 31<sup>st</sup> on or immediately preceding the valuation date for which the Required Level of Primary Security is being calculated. The tables of asset spreads and asset default costs shall be incorporated into the Actuarial Method in the manner specified in VM-20.

**6. Required Actuarial Analysis and Actuarial Opinion and Memorandum Requirements**

**A. Required Actuarial Analysis**

Before the due date of each actuarial opinion, as to each reinsurance treaty in which Covered Policies have been ceded, the appointed actuary of each ceding insurer must perform an analysis on a treaty by treaty basis, of such Covered Policies to determine whether, as of the immediately preceding December 31<sup>st</sup> (the valuation date):

- (1) Funds consisting of Primary Security, in an amount at least equal to the Required Level of Primary Security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of Section 3 of the NAIC *Credit for Reinsurance Model Law* (Model 785), on a funds withheld, trust, or modified coinsurance basis; and



- (2) Funds consisting of Other Security, in an amount at least equal to any portion of the statutory reserves as to which Primary Security is not held pursuant to Paragraph (1) above, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of Section 3 of the NAIC *Credit for Reinsurance Model Law* (Model 785); and

***Note:** For the sake of clarity, funds consisting of Primary Security pursuant to Paragraphs (1) may exceed the Required Level of Primary Security, and Other Security is only required under Paragraph (2) to the extent that there is any portion of the statutory reserves as to which Primary Security is not so held. For example, if a ceding insurer's statutory reserves equal \$1 Billion, its Required Level of Primary Security is \$600 Million, and it holds \$1 Billion in Primary Security pursuant to Paragraph (1), no Other Security is required under Paragraph (2).*

- (3) Any trust used to satisfy the requirements of this Section 6 complies with all of the conditions and qualifications of Section 11 of the NAIC *Credit for Reinsurance Model Regulation* (Model 786), except that:
  - (a) Funds consisting of Primary Security or Other Security held in trust, shall for the purposes identified in Section 5B, be valued according to the valuation rules set forth in Section 5B, as applicable; and
  - (b) There are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of Section 6A(1); and
  - (c) The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the Primary Security within the trust (when aggregated with Primary Security outside the trust that is held by or on behalf of the ceding insurer in the manner required by Section 6A(1)) below 102% of the level required by Section 6A(1) at the time of the withdrawal or substitution.

**B. Qualified Actuarial Opinion; Remediation**

- (1) The appointed actuary of the ceding insurer performing the analysis required by Section 6A above must issue a qualified actuarial opinion as described in Section 6.D. of the AOMR or Section 3A(10) of VM-30 of the Valuation Manual, as applicable, unless:
  - (a) The requirements of Section 6A(1) and 6A(2) were fully satisfied as of the valuation date as to such reinsurance treaty; or
  - (b) Any deficiency has been eliminated before the due date of the Annual Statement to which the valuation date relates through the addition of Primary Security and/or Other Security, as the case may be, in such amount and in such form as would have caused the requirements of Section 6A(1) and 6A(2) to be fully satisfied as of the valuation date; or
  - (c) The ceding insurer has established a liability equal to the excess of the credit for reinsurance taken over the amount of Primary Security actually held pursuant to Section 6A(1).
- (2) In addition to the requirement set forth in Section 6B(1) above, the appointed actuary of the ceding insurer performing the analysis required by Section 6A above must issue a qualified actuarial opinion as described in Section 6.D. of the AOMR or Section 3A(10) of VM-30 of the Valuation Manual, as applicable, if the appointed actuary for any affiliated reinsurer of the ceding insurer

issues a qualified actuarial opinion with respect to such affiliated reinsurer where (a) the affiliate reinsures Covered Policies of the ceding insurer and (b) the qualified actuarial opinion pertaining to the affiliated reinsurer results, in whole or in part, from the analysis required by this Actuarial Guideline.

***Note:** The remediation option set forth in Section 6B(1)(c) mirrors that set forth in the NAIC Term and Universal Life Insurance Reserve Financing Model Regulation (Model ###). Under this option, a ceding company may choose to avoid the consequence (a qualified opinion under this Actuarial Guideline) by establishing a liability equal to the excess of the credit for reinsurance taken over the amount of Primary Security actually held. For example, suppose a ceding insurer has established statutory reserves of \$1 Billion and has Primary Security of \$550 Million and Other Security of \$450 Million. Suppose further that the actuary determines that the insurer's Required Level of Primary Security is \$600 Million. Under Section 6B(1)(c), the insurer may avoid a qualified opinion by establishing a liability equal to \$450 Million (the difference between the statutory reserve of \$1 Billion and the \$550 Million amount of Primary Security actually held).*

C. Additional Requirements for the Actuarial Opinion and Memorandum for Companies that have Covered Policies Requiring the Analysis Pursuant to this Actuarial Guideline

- (1) In the statement of actuarial opinion, the appointed actuary of the ceding insurer must state whether (i) he has performed an analysis, as to each reinsurance arrangement under which Covered Policies have been ceded, of the security supporting the Covered Policies and whether funds consisting of Primary Security in an amount at least equal to the Required Level of Primary Security are held by or on behalf of the ceding insurer, as security under the reinsurance contract, on a funds withheld, trust, or modified coinsurance basis and (ii) funds consisting of Primary Security or Other Security in an amount equal to the statutory reserves are held by or on behalf of the ceding insurer as security under the reinsurance arrangement.
- (2) In the actuarial memorandum as described by Section 7 of the AOMR or Section 3B of VM-30 of the Valuation Manual, as applicable, the appointed actuary of the ceding insurer must document the analysis and requirements applied by this Actuarial Guideline as to each reinsurance arrangement under which Covered Policies are ceded.
- (3) In the event that a reinsurance treaty contains both (1) Covered Policies subject to this Actuarial Guideline rather than to the NAIC *Term and Universal Life Insurance Reserve Financing Model Regulation* (Model ###), and (2) Covered Policies subject to the NAIC *Term and Universal Life Insurance Reserve Financing Model Regulation* (Model ###) rather than to this Actuarial Guideline, the treaty shall be tested as a whole for purposes of a ceding insurer's compliance with both (a) the requirements of Section 6A(1) and Section 6A(2) of this Actuarial Guideline and (b) the requirements of Section 7A(3) and Section 7A(4) of the NAIC *Term and Universal Life Insurance Reserve Financing Model Regulation* (Model ##); provided further, that:
  - a. If funds consisting of Primary Security are held in amounts less than the Required Level of Primary Security, such funds consisting of Primary Security shall be allocated first to fulfill the Required Level of Primary Security for the Covered Policies subject to this Actuarial Guideline, with any remainder allocated to those Covered Policies subject to the NAIC *Term and Universal Life Insurance Reserve Financing Model Regulation* ( Model ##); and
  - b. If funds consisting of Other Security are held in amounts less than the requirements of Section 6A(2), such funds consisting of Other Security shall be allocated first to fulfill the Other Security requirements for the Covered Policies subject to this Actuarial Guideline, and any remainder shall be allocated to those Covered Policies subject to the NAIC *Term and Universal Life Insurance Reserve Financing Model Regulation* (Model ##).

7. Effective Date

This Actuarial Guideline shall become effective as of January 1, 2017 with respect to all Covered Policies. This Actuarial Guideline supersedes and replaces all previous versions thereof with respect to actuarial opinions rendered as to valuation periods ending on or after January 1, 2017.

***Note:*** For the avoidance of doubt, actuarial opinions issued with respect to the year ended December 31, 2016 shall be governed by the version of this AG 48 in effect on December 31, 2016, as included in the *Accounting Practices and Procedures Manual*.

8. Sunset Provision

This Actuarial Guideline shall cease to apply as to Covered Policies that are both (a) issued by ceding insurers domiciled in a jurisdiction that has in effect, as of December 31st<sup>t</sup> of the calendar year immediately preceding the year in which the actuarial opinion is to be filed, a regulation substantially similar to the NAIC *Term and Universal Life Insurance Reserve*

*Financing Model Regulation (Model ###) adopted by the NAIC on XXX, 2016; and (b) subject to the NAIC Term and Universal Life Insurance Reserve Financing Model Regulation (Model ###) as so adopted by the ceding insurer's jurisdiction of domicile. This Actuarial Guideline shall continue to apply, without interruption, to any and all Covered Policies not included in both (a) and (b) of the immediate preceding sentence.*

**Note:** *It is anticipated that, for most states, this Actuarial Guideline will sunset pursuant to (a) and (b) of Section 8 and will continue only with respect to the limited number of states in which their version of the NAIC Term and Universal Life Insurance Reserve Financing Model Regulation (Model ###) applies prospectively only, i.e., applies only to Covered Policies issued on or after the effective date of their version of the NAIC Term and Universal Life Insurance Reserve Financing Model Regulation (Model ###). It is anticipated, however, that most states will be able to adopt a version of the NAIC Term and Universal Life Insurance Reserve Financing Model Regulation (Model ###) that, like the Model itself, applies to all Covered Policies (subject to the applicable exemptions and grandfathering provisions) that are "in force" on or after the effective date, even if the policies were originally issued prior to that effective date. The goal of Section 8 is to ensure that all Covered Policies ceded in reinsurance transactions within the scope of this Actuarial Guideline continue to be subject to this Actuarial Guideline unless and until they become subject to the NAIC Term and Universal Life Insurance Reserve Financing Model Regulation (Model ###).*

## **Agenda Item #6**

***Consider Adoption of Actuarial Guideline XLIX—The Application of the Life Insurance Illustrations Model Regulation to Policies with Index-Based Interest (AG 49)***

## Actuarial Guideline XLIX

### THE APPLICATION OF THE LIFE ILLUSTRATIONS MODEL REGULATION TO POLICIES WITH INDEX-BASED INTEREST

#### Background

The *Life Insurance Illustrations Model Regulation* (#582) was adopted by the NAIC in 1995. Since that time there has been continued evolution in product design, including the introduction of benefits that are tied to an external index or indices. Although these policies are subject to Model #582, not all of their features are explicitly referenced in the model, resulting in a lack of uniform practice in its implementation. In the absence of uniform guidance, two illustrations that use the same index and crediting method often illustrated different credited rates. The lack of uniformity can be confusing to potential buyers and can cause uncertainty among illustration actuaries when certifying compliance with Model #582.

This guideline provides uniform guidance for policies with index-based interest. In particular, this guideline:

- (1) Provides guidance in determining the maximum crediting rate for the illustrated scale and the earned interest rate for the disciplined current scale.
- (2) Limits the policy loan leverage shown in an illustration.
- (3) Requires additional consumer information (side-by-side illustration and additional disclosures) that will aid in consumer understanding.

#### Text

##### 1. Effective Date

This Actuarial Guideline shall be effective as follows:

- i. Sections 4 and 5 shall be effective for all new business and in force life insurance illustrations on policies sold on or after September 1, 2015.
- ii. Effective July 1, 2017, Section 4 and Section 5 shall be effective for all in-force life insurance illustrations on policies within the scope of this actuarial guideline, regardless of the date the policy was sold.
- ~~ii~~.iii. Sections 6 and 7 shall be effective for all new business and in force life insurance illustrations on policies sold on or after March 1, 2016.

##### 2. Scope

This Actuarial Guideline shall apply to any life insurance illustration that meets both (i) and (ii), below:

- i. The policy is subject to Model #582.
- ii. Interest credits are linked to an external index or indices.

##### 3. Definitions

A. Alternate Scale: A scale of non-guaranteed elements currently being illustrated such that:

**Agenda Item #7**

**Consider Adoption of Contingent Deferred Annuity (CDA)-Related Revisions to the *Standard Nonforfeiture Law for Individual Deferred Annuities (Model #805)***

Draft Fall 2015  
Revisions referred by Life Actuarial (A) Task Force

Comments are being requested on this draft. Comments should be sent only by email to Jennifer Cook at [jcook@naic.org](mailto:jcook@naic.org).

## STANDARD NONFORFEITURE LAW FOR INDIVIDUAL DEFERRED ANNUITIES

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### Section 1. Title

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

### Section 2. Applicability

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

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



### **Section 3. Nonforfeiture Requirements**

- A. In the case of contracts issued on or after the operative date of this Act as defined in Section 13, no contract of annuity, except as stated in Section 2, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contractholder, upon cessation of payment of considerations under the contract:
- (1) That upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in Sections 5, 6, 7, 8 and 10;
  - (3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits; and
  - (4) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.
- B. Notwithstanding the requirements of this section, a deferred annuity contract may provide that if no considerations have been received under a contract for a period of two (2) full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from prior considerations paid would be less than \$20 monthly, the company may at its option terminate the contract by payment in cash of the then present value of the portion of the paid-up annuity benefit, calculated on the basis on the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by this payment shall be relieved of any further obligation under the contract.

### **Section 4. Minimum Values**

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

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

Draft Fall 2015  
Revisions referred by Life Actuarial (A) Task Force

Comments are being requested on this draft. Comments should be sent only by email to Jennifer Cook at [jcook@naic.org](mailto:jcook@naic.org).

- (b) An annual contract charge of \$50, accumulated at rates of interest as indicated in Subsection B;
    - (c) Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in Subsection B; and
- Drafting Note:** The premium tax credit is only permitted if the tax is actually paid by the company. If the tax is paid and subsequently credited back to the company, such as upon early termination of the contract, the tax credit may not be taken.
- (d) The amount of any indebtedness to the company on the contract, including interest due and accrued.
  - (2) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent (87.5%) of the gross considerations credited to the contract during that contract year.
- B. The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent (3%) per annum and the following, which shall be specified in the contract if the interest rate will be reset:
- (1) The five-year Constant Maturity Treasury Rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest 1/20<sup>th</sup> of one percent, specified in the contract no longer than fifteen (15) months prior to the contract issue date or redetermination date under Section 4B(4);
  - (2) Reduced by 125 basis points;
  - (3) Where the resulting interest rate is not less than one percent (1%); and
  - (4) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year Constant Maturity Treasury Rate to be used at each redetermination date.
- C. During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in Subsection B(2) above by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.
- D. The commissioner may adopt rules to implement the provisions of Section 4C and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines adjustments are justified.

## **Section 5. Computation of Present Value**

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

## **Section 6. Calculation of Cash Surrender Value**

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

## **Section 7. Calculation of Paid-up Annuity Benefits**

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

## **Section 8. Maturity Date**

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

## **Section 9. Disclosure of Limited Death Benefits**

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

Draft Fall 2015  
Revisions referred by Life Actuarial (A) Task Force

Comments are being requested on this draft. Comments should be sent only by email to Jennifer Cook at [jcook@naic.org](mailto:jcook@naic.org).

#### **Section 10. Inclusion of Lapse of Time Considerations**

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

#### **Section 11. Proration of Values; Additional Benefits**

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

#### **Section 12. Rules**

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

#### **Section 13. Effective Date**

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



Insured Retirement Institute

December 7, 2016

Commissioner Nick Gerhart, Chair  
NAIC Life Insurance and Annuities (A) Committee  
1110 Walnut Street, Suite 1500  
Kansas City, MO 64106-2197

Attn: Jennifer Cook  
Health and Life Policy Counsel  
jcook@naic.org

Re: Exposed Revisions to Standard Nonforfeiture Law for Individual Deferred Annuities Model (Model #805)

Dear Commissioner Gerhart:

The American Council of Life Insurers (ACLI) and Insured Retirement Institute (IRI) appreciate the opportunity to submit comments on revisions to Model #805 referred by the Life Actuarial Task Force (LATF).

We believe a minimum nonforfeiture requirement on CDAs raises several important policy issues and concerns. These matters have been the subject of extensive consideration over the last several years by LATF and the Contingent Deferred Annuities (A) Working Group. We have submitted information in response to these discussions and have expressed our support for revisions consistent with the NAIC's stated charge to exclude CDAs from Model #805. Attached for your reference are prior written comments dated September 30, 2014 and May 13, 2015.

We agree that requirements of Model #805 cannot be applied to CDA products and, therefore, these products should be excluded from the requirements of Model #805. Although the proposed revision to paragraph 2.B accomplishes this exemption, we believe the more appropriate change, one that directly fulfills the NAIC's charge<sup>1</sup>, is to include CDAs in "Section 2 Applicability" as a product outside of the scope of this model. This change would result in uniform treatment across products that provide similar longevity risk protection to consumers as CDAs (e.g., variable annuities, immediate annuities, deferred annuities). Subsection B, C and the drafting note can then be eliminated.

## **Section 2. Applicability**

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<sup>1</sup> Consider revisions to the Standard Nonforfeiture Law for Individual Deferred Annuities to specifically exclude Contingent Deferred Annuities from the scope of the model.

A. This Act shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, ~~or~~ reversionary annuity, or contingent deferred annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract

For a number of reasons we do not support Subsection 2.C and believe its inclusion would represent an endorsement by the NAIC that some form of nonforfeiture benefits should be required for CDAs.

NAIC models are intended and designed to promote uniform regulation. We respectfully disagree with the opinion stated in the June 2016 memorandum accompanying the exposure that non-uniform treatment of CDAs nonforfeiture requirements across the country is unlikely to occur because of the inclusion of Subsection C granting the commissioner authority to prescribe nonforfeiture benefits. It is reasonable to conclude that some states would exercise authority to prescribe nonforfeiture benefits while others would not. Additionally, it's conceivable that some states may not grant this level of authority to a commissioner. Furthermore, for states that do prescribe by regulation specific nonforfeiture benefits for CDAs, these rules likely will not be uniform from state to state. The resulting effect would be a maze of inconsistent and complex requirements, impacting consumers, product development, and compliance. Uniform regulation of life and annuity products is critical for any product marketed and sold across the country to consumers. This is particularly important for new and innovative products like CDAs.

With respect to the question of whether CDAs should be subject to nonforfeiture, we do not believe it is appropriate for these products. The following are previous key points we've made about why nonforfeiture values are not appropriate for CDA products:

- A CDA is a protection benefit added to a savings vehicle. If the consumer “turns off” a CDA, the underlying savings vehicle is not forfeited; the policyholder is able to control the underlying assets by moving to another vehicle.
- The ability to “turn off” the CDA already provides a valuable option to the policyholder and allows for a limited but constrained degree of anti-selection (e.g., in the event of an adverse health diagnosis). Any additional form of nonforfeiture, either cash or in-kind, increases the risk of anti-selection to the company, the cost of which will be passed through to the consumer.
- Although an in-kind nonforfeiture benefit would avoid the “run on the bank” risk created by a cash benefit, it would require an insurer to assume an alternative and possibly undesired risk profile that is inconsistent with the benefits provided in the CDA (e.g, a DIA would like involve greater interest rate risk).

- The risk to consumers is limited due to the fact that, with a CDA (or variable annuity with guaranteed living benefits), the maximum fee structure is clearly known and disclosed.
- The experience with variable annuity with guaranteed living benefits (VAGLBs) suggests that nonforfeiture on guaranteed living benefits, like CDAs, is not demanded by consumers, nor is there evidence that the absence of nonforfeiture on VAGLBs has resulted in consumer harm.

Thank you in advance for your consideration of our comments.

Sincerely,



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May 13, 2015

Mr. Mike Boerner  
Chairman – NAIC Life Actuarial Task Force

Re Exposed edits to Model #805 – SNFL-DA

Dear Mike;

The ACLI<sup>1</sup> is pleased to submit the following comments on behalf of our member companies regarding the exposed edits to Model #805 to clarify that CDA contracts are not in the scope of this model.

We agree that the nonforfeiture requirements for fixed deferred annuities cannot be applied to CDA products and those products should be excluded from the requirements of this model. The proposed paragraph 2.B. accomplishes this exemption, but could also be more simply done by including CDA products in the current main paragraph as a product outside of the scope of this model. That paragraph could then read:

#### **Section 2. Applicability**

This Act shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, ~~or~~ reversionary annuity, or contingent deferred annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.

Paragraph B can then be eliminated.

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<sup>1</sup> The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with 284 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums. Learn more at [www.acli.com](http://www.acli.com).



We object to the inclusion of the recommended paragraph 2.C. NAIC models are intended and designed to promote uniform regulation. A model inviting commissioners to act independently and to potentially impose independently developed standards, notwithstanding the drafting note, is contrary to that purpose.

A reason given for this additional paragraph is that the issue of NF values on these products has not been fully resolved. We have previously provided comments (attached) to the NAIC Contingent Deferred Annuity (A) Working Group as to why required nonforfeiture benefits are not appropriate for these products. The following is a summary list of reasons that required nonforfeiture values are not appropriate for CDA products:

- A CDA is a protection benefit added to a savings vehicle. If the consumer “turns off” a CDA, the underlying savings vehicle remains intact and in the consumer’s control.
- The ability to “turn off” the CDA already provides a valuable option to the policyholder and allows for a limited but constrained degree of anti-selection (e.g. in the event of an adverse health diagnosis). Any additional form of nonforfeiture, either cash or in-kind, increases the risk of anti-selection to the company, the cost of which will be passed through to the consumer.
- Although an in-kind nonforfeiture benefit would avoid the “run on the bank” risk created by a cash benefit, it would require an insurer to assume an alternative and possibly undesired risk profile (e.g. a DIA would likely involve greater interest rate risk).
- The risk to consumers is limited due to the fact that, with a CDA (or VAGLB), the maximum fee structure is clearly known and disclosed. In many instances the consumer has the opportunity to “opt out” of a higher fee by rejecting a step-up in the notional amount.
- The experience with VAGLBs suggests that a nonforfeiture on CDA-type benefits is not demanded by consumers, nor is there evidence that the absence of nonforfeiture on VAGLBs has resulted in consumer harm.

While we don’t think requiring nonforfeiture values is appropriate for CDAs, we do believe contracts should provide some protections for consumers in situations where the contracts are potentially terminated outside of the consumer’s control. We have proposed cancellation provision options that the industry is willing to include in future CDA designs that would offer one or more benefits in situations where a CDA may be terminated outside the consumer’s control. Such a provision can be addressed outside of the nonforfeiture statute.

We will be glad to answer any questions and to work with you to update the Model Law.



cc Reggie Mazyck, NAIC



**John Bruins**  
Vice President & Senior Actuary

**Kelly Ireland**  
Senior Counsel, Insurance Regulation

September 30, 2014

National Association of Insurance Commissioners  
Commissioner Ted Nickel, Chair  
NAIC Contingent Deferred Annuities (A) Working Group  
1100 Walnut Street, Suite 1500  
Kansas City, MO 64106-2197

Attn: Jennifer Cook  
Health and Life Policy Counsel  
Via e-mail: [jcook@naic.org](mailto:jcook@naic.org)

Re: Nonforfeiture Benefits for Contingent Deferred Annuities (CDAs)

Dear Commissioner Nickel:

The American Council of Life Insurers (ACLI)<sup>2</sup> appreciates the opportunity to comment on the questions raised at the August meeting about whether there should be required nonforfeiture values for CDA contracts.

**Public Policy Question: should CDA's have required minimum nonforfeiture benefits?**

The suggested requirement of minimum nonforfeiture requirements on CDAs raises several important public policy issues and concerns, including:

1. **Compromise of risk pooling.** CDAs provide longevity risk protection. The pooling of longevity risk provides clear public benefit, as individuals with shorter lifespans effectively fund the incomes of those with longer lifespans. Minimum nonforfeiture requirements, however, would encourage anti-selection: a customer who receives a health diagnosis with negative mortality implications would have a much greater incentive to surrender in order to minimize the funding of those with longer lifespans. This would fundamentally compromise the pooling mechanism that is fundamental to insurance.
2. **Increase in cost to consumers.** The decline of defined benefit pension plans and increased longevity have created a clear public policy need for affordable vehicles that allow a pool of assets to be converted into reliable lifetime income. Every benefit, however, has a cost. The

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<sup>2</sup>The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States. ACLI advocates in federal, state and international forums. Its members represent more than 90 percent of the assets and premiums of the U.S. life insurance and annuity industry. In addition to life insurance, annuities and other workplace and individual retirement plans, ACLI members offer long-term care and disability income insurance, and reinsurance. Its public website can be accessed at [www.acli.com](http://www.acli.com).

existence of a nonforfeiture benefit on CDAs would increase the cost of longevity risk protection which would, in turn, provide a disincentive for consumers to purchase the product.

3. **Potential arbitrage opportunities against the insurer.** Traditional nonforfeiture requirements are based on providing a minimum book value. If a minimum book value concept were applied to nonforfeiture requirements on CDAs, however, insurer solvency could be compromised. In particular, in situations when guarantees are not deeply “in the money” (i.e. the benefit base is near the value of the covered investments), a “book value” nonforfeiture benefit could create situations where a consumer could achieve economic arbitrage—at the expense of the insurer—by surrendering the CDA and using the proceeds to fund an alternative investment. This would be counter to the interests of both insurers and insurance regulators.
4. **Potential “run on the bank” scenarios.** While the use of market-based nonforfeiture benefits could address some of the challenges with book value-based requirements, they would create other concerns. In particular, they could lead to a “run on the bank” scenario when markets are down. Consider if variable annuity customers with guaranteed income benefits had market based cash values available during the market crash of 2008 – there could have been large surrender activity and a resulting increase in solvency concerns for insurers and potentially systemic risk implications for the broader economy. The 2008 crisis demonstrated that the *absence* of nonforfeiture benefits on guaranteed income benefits provides a stabilizing influence on insurers and the broader economy.
5. **Applicability.** The Model law exempts other annuities which emphasize payout streams over lifetime similar to those offered through CDAs, such as variable annuities (including those offering GLWBs), immediate annuities and deferred annuities after annuity payments have commenced. It would seem inappropriate to inconsistently apply nonforfeiture requirements across products that are providing similar longevity risk protection to consumers.

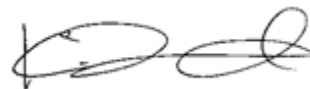
Based on the aforementioned concerns, we suggest that it would be counter to sound public policy and to the interests of consumers, regulators, and insurers to require minimum nonforfeiture benefits on CDAs. Nor is it clear that such benefits are actually desired by consumers, based on the industry’s experience with variable annuities that have lifetime withdrawal benefit riders. If market preferences shift to demand such benefits, competitive and creative forces will create an incentive for companies to provide them within their risk tolerances, even in the absence of a required regulatory minimum.

In February 2014, pursuant to its charges from the NAIC Life and Annuities Committee to specifically exclude CDAs from the scope of the Standard Nonforfeiture Law, the Life Actuarial Task Force exposed revisions to the Model to clarify the exemption of CDAs from the minimum requirements of the current law. We encourage the Working Group to support this revision and its formal adoption by the NAIC.

Sincerely,



John Bruins  
Vice President & Senior Actuary  
Regulation



Kelly Ireland  
Senior Counsel, Insurance

Cc: Richard Wicka, Deputy Chief Legal Counsel, Wisconsin Office of the Commissioner of Insurance

Tomasz Serbinowski, Actuary, Utah Insurance Department  
Jennifer Cook, Health & Life Policy Counsel, NAIC