LIFE INSURANCE AND ANNUITIES (A) COMMITTEE

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Draft Pending Adoption

Date: 8/8/19

Life Insurance and Annuities (A) Committee
New York, New York
August 4, 2019

The Life Insurance and Annuities (A) Committee met in New York, NY, Aug. 4, 2019. The following Committee members participated: Doug Ommen, Chair, and Mike Yanacheak (IA); Stephen C. Taylor, Vice Chair (DC); Jim L. Ridling (AL); Keith Schraad represented by Erin Klug (AZ); Trinidad Navarro represented by Fleur McKendell (DE); Dean L. Cameron (ID); James J. Donelon represented by Frank Opelka and Rich Piazza (LA); Jon Godfread (ND); Bruce R. Ramge (NE); Barbara D. Richardson (NV); Linda A. Lacewell represented by James Regalbuto (NY); Jillian Froment (OH); Carter Lawrence represented by Lorrie Brouse and Brian Hoffmeister (TN); and Mark Afable represented by Richard Wicka (WI). Also participating were: Perry Kupferman and Jodi Lerner (CA); Paula Keen (MD); Mary Mealer (MO); Johnny Palsgraaf (ND); Matt Gendron and Sarah Neil (RI); Mike Boerner and Doug Slape (TX).

1. Adopted its July 10 Minutes

Commissioner Taylor made a motion, seconded by Commissioner Ridling, to adopt the Committee’s July 10 minutes (Attachment One). The motion passed unanimously.

2. Adopted the Reports of its Working Groups and Task Force

a. Annuity Disclosure (A) Working Group

Mr. Yanacheak explained that the Annuity Disclosure (A) Working Group has continued to try to reach consensus on revisions to the Annuity Disclosure Model Regulation (#245) to allow for the illustration of indices that have been in existence for less than 10 years, which is currently prohibited under Model #245. He said the Working Group met four times since the last national meeting: July 29, July 15, June 5 and May 13. He said the Working Group has debated and discussed several versions of draft revisions to Model #245, and it heard comments from interested parties on each draft. He pointed out that the Working Group made significant progress on its most recent calls—distilling its list of outstanding issues to five and voting to resolve three of those issues. He explained that, at this point, two of the five previously identified issues remain, one of which may require some additional drafting before it can be resolved.

Mr. Yanacheak said the Working Group is close to having draft revisions for the Committee to consider. He said revisions to this model are important, given that the existing model, which prohibits illustrations for indices that have been in existence for fewer than 10 years, has only been adopted in a handful of states, which means that the model is not working as intended—there are no limits on illustrations in those states that have not adopted the updated model. He said because the Working Group is so close to finishing its work and providing a model that allows, within limits, the illustration of indices that have been in existence for at least 15 years, he asked the Committee for an extension of the Request for NAIC Model Law Development.

Commissioner Ridling made a motion, seconded by Director Froment, to adopt the report of the Annuity Disclosure (A) Working Group, including its June 5 minutes (Attachment Two), May 13 minutes (Attachment Three), and an extension of the Request for NAIC Model Law Development for Model #245. The motion passed unanimously.

b. Annuity Suitability (A) Working Group

Director Froment said the Annuity Suitability (A) Working Group met on Aug. 3 to continue its discussions of “parking lot issues,” or issues that were identified and set aside for later discussion during the Working Group’s June meeting in Columbus, OH. She said the Working Group settled a few more of those issues and decided on next steps. She said the Working Group intends to form a technical drafting group to work on developing a draft of revisions to the Suitability in Annuity Transactions Model Regulation (#275) based on the framework, including its guardrails and principles, which were developed in the Working Group’s discussions in Columbus, OH; its July conference calls; and its Aug. 3 meeting. She said the technical drafting group hopes to meet in late August or early September. She said once the technical drafting group completes its draft, the Working Group will set a public comment period to receive comments. The Working Group plans to set a regular day and time to begin holding weekly conference calls beginning in early October through November to discuss the comments received. The Working Group’s goal is to present a draft to the Committee for its consideration prior to or at the Fall National Meeting.
Director Froment made a motion, seconded by Commissioner Taylor, to adopt the report of the Annuity Suitability (A) Working Group (Attachment Four). The motion passed unanimously.

c. Life Insurance Illustration Issues (A) Working Group

Mr. Wicka said the Life Insurance Illustration Issues (A) Working Group met twice via conference call since the Spring National Meeting on July 30 and May 15. He said the Working Group discussed a couple versions of draft revisions to the *Life Insurance Disclosure Model Regulation* (#580) requiring a policy overview document to be distributed along with the Life Insurance Buyer’s Guide (Buyer’s Guide) and all life insurance policies to achieve its charge of improving the understandability of the life insurance policy summaries already required in Section 7B of the *Life Insurance Illustrations Model Regulation* (#582) and Section 5A(2) of Model #580. He said the policy overview is intended to be a short, consumer-friendly disclosure that describes the basic features of a life insurance policy. The revisions will also include a sample overview that insurers can use, but they are not required to use it. Mr. Wicka said the Working Group made significant progress during its July 30 conference call when it was able to take some votes to resolve a couple key outstanding issues. He said the Working Group has a call scheduled for Sept. 3 to continue its discussions.

Mr. Wicka explained that the Working Group’s charge is to “[e]xploring how the narrative summary required by Section 7B of Model #582 and the policy summary required by Section 5A(2) of Model #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.” He said the issue of access—how consumers get the policy overview document—has been raised at the Working Group level, and it has prompted serious discussion by the Working Group and interested parties. He said the current draft revisions to Model #580 tie delivery of the policy overview document to delivery of the Buyer’s Guide. He said the existing model requires delivery of the Buyer’s Guide prior to accepting premium, unless the policy contains a 10-day “free look” period, in which case the Buyer’s Guide may be delivered with the policy. Working Group members and interested parties have raised issues as to whether that timing works—i.e., at the time of policy delivery—to fulfill the charge of improving the function of the summaries currently required under the model, especially in light of innovations in electronic delivery and how life insurance is sold. Mr. Wicka said there are practicality questions and a cost/benefit analysis to be undertaken in light of the fact that any change would be a significant deviation from current practices. For this reason, the life insurance industry has indicated opposition to any changes.

Mr. Wicka said his hope is that the Working Group will be able to thoroughly explore this issue and bring a consensus recommendation to the Committee regarding delivery requirements for the policy overview document. He said because changing delivery requirements may affect the delivery of other disclosures, such as the Buyer’s Guide, the Working Group may recommend that the issue of delivery timing requirements be explored in depth by the Committee or a Working Group designed for this purpose. He said the Working Group planned to keep a rigorous schedule of conference calls in order to have a draft for the Committee to consider by the end of the year; as a result, he requested an extension of the Request for NAIC Model Law Development.

Mr. Wicka made a motion, seconded by Commissioner Taylor, to accept the report of the Life Insurance Illustration Issues (A) Working Group, including its May 15 minutes (Attachment Five) and an extension of the Request for Model Law Development. The motion passed unanimously.

d. Life Insurance Online Guide (A) Working Group

Ms. Mealer said the Life Insurance Online Guide (A) Working Group met via conference call on July 24, July 10 and June 8. She said the Working Group continues to make progress on its charge to “[d]evelop an online resource on life insurance, including the evaluation of existing content on the NAIC website, to be published digitally for the benefit of the public.” She said the Working Group heard a presentation from the NAIC Communications Director about future plans to streamline and update the NAIC website and the opportunity to coordinate with the Working Group on its work. She said the Working Group discussed draft language submitted by state insurance regulator and industry volunteers, and it reviewed revision suggestions provided by NAIC funded consumer representatives. She said the Working Group plans to continue to meet via conference call following the Summer National Meeting and keep a rigorous schedule of meetings in order to achieve its charge by the end of the year.

Director Ramge made a motion, seconded by Mr. Hoffmeister, to adopt the report of the Life Insurance Online Guide (A) Working Group, including its July 24 (Attachment Six), July 10 (Attachment Seven) and June 8 (Attachment Eight) minutes. The motion passed unanimously.
Birny Birnbaum (Center for Economic Justice—CEJ) said the work of the various groups under the Committee are critical to the overall goal of retirement security—to preserve and enhance consumer assets for lifetime income and well-being. He pointed out that two work streams under the Committee are taking opposite approaches. He said the IUL Illustration (A) Subgroup under the Life Actuarial (A) Task Force has taken an approach to Actuarial Guideline XLIX—The Application of the Life Illustrations Model Regulation to Policies with Index-Based Interest (AG 49) to prohibit the illustration of exotic indices, while the Annuity Disclosure (A) Working Group is allowing the illustration of certain indices with the disclosure of volatility risk. He said the Committee needs to take a broader look at the activities of all its groups to ensure that there is a consistency in approach for the benefit of consumers.

Mr. Birnbaum said the Life Insurance Illustration Issues (A) Working Group has developed a policy overview document, designed to aid consumers in choosing the best product to meet their needs. He said the current requirement provides that delivery of the policy overview and a Buyer’s Guide can be as late as delivery of the policy, which contradicts the purpose of Model #580. He questioned the reasonableness of allowing the delivery of a shopping tool after a policy has been bought. He suggested that it is possible that this made sense years ago, but it no longer makes sense given modern methods of selling life insurance and the electronic delivery of documents.

3. **Adopted the Report of Life Actuarial (A) Task Force**

Mr. Boerner said the Life Actuarial (A) Task Force met Aug. 1–2 to adopt the minutes of 17 conference calls since the Spring National Meeting. He said on July 16 there was a joint call of the Task Force and the Life Risk-Based Capital (E) Working Group to discuss next steps on the economic scenario generators (ESGs) that are used in both reserve and capital requirements. He said the result of this call was to begin the process to update/replace the current ESGs, given the American Academy of Actuaries’ (Academy) communication that they are no longer able to maintain these generators, given the need for additional improvements. He said this will involve development of a request for proposals (RFP), which the Task Force will work with NAIC support staff and subject matter experts (SMEs) to draft. He said he will keep the Committee apprised of the status on this. He said some actions taken during the other 16 calls included the significant adoption of amendments to implement the Variable Annuity (VA) Framework. He said while these requirements apply to in-force variable annuity business beginning Jan. 1, 2020, the requirements also allow for early adoption of these requirements, which may be applied beginning this year-end.

Mr. Boerner said other actions in these Task Force calls included principle-based reserving (PBR) reporting and valuation requirements/clarifications, which primarily came from the Valuation Analysis (E) Working Group review process, but they also came from other stakeholders, including the American Council of Life Insurers (ACLI) and the Academy. He said one of these amendments is an interim solution for the yearly renewable term (YRT) reinsurance issue to align the credit for this to be in line with the more traditional YRT reinsurance credit until a permanent solution is developed. He said the Academy is currently working on the permanent solution and involving stakeholders, including the ACLI, industry members, and state insurance regulators. He said there are a total of 65 Valuation Manual amendments from these Task Force calls, which the Committee adopted during its July 10 call. He said these Valuation Manual amendments will be considered for adoption by the Executive (EX) Committee and Plenary during the Summer National Meeting. He said during the Task Force’s Aug. 1–2 meeting, it exposed for comment the 2020 Generally Recognized Expense Tables (GRET) that were developed by the Society of Actuaries (SOA). He explained that this is an annual process to update these tables, which are then used in life illustrations. Mr. Boerner said the Task Force also adopted the report of the VM-22 (A) Subgroup. He said this Subgroup is looking to develop PBR for non-variable annuities. He said the Subgroup, along with the Academy Annuity Reserve Working Group, is targeting an ambitious time frame to have these requirements developed and tested for possible implementation by Jan. 1, 2022.

Mr. Boerner said other Subgroup reports were also discussed and adopted by the Task Force, including the IUL Illustration (A) Subgroup report. He said at the Aug. 1–2 meeting, there was a robust discussion regarding comments, possible direction, and next steps regarding indexed universal life (IUL) illustration concerns related to what are referred to as interest multipliers. He said Fred Andersen (MN) chairs this Subgroup, and Mr. Andersen led the discussion, which resulted in an exposure for comment on two key questions. Mr. Andersen plans to discuss the comments on these two key questions to see if a direction can then be set for appropriate edits to AG 49.

Mr. Boerner said the Task Force also heard an update from the Academy Life Experience Committee and the SOA Preferred Mortality Oversight Group (Joint Committee) regarding accelerated underwriting data elements that could be considered for the required data reporting in VM-51, Experience Reporting Formats. He said the Task Force exposed an amendment to do this...
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for a 60-day public comment period. He said the Task Force also adopted a purely informational actuarial guideline that informs stakeholders of the ability, pursuant to the VA Framework amendments discussed earlier, to early adopt these requirements for this year-end. He said this actuarial guideline will be provided to the Committee for consideration prior to the Fall National Meeting.

Mr. Boerner said the Task Force heard a number of other reports, which included one from the Academy Life Reserves Work Group for *Valuation Manual* treatment of conversion mortality. He said considerations include any additional risk and appropriate PBR application when one form of coverage is converted to another, such as converting to a permanent form of individual coverage from a group life chassis. He said the discussion involved potential *Valuation Manual* treatment, PBR documentation, and possible VM-50, Experience Reporting Requirements, and VM-51 changes related to mortality experience reporting. He said the Academy Life Reserves Work Group will be submitting an amendment for future Task Force consideration.

Mr. Boerner said the Academy PBR Governance Work Group announced that it is working to put together an Academy PBR Boot Camp at the end of the Fall National Meeting. He explained that the timing of this boot camp is to help both state insurance regulators and companies prepare for the required Jan. 1, 2020, start date of PBR. He said there is also consideration of including topics related to the new VA Framework.

Director Froment made a motion, seconded by Director Cameron, to adopt the report of the Life Actuarial (A) Task Force. The motion passed unanimously.

4. **Discussed the Retirement Security Initiative Draft Work Plan**

Commissioner Taylor reminded the Committee of the charge to “[e]xplore ways to promote retirement security consistent with the NAIC’s continuing ‘Retirement Security Initiative.’” He said the NAIC Retirement Security Initiative focuses on three major areas: education, consumer protection and innovation. He described to the Committee a draft work plan that identifies potential deliverables in these three areas. He said he would like the Committee to appoint a Working Group to work on implementing this charge. He said he would chair the Working Group, and he has already heard from several states (Alaska, Idaho, Iowa, Rhode Island and Texas) that would like to participate. He explained that his draft work plan identifies a number of key projects:

a. **White Paper**

Commissioner Taylor said a white paper could be drafted to describe the challenges facing many Americans in having a secure and dignified retirement due to changes and challenges to America’s retirement system, including challenges facing workers and retirees. This focus illustrates the retirement security crisis and the need for action.

b. **Review and Revise State Laws**

Commissioner Taylor suggested having NAIC staff inventory state laws that protect consumers in retirement-related transactions to identify places where new laws or amendments could enhance consumer protection in connection with the sale of retirement-related insurance products.

c. **Public Campaign**

Commissioner Taylor suggested that a public media campaign be developed to emphasize the importance of retirement security and the need for individuals to take more responsibility for their retirement.

d. **Retirement Security Curriculum**

Commissioner Taylor suggested creating a curriculum to provide financial literacy education on retirement security and the need for Americans to have an individual retirement plan. He suggested developing curriculum targeting various audiences, including students in elementary school, middle school, high school and college. He suggested that another audience is workers, and the curriculum should target topics such as enrolling, savings, not borrowing, managing investments, strategies to address changes in employment, independent contractor status, options for management, and options regarding troubled defined benefit plans. He suggested that another curriculum could be for employers, focused on using automated mechanisms to increase participation; providing useful plan information; providing flexibility regarding vesting; providing portability; and providing valuable options upon retirement, such as life income replacement options. He also suggested developing a curriculum for
retirees to focus on educating post retirement employees; explaining taking a lump sum; long-term care (LTC); and the availability of federal, state and local retiree support programs. He said any curriculum should include a template for people to create an individual retirement plan, as well as tools and materials to explore, set and measure goals for retirement. He said the program should show the impact of plan options, such as taking loans from retirement without repayment, rolling a pension into an individual retirement account (IRA), and senior needs planning.

e. CE Requirement
Commissioner Taylor suggested developing a continuing education (CE) component requirement for producers that includes needs analysis and suitability, including a draft of 30 new exam questions.

f. Innovation Forum
Commissioner Taylor suggested facilitating a forum for the industry to discuss new products, identify regulatory obstacles, and provide a mechanism for continuous dialogue.

g. Antifraud
Commissioner Taylor suggested developing an antifraud and abuse program to report and remedy fraud and abuse in retirement planning, advice and products.

h. Investigate a Partnership with the Compact
Commissioner Taylor suggested looking into partnering with the Interstate Insurance Product Regulation Commissioner (Compact) for the purpose of developing new lifetime income products.

i. National Dialogue on Retirement Security
Commissioner Taylor suggested convening a national dialogue on retirement security to bring together experts in retirement, pension, financial services, retirement services, and government technology sectors to discuss retirement security; challenges to the U.S. retirement system; challenges facing American workers and retirees; and possible solutions from state and local government, employers, workers and retirees on the financial services industry and technology.

Commissioner Taylor made a motion, seconded by Director Ramge, to appoint a Working Group to implement the Committee’s charge on retirement security. The motion passed unanimously.

Commissioner Ommen commended Commissioner Taylor on putting together a very comprehensive catalog of ideas addressing many critical issues, and he looked forward to the Working Group getting together to consider and further refine Commissioner Taylor’s draft work plan.

Mr. Regalbuto spoke in support of the new Working Group and offered to participate. He said there has been great innovation in retirement income products, but sometimes there is a disconnect between the design of a product and the people who purchase it.

5. Heard Presentation from the IRI on Retirement Security
Jason Berkowitz (Insured Retirement Institute—IRI) gave a presentation on retirement security. He said the IRI wants to continue to support the NAIC in its Retirement Security Initiative, and he offered the IRI’s assistance to Commissioner Taylor as the new Working Group moves forward. He said the IRI’s recent research findings support the critical need to promote retirement security.

Mr. Berkowitz shared some statistics, identifying two critical deficiencies in how well American workers are prepared to enter and live in a retirement. He said first, 40–50% of American workers have no retirement savings at all. Second, he said most of those who do have some retirement savings do not have enough saved and do not have a plan for how they will convert their savings to income in a way that will ensure that they will not run out of money at an advanced age. He said these deficiencies mean the vast majority of Americans will have to rely on Social Security, pensions, and full or part-time work to fund their retirement; and none of these are particularly reliable as sources of retirement income.
Mr. Berkowitz said research by the IRI and its member firms on the retirement preparedness of baby boomers, GenXers and millennials indicates that Americans need more opportunity, education and assistance to enable them to save enough for retirement. He said the IRI’s research findings highlight how concerned Americans should be about the lack of retirement preparedness. He said baby boomers have saved a median of $152,000 for retirement, GenXers just $66,000, and millennials $23,000. He said while millennials have time on their side, even the youngest boomers will be 65 in less than a decade, and $152,000 will not create much annual income over a 20 or 30-year time horizon. He said 45% of boomers have no retirement savings at all, while one in five used to have savings but exhausted their nest eggs before or during retirement. He said compounding this problem, nine in 10 boomers have no clear plan for their retirement accounts, and they will instead take a haphazard approach to using their savings. He said 40% will simply withdraw money whenever they need it to cover basic expenses like housing, food and utilities; 30% will take withdrawals for leisure and lifestyle or emergencies; 20% do not know how they will use their savings; and only 6% plan to use a portion of their savings to purchase an annuity or use some type of lifetime income approach. He said the IRI attributes this, at least in part, to a lack of understanding about how much it costs to live in retirement. He said almost half of boomers believe they will need retirement income of less than $35,000 a year in today’s dollars, but the Bureau of Labor Statistics data shows average spending of $46,000 a year between ages 65 and 74. He said without planning and with only a vague notion of what their expenses will be in retirement, it is not surprising that only one in five boomers believe their savings will last throughout retirement, that they will be able to pay for health care, and that they will be able to remain independent.

Mr. Berkowitz said the industry, state insurance regulators, policymakers, and consumer advocacy groups need to work together to provide people with the tools they need to achieve their goals. He said IRI research shows that working with a financial professional and owning an annuity are strong predictors of retirement readiness and confidence. He said boomers with financial advisors and those who own annuities are two to three times more likely to believe they did an effective job planning and that their income will last throughout retirement. He said seven in 10 boomers with advisors and six in 10 annuity owners feel either “excited and confident” or “happy and cautiously optimistic” about retirement. He said boomers with advisors are three times more likely, and annuity owners more than twice as likely, as those who do not have advisors or own annuities to believe they will more secure in retirement than the average American. He said the three elements of the NAIC’s retirement security initiative—education, innovation and consumer protection—align well with these findings.

Mr. Berkowitz said there needs to be an effort to help more people understand what they want and need in retirement, the risks and challenges they will encounter on the road to retirement and once they arrive, and how to manage or overcome those risks and challenges. He said if half as much time and energy was spent working together to educate consumers as is spent wordsmithing regulations and debating legal nuances and technicalities, we could make a real difference for many people.

Mr. Berkowitz also said the industry needs to listen to consumers and develop products designed to address or advance their retirement goals. He said state insurance regulators and consumer groups have an important responsibility to serve as a check on industry efforts to innovate, ensuring that new products do not expose consumers to undue risks. He also said this responsibility must be exercised with great care—if the goal is to eliminate all risk, consumers will be deprived of access to valuable and beneficial products.

Mr. Berkowitz said there is an obligation to protect consumers against bad actors. He said the IRI and its members take this very seriously, but they recognize that the vast majority of financial professionals always work in their clients’ best interest. He said even the best and strongest rules cannot prevent all consumer harm. He said holding producers to overly burdensome rules will ultimately drive good people out of the business and increase the chances that consumers will seek assistance from unscrupulous and untrustworthy individuals.

Mr. Berkowitz said annuities and guaranteed lifetime income solutions, while not appropriate for every financial situation, are an important tool to help workers develop a disciplined approach to creating income from savings that will last as long as they do. He said by ensuring that consumers have access to a wide variety of annuities and lifetime income solutions, and trustworthy professional guidance about when and how to use them, great strides can be achieved towards a world in which a secure and dignified retirement is attainable for all Americans.

6. **Discussed a Referral from the Big Data (EX) Working Group**

Commissioner Ommen said the Big Data (EX) Working Group discussed the use of data models in accelerated life insurance underwriting, instead of medical examinations and the collection of fluids. He referred to the minutes of the Big Data (EX) Working Group at the Spring National Meeting when it voted to refer the issue of the use of external data and data analytics in accelerated underwriting to the Committee (see [NAIC Proceedings – Spring 2019, Innovation and Technology (EX) Task Force, Attachment Two](https://www.naic.org/proceedings/spring2019/)).
Mr. Regalbuto said the data used in accelerated underwriting is provided by external vendors and data reporting agencies that are not regulated entities, and insurers are not aware of what these vendors are doing. He said New York requires that consumers receive notification when they are entered into these accelerated underwriting programs, and again when they are removed.

Commissioner Godfread said the issue of using external data and data analytics in underwriting goes beyond just life and health products, and it involves other insurance products and may implicate privacy issues. Commissioner Ommen agreed that the issues involved are broad, and it is important that these larger issues are not lost.

Director Ramge made a motion, seconded by Commissioner Taylor, to appoint the following Working Group and charge under the Committee:

The Accelerated Underwriting (A) Working Group will:

a. Consider the use of external data and data analytics in accelerated life underwriting, including consideration of the ongoing work of the Life Actuarial (A) Task Force on the issue and, if appropriate, drafting guidance for the states.

The motion passed unanimously. Commissioner Ommen said Director Robert H. Muriel (IL) has agreed to chair the new Working Group. He said other state insurance regulators interested in being on the Working Group should contact Jennifer R. Cook (NAIC).

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

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The Life Insurance and Annuities (A) Committee met via conference call July 10, 2019. The following Committee members participated: Doug Ommen, Chair, Lindsay Bates and Mike Yanacheak (IA); Stephen C. Taylor, Vice Chair, and Philip Barlow (DC); Jim L. Ridling (AL); Keith Schraad represented by Vincent Gosz (AZ); Dean L. Cameron (ID); Bruce R. Ramge represented by Matt Holman (NE); Barbara D. Richardson (NV); Linda A. Lacewell represented by Bill Carmello and James Regalbuto (NY); Jillian Froment and Peter Weber (OH); Carter Lawrence represented by Brian Hoffmeister and Michael Humphreys (TN); and Mark Afable, Jerry DeArmond and Eric Holz (WI). Also participating were: Rachel Hemphill and Perry Kupferman (CA); David Altmaier and Chris Struk (FL); Julie Holmes (KS); Fred Andersen (MN); Mary Mealer (MO); Denise Lamy (NH); Bogdanka Kurahovic (NM); Elizabeth Kelleher Dwyer, Matt Gendron and Sarah Neil (RI); Mike Boerner (TX); Tomasz Serbinowski (UT); and David Hippen (WA).

1. **Adopted its Spring National Meeting Minutes**

Director Froment made a motion, seconded by Commissioner Afable, to adopt the Committee’s April 7 minutes (see NAIC Proceedings – Spring 2019, Life Insurance and Annuities (A) Committee). The motion passed unanimously.

2. **Adopted Valuation Manual Amendments**

Commissioner Ommen explained that there are 65 separate Valuation Manual amendments for consideration by the Committee representing the significant work of several subgroups under the Life Actuarial (A) Task Force. Mr. Boerner gave a brief overview of the summary of the amendments. He explained that several of the amendments provide the reserve details for the Variable Annuities Framework. He said many other amendments come out of the Valuation Analysis (E) Working Group analysis of principle-based reserving (PBR) reports and improve the reporting and clarity of PBR requirements in the Valuation Manual. Another significant portion of the amendments helps prepare the Valuation Manual for 2020, which is the required start of PBR for companies that have not yet elected to implement PBR. He said that will be approximately 270 companies compared to the 30 that have implemented so far.

Ms. Ahrens said Nebraska, while supportive of the package of amendments, did raise concerns during deliberations with the Life Actuarial (A) Task Force. She said Nebraska considers one amendment in the package to be a non-PBR interim solution. She said that as PBR goes forward, it needs to be responsive to innovation and the ongoing competitiveness of the insurance environment, which can stimulate availability of products, as well as fair and reasonable pricing to the insureds. She said Nebraska prefers PBR solutions in the Valuation Manual, but to the extent that amendments are adopted that provide a more conservative temporary solution, they need to be addressed going forward to ensure that a long-term solution is developed in the spirit of PBR.

Mr. Carmello said New York also voted against one of amendments at the Task Force level because it prefers a more conservative approach, which New York will likely take. However, he confirmed that New York will vote in favor of the package as a whole.

Commissioner Ridling made a motion, seconded by Director Froment, to adopt the Valuation Manual amendments (see NAIC Proceedings – Summer 2019, Executive and Plenary Committee – Attachment Nine). The motion passed unanimously.

3. **Adopted an Amendment to AG 43**

Mr. Boerner said this amendment to Actuarial Guideline XLIII—CARVM for Variable Annuities (AG 43) applies to the Variable Annuities Framework reserve requirements to products issued prior to Jan. 1, 2017. He said the Valuation Manual amendments just adopted by the Committee handle the reserve requirements for the Variable Annuities Framework for products issued on and after Jan. 1, 2017. This amendment will synchronize the reserve requirements with in-force business.

Mr. Holman made a motion, seconded by Commissioner Ridling, to adopt the amendment to AG 43 (see NAIC Proceedings – Summer 2019, Executive and Plenary Committee – Attachment Ten) Alabama, Arizona, the District of Columbia, Idaho, Nebraska, Ohio, Tennessee and Wisconsin voted in favor of the motion. New York opposed the motion. The motion passed.
4. Discussed Upcoming Life Actuarial (A) Task Force Issues

Mr. Boerner apprised the Committee of two additional items. He said there is another actuarial guideline that the Life Actuarial (A) Task Force will be considering at the Summer National Meeting related to the Variable Annuities Framework for both reserves and capital. He said the amendment informs companies of the existing option to adopt the variable annuity reserve and capital requirements early for year-end 2019. This amendment will be coming to the Life Insurance and Annuities (A) Committee after the Summer National Meeting.

Mr. Boerner also said that the Life Actuarial (A) Task Force will be submitting a request to the Statutory Accounting Principles (E) Working Group to work with the Task Force to coordinate efforts to determine what revisions to reserving and accounting requirements might be necessary to address the yearly renewable term (YRT) reinsurance reserve credit issue for which Valuation Manual amendment proposal 2019-39 provides an interim solution. Mr. Boerner said he will update the Committee on this issue at the Summer National Meeting.

Having no further business, the Life Insurance and Annuities (A) Committee adjourned.
The Annuity Disclosure (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call June 5, 2019. The following Working Group members participated: Mike Yanacheak, Chair (IA); Chris Struk (FL); Craig Van Aalst and Tate Flott (KS); Nour Benchaaboun (MD); John Robinson (MN); Cuc Nguyen (OK); Matt Gendron and Raymond Santilli (RI); and John Carter (TX). Also participating were: Jason Lapham (CO); William Leung (MO); Robert E. Harkins (NE); Denise Lamy (NH); Doug Danzeiser (TX); and David Hippen (WA).

1. **Discussed Comments on March 7 Draft Revisions to Model #245**

Mr. Yanacheak reminded the Working Group that the purpose of the conference call is to continue the discussion of the draft revisions to the *Annuity Disclosure Model Regulation (#245)* dated March 7 (see NAIC Proceedings – Summer 2019, Life Insurance and Annuities (A) Committee, Attachment Three-A). Comments were discussed during the Working Group’s last call on May 13, and additional comments were submitted and posted on the Working Group’s web page for discussion during this conference call.

   a. **Discussed ACLI Comment Letter**

Robbie Meyer (American Council of Life Insurers—ACLI) said the ACLI submitted comments along with suggested language to implement their comments. She said the ACLI appreciates the Working Group’s efforts to allow illustrations that reflect innovation and enhance understanding. She said the ACLI supports consistent regulation state-to-state and hopes that it can continue to support state adoption of the model. She said the ACLI comment letter is a compromise proposal, outlines the ACLI’s concerns, and proposes some solutions.

   i. **Section 6F(9)(b)**

   The ACLI is concerned with the prohibition of the illustration of indices that have not been in existence for at least 20 calendar years, unless all the criteria in Sections 6F(9)(b) are met. This requirement would jeopardize the illustration of many fixed indexed annuities currently in the marketplace and, most importantly, limit consumers’ understanding of these products. The ACLI recommends modifying Section 6F(9)(b) to include a 15-year time period as follows:

   (b) If any index utilized in determination of an account value has not been in existence for at least fifteen (15) calendar years, indexed returns for that index shall not be illustrated unless all of the following criteria are met.

   ii. **Section 6F(9)(b)(i)**

   The ACLI is concerned with the use of the term “indices” rather than “components” in Section 6F(9)(b)(i). The ACLI is concerned that the term “indices” as used in this provision is too narrow, and it would not include many components of existing fixed indexed annuities, such as exchange-traded funds (ETFs). The ACLI suggests modifying Section 6F(9)(b)(i) to substitute the word “indices” with the word “component,” to read as follows:

   (i) The index is a combination of components, each of which has been in existence for at least fifteen (15) calendar years. For purposes of this section, a component is, or a component is comprised of other components each of which is, a financial instrument or a published index that has its own verifiable performance history for at least fifteen (15) years prior to issue of the fixed indexed annuity;

   iii. **Section 6F(9)(b)(ii)**

   Consistent with this proposed modification to Section 6F(9)(b), the ACLI urges modification to Section 6F(9)(b)(ii) to read as follows:
(ii) The method of the combination is such that a unique fifteen (15) calendar year history of the index can be constructed.

iv. Section 6F(9)(iii)

The ACLI is concerned with the criterion that the algorithm or method of combining components be fixed in Section 6F(9)(iii). She said the requirement that the algorithm or other method of combining components be fixed would not consider common de minimis and other changes to indices, like those necessitated by the discontinuance of components (such as the London Inter-Bank Offered Rate [LIBOR]), made in accordance with index sponsors’ governance protocols. The ACLI suggests modifying Section 6F(9)(b)(iii) as follows:

(ii) Any algorithm or method of combining the components shall be fixed from the published/live date of the index, except for de minimis changes, and changes necessitated by external circumstances and made pursuant to the index provider’s established governance rules;

v. Section 6F(9)(iv)

The ACLI is concerned with the criterion that the algorithm or method of supporting an index be available for inspection at the request of the commissioner or consumer in Section 6F(9)(iv). The intended breadth of the requirement is unclear, and information relating to the algorithm may be proprietary, confidential, or subject to other contractual limitations on its disclosure. For these reasons, the ACLI recommends deleting Section 6F(9)(b)(iv).

vi. Section 6F(9)(b)(v)

Ms. Meyer said the ACLI also recommends deleting Section 6F(9)(b)(v) because it is unnecessary since an index cannot be illustrated in the first place unless it has been in existence for the number of years specified in Section 6.F(9)(b) or meets the criteria set forth in Section 6F(9)(b).

vii. Section 6F(9)(c)

In view of the ACLI’s proposed modification to Section 6F(9)(b) to allow the illustration of an index that has been in existence for at least 15 years, rather than 20 years, or meets all the criteria in Section 6F(9)(b), the ACLI believes that Section 6F(9)(c) should be not deleted, as proposed in the March 7 draft; instead, it should be reinserted, with its existing language modified to take into account the changes proposed to be made to Section 6F(9)(b). Accordingly, the ACLI suggests reinserting Section 6.F.(9)(c) to read as follows:

c. If any index utilized in the determination of an account value meets the criteria of Section 6F(9)(b), but has less than fifteen (15) calendar years of history, the ten (10) calendar year periods that define the low and high scenarios shall be chosen from the exact number of years of unique history constructed pursuant to Section 6.F.(9)(b)(ii);

viii. Section 6G(4)(b)(i)(I)

Consistent with the proposed modifications to Section 6F(9)(b) and Section 6F(9)(b)(i), the ACLI suggests modifying Section 6G(4)(b)(i)(I) to read as follows:

(I) The index has not been in existence for fifteen (15) calendar years, but it is a weighted average of components that have each been in existence for at least fifteen (15) calendar years;

ix. Section 6G(4)(b)(i)(II)

The ACLI suggests the substitution of the current language of Section 6G(4)(b)(i)(II) to avoid using the word “hypothetical” and make this required statement clearer for consumers, with the following:

(II) Some of the illustrated index values for years in which the index was not in existence are calculations of values that the index would have had if it was in existence;
x. Section 6G(4)(b)(i)(III)

Consistent with the proposed modification to Section 6.F.(9)(b)(i) and comments relating to Section 6.F.(9)(b)(iii), the ACLI suggests modifying Section 6G(4)(b)(i)(III) to read as follows:

(III) Except for de minimis changes and changes necessitated by external circumstances, either the weights used in combining the components are constant over time, or the weights are based on an algorithm that is consistently applied over time but may produce different weights in different years;

Ms. Meyer said the ACLI’s last concern is with the requirements to provide an explanation of the algorithm in Sections 6G(4)(i)(IV) and (ii)(II).

xi. Section 6G(4)(b)(i)(IV)

The ACLI recommends deleting Section 6G(4)(b)(i)(IV), which provides that the consumer may request further explanation of the algorithm used to determine the weights. Consistent with the ACLI’s comments relating to Section 6F(9)(b)(iv), information relating to the algorithm may be proprietary, confidential, and otherwise prohibited from disclosure. Moreover, the ACLI believes consumers are likely to obtain more understandable and meaningful information about a fixed indexed annuity’s underlying indices, their components, and any associated risks through other disclosures already required under Model #245.

xii. Section 6.G.(4)(b)(ii)

Consistent with the ACLI’s proposed modifications to Section 6F(9)(b) and Section 6.(9)(b)(i), the ACLI suggests modifying Section 6G(4)(b)(ii) to read as follows:

(ii) For fixed indexed annuities where the index is a combination of components and has been in existence for fifteen (15) calendar years, the following additional statements:


Consistent with the ACLI’s comments relating to Section 6F(9)(b)(iii) and Section 6G(4)(b)(i)(III), the ACLI suggests modifying Section 6G(4)(b)(ii)(I) to read as follows:

(I) Except for de minimis changes and changes necessitated by external circumstances, either the weights used in combining the components are constant over time, or the weights are based on an algorithm that is consistently applied over time but may produce different weights in different years;


Consistent with the ACLI’s comments relating to Section 6F(9)(b)(iv) and Section 6G(4)(b)(i)(IV), the ACLI recommends deleting Section 6G(4)(b)(ii)(II).

xv. Section 6.G.(5)(f)

The ACLI is supportive of the addition of a new disclosure that would inform the consumer of the number of illustrated years the index has been live and the number of years for which the illustrated values are calculations of values that the index would have had if it was in existence. Accordingly, the ACLI suggests that the following language be substituted for the current language of Section 6G(5)(f) and that the current language of Section 6G(5)(f) be moved into a new Section 6G(5)(g):

(f) For fixed indexed annuities where the index is a combination of components and has not been in existence for fifteen (15) years, but the criteria in Section 6F(9)(b) have been met, specify the number of years the index has been live and the number of years for which illustrated values are calculations of values that the index would have had if it was in existence.

a. Discussed IRI Comment Letter
Jason Berkowitz (Insured Retirement Institute—IRI) explained that the IRI comment letter reiterated the major concerns raised in the other industry comment letters. He said the IRI, like the others industry representatives on the conference call, is concerned about: 1) the disruptive effect of the 20-year requirement to be able to illustrate; 2) the requirement that an index be made up of other indices, rather than components; and 3) the requirement that an algorithm be fixed from the time of the creation of the index.

b. Discussed NAFA Comment Letter

Pamela M. Heinrich (National Association of Fixed Annuities—NAFA) explained that the substance of NAFA’s comment letter is an attempt to further explain the NAFA comment letter discussed during the Working Group’s May 13 conference call and, in particular, respond to some of the questions posed by Mr. Robinson during that call. Ms. Heinrich explained that when NAFA raised the concern that the increase to 20 years would restrict consumer choice and create an unfair advantage, Mr. Robinson had questioned this assertion because while a product may not be illustrated, it can still be sold. Ms. Heinrich explained that NAFA meant that if indexed annuity interest strategies cannot be illustrated because they lack enough history, consumers will not understand them and utilize their benefits. She said in the absence of an illustration, there is a substantial risk that consumer interest will migrate to the investment industry; i.e., variable annuities, indexed variable annuities, and structured investment products. If that happened, she said that would bring greater risk of retirement savings losses to many individuals. She explained further that this prohibition on illustrations would unfairly disadvantage the fixed indexed annuity market. Birny Birnbaum (Center for Economic Justice—CEJ) said the NAFA comments reveal that their interest is in protecting their industry and not consumers.

c. Discussed CEJ Comment Letter

Mr. Birnbaum said the CEJ’s comment letter expands upon and replaces the CEJ’s earlier comments provided during the Working Group’s May 13 conference call. He summarized the primary points of the comment letter and provided suggested language. He said he remains concerned that the proposals would allow and encourage data mining of recent historical experience of securities or anything with a price to generate an index with a favorable recent history to illustrate fabulous “returns” for the consumer. He said the problem of product design driven by illustration potential is evidenced by the explosion in indices created for and used in indexed annuity products. In some cases, the indices have been created specifically for, and only for, an indexed annuity product and introduced at the same time as the introduction of the annuity product.

Mr. Birnbaum said the industry has created a false narrative by calling for proper balance and warning against restrictions that would deprive consumers of information necessary for retirement planning. He said this has nothing to do with consumer protection and everything to do with no disruption to the current indexed annuity business model and sales practices.

Mr. Birnbaum said the March 7 draft, with the 20-year time frame already represents a compromise. He said the industry argument for a 15-year minimum is not based on any consumer protection logic, but it is simply an effort to retain as many indices as possible. He said changing the prohibition time frame from 10 to 15 years does little to address the problem that the time frame is so short to preclude a meaningful worst-case 10-year scenario. In fact, 20 years is too short to fulfill the purposes of Model #245, but it represents a compromise.

Mr. Birnbaum said the CEJ suggests that in Section 6(F)(9)(b)(i) and (ii), the minimum time in existence for indices that are made up of other indices be changed to 30 years. He said the CEJ draws a distinction between an index that has been in existence for 20 years and a composite index made up of other indices. For an index that has been in existence for 20 years, the opportunity for data mining favorable historical returns effectively does not exist because the index was created prior to current data mining practices. In contrast, with a composite index, there is the possibility of data mining over a recent 20-year time frame with specific indices and weights to produce favorable illustrations. This difference is significant and logically leads to a longer time in existence for indices used in a composite index.

Mr. Birnbaum said the CEJ suggests that the time in existence requirement in Section 6(F)(9)(b) be changed from “has not been in existence for at least twenty (20) calendar years” to “has not been in existence for the lesser of 20 consecutive years or continuously since Jan. 1, 2000.” He said this change better reflects the purpose of the time in existence limitation—to ensure meaningful results for best and worst product results over a 10-year period. He said in addition to the improved consumer protection of longer time frames to produce the critical best and worst ten-year outcomes, the fixing of a starting date will create operational efficiencies for insurers. He said, for example, if the worst ten-year period is 2000 to 2009, he does not see a reason to eliminate that data point for consumers as 2020 approaches. In addition, by setting a fixed starting date (instead of a rolling 20-year time frame) there should be fewer changes to best and worst 10-year outcomes resulting in operational
efficiencies for insurers and improved understanding by consumers. The CEJ also proposes an additional requirement to reflect expense charges in the 10-year scenarios; this is critical for alerting consumers to the difference between performance of the index and performance of the annuity. Mr. Birnbaum also said, of utmost importance is that disclosures empower consumers and not provide a liability shield to insurers.

Mr. Birnbaum suggested the following language for Sections 6(F)(9), 6(F)(9)(a), 6(F)(9)(b), 6(F)(9)(b)(i), 6(F)(9)(b)(ii) and new (vi):

(9) In determining the non-guaranteed illustrated values for a fixed indexed annuity, the index-based interest rate and account value shall be calculated for three different scenarios: 1) one to reflect historical performance of the index for the most recent ten (10) calendar years; 2) one to reflect the historical performance of the index for the continuous period of ten (10) calendar years from the beginning of the existence of the index through the most recent calendar year that would result in the least index value growth (the “low scenario”); and 3) one to reflect the historical performance of the index for the continuous period of ten (10) calendar years from the beginning of the existence of the index through the most recent calendar year that would result in the most index value growth (the “high scenario”). The following requirements apply:

(a) The most recent ten (10) calendar years and the most recent year are defined to end on the prior Dec. 31, except for illustrations prepared during the first three (3) months of the year, for which the end date of the calendar year period may be the Dec. 31 prior to the last full calendar year;

(b) If any index utilized in determination of an account value has not been in existence continuously for at least the lesser of twenty (20) calendar years or since Jan. 1, 2000, indexed returns for that index shall not be illustrated unless all of the following criteria are met:

(i) If the index is a combination of indices, each component index shall have been in continuous existence for the lesser of thirty (30) calendar years or since Jan. 1, 1990;

(ii) If the index is a combination of indices, the method of combination is such that a unique history of the index can be constructed;

(iii) If the index is a combination of indices, any algorithm or other method of combining the indices shall be fixed from the creation of the composite index;

(iv) Any algorithm or other method that is supporting such an index that is a combination of indices and is utilized in the illustration shall be made available for inspection at the request of the commissioner or the consumer.

(v) If the fixed indexed annuity provides an option to allocate account value to more than one indexed or fixed declared rate account, and one or more of those indices has not been in existence for at least twenty (20) calendar years, the allocation to such indexed account(s) shall be zero. If one or more of the indices is a combination of indices of which any component index has not been in existence for at least thirty (30) years, the allocation to such indexed account(s) shall be zero;

(vi) The scenarios shall include all expenses and charges that could reduce account value. For example, if there is a charge expressed as a percentage of an asset associated with a guaranty that the account value will not decline even if the associated index value declines and if that charge is assessed regardless of the performance of the index, the impact of the charge shall be included in the 10-year scenarios.

Mr. Birnbaum suggested the following simplified disclosure instead of the current draft Section 6G(4)(b):

For fixed indexed annuities:

The illustration is not a guaranty of future performance. The illustration is required to include the results for the worst 10-year period since the index has been in existence as well as the best 10-year performance and the most recent 10-year performance. Use this information to understand how future results can vary from the recent past. Use this information to understand how various expense charges associated with your product can affect your account value beyond the impact of changes in the value of the index.
You have the right to know how much you will pay for your annuity. An “element” is any factor that the insurer uses to determine the value of your annuity over time. Some elements are guaranteed, which means that the value used for that element cannot change over time. Most elements are non-guaranteed. Be sure to understand what elements are guaranteed and what elements are not guaranteed. Ask the agent, broker, adviser or insurer to provide a complete list of guaranteed and non-guaranteed elements. For the non-guaranteed elements, be sure to find out if there is a limit on how much the value of the element can change over time.

Do not assume that the performance of the index is the same as what you would earn if you invested directly in the securities or other things comprising the index. For example, if you invested in a Standard & Poor (S&P) 500 fund, you would receive dividends as well as any gains in the value of the fund. An illustration is not a comparison of what you would earn with an investment in the actual index security.

If your annuity uses an index or indices to determine account value, you have the right to know how long the index has been in existence. The longer an index has been in existence, the more history of the actual performance of the index is available for you to see.

You have the right to know how the insurer uses the index to calculate changes in your account value. If the agent, broker, adviser or insurer tries to convince you that you do not need to know the details of how your product value changes, you should be skeptical and contact the department of insurance (DOI).

Ask your agent, broker, adviser or insurer if they are required to work in your best interest. If they answer no or fail to answer your question, be sure to get a second opinion regarding the value and suitability of the indexed annuity for you. Be sure to ask the agent, broker or adviser about their compensation to see if the agent, broker or adviser compensation may be affecting the product recommendation.

Mr. Gendron said the Center for Insurance Policy and Research (CIPR) is looking to facilitate communication with academics on consumer issues, from both a risk management perspective and a consumer understanding perspective; it could also inform the disclosures contemplated in Model #245.

d. Discussed Next Steps

Mr. Yanacheak asked whether the Working Group thought it could reach a decision. Mr. Gendron identified three primary outstanding issues: 1) whether Section 6F(9)(b)(i) should reference “indices” or “components”; 2) whether Section 6F(9)(iii) should include the criterion that the algorithm or method of combining components be fixed; and 3) whether the time frame for the prohibition on illustrating indices that have not been in existence should be 10, 15 or 20 calendar years.

Mr. Robinson said recent experience with indexed universal life (IUL) products, including things never contemplated by Actuarial Guideline XLIX—The Application of the Life Illustration Model Regulation to Policies with Index-Based Interest (AG 49), has made him wary of using such an open-ended term like component. If a component is not clearly defined, things can easily get out of hand. Mr. Yanacheak asked for an example of a commonly used component that is not an index. He said one example is an ETF, which is a collection of securities, such as stocks; but ETFs track an underlying index. He asked whether there is a reason that the index could not be used instead of an ETF. Ms. Meyer said the ACLI comment letter did suggest a definition of “component” that could address Mr. Robinson’s concerns with the open-ended nature of the term “component.” Mr. Gendron asked whether it would be possible to include a definition of index that was sufficiently broad. Sheryl Moore (Moore Market Intelligence) said cash and bonds are often included; they are not indices, and they should not be included in a definition of index.

Mr. Yanacheak said he has become aware of a concern involving LIBOR, which is the average interest rate at which leading banks borrow funds from other banks in the London market. He said LIBOR is the most widely used global “benchmark” or reference rate for short-term interest rates. He said LIBOR is used today, and its publication is not guaranteed beyond 2021. He said for a few years now, the Alternative Rates Reference Committee (ARRC), which was created by the Federal Reserve Board and the Federal Reserve Bank of New York, has been working a transition to the relatively new Secured Overnight Financing Rate (SOFR). He said it is quite possible that many of these indices will need to transition from LIBOR to SOFR (or another suitable rate), and this is why these indices have oversight boards. He said the concern is that it may be necessary for regulatory reasons to move from LIBOR, and if these rules prevent the illustration of that, it would be a disservice to contract owners who may already own these contracts.
Mr. Robinson said companies routinely retain the right to substitute a new index if an index is discontinued. If an algorithm changes, it creates a new index, and policyholders should be notified. He said if only the algorithm was changed, the new index would have no more difficulty meeting the criteria (20-year existence, unique history) than the previous one. Mr. Robinson said he is not aware of any burdensome requirements for insurers changing an index. Mr. Hippen said some states require new indices to be filed, but he did not think it was a particularly burdensome process.

Mr. Robinson said the 20-year time frame may result in some indices not being able to illustrate, but that would only be temporary. He said it makes sense for indices to have some additional time to get seasoned before being illustrated. He said moving to a 15-year time frame, only to accommodate more indices, is not a convincing justification, but he could be talked into it. He said the primary reason to move to the 20-year time frame is to make sure there is a credible high 10 and a low 10 to illustrate. Mr. Yanacheak agreed that having a high 10 and a low 10 that do not have to overlap sounds reasonable.

Mr. Robinson said the ACLI comment letter had suggested an additional disclosure that might be worth considering. Mr. Danzeiser said he wanted additional time to consider the ACLI disclosure, including the plain language aspects of it. Mr. Yanacheak said he could report to the Life Insurance and Annuities (A) Committee that the Working Group is having difficulty reaching consensus and suggest closing Model #245, pending better identification of the problems and how to resolve them. Mr. Robinson said he would be willing to make a motion to adopt the draft as is, if that was the will of the Working Group. The Working Group agreed to continue discussions via conference call in July.

Having no further business, the Annuity Disclosure (A) Working Group adjourned.
The Annuity Disclosure (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call March 7, 2019. The following Working Group members participated: Mike Yanacheak, Chair (IA); Chris Struk (FL); Julie Holmes (KS); Nour Benchaaboun (MD); John Robinson (MN); Andrew Schallhorn (OK); Matt Gendron and Sarah Neil (RI); and Sandra Dodson (TX). Also participating were: Jason Lapham (CO); Tracy Swalwell (IA); Mike Chrysler (IL); William Leung (MO); Robert E. Harkins (NE); Denise Lamy (NH); Jill Kruger (SD); David Hippen (WA); and Justine Bellamy (WI).

1. Discussed Comments on March 7 Draft Revisions to Model #245

Mr. Yanacheak reminded the Working Group that draft revisions of the Annuity Disclosure Model Regulation (#245) dated March 7 (Attachment Three-A) were exposed for a comment period ending April 26. Five comment letters were distributed by email and posted on the Working Group’s web page for discussion during this conference call. Mr. Yanacheak said some interested parties requested additional time to comment, and he expected that the Working Group would review and consider additional comments when they come in.

   a. Discussed IALC Comment Letter

Mr. Yanacheak summarized the three main points laid out in the Indexed Annuity Leadership Council (IALC) comment letter. First, he said the letter asserts that the draft revisions under Section 6(F)(9)(b) to increase the required index history from 10 to 20 years would preclude a majority of indices in the marketplace today from being illustrated. He said the letter states that approximately 70% of indices utilized today have historical data going back at least 15 years. More than half of these do not have a full twenty years of history, and they would exclude, in particular, innovative indices and exchange-traded funds (ETFs) that offer a significant value to policyholders.

Mr. Yanacheak said the second point in the letter is that the draft revisions under Section 6(F)(9)(b)(i), requiring that an index be constructed entirely of a “combination of indices,” is overly restrictive, and it should be revised to permit a “combination of underlying index components.” He said the letter raises the concern that the phrase “combination of indices” severely limits the options available for index construction, and it may create unintended consequences that limit innovation, efficiency and consumer choice. He said the letter suggests that the phrase “combination of underlying index components,” which would allow for the inclusion of index components utilized today, including ETFs, excess return indices, and futures contracts that would otherwise be left out of consideration for illustrations under the draft revisions. He said the letter also suggests the inclusion of a drafting note to clarify the meaning of a “combination of underlying index components,” particularly around the question of determining the start date for when an index component has been “in existence” for the requisite time period. The letter suggests the following language for a drafting note: “An underlying index component is considered in existence so long as it: 1) has a published live date exceeding the requisite X years; or 2) the underlying index component is comprised solely of other underlying components, each of which, standing on their own, have a published live date exceeding the requisite X years.”

Mr. Yanacheak said the letter also raises a concern with draft revisions in Section 6(F)(9)(b)(iii), which provides if an algorithm or other method of combination is used to construct a reference index, it must be “fixed from the creation of the index.” He said the concern in the letter is that this language, if strictly interpreted, could prevent index sponsors from modifying algorithms or other methods of combining index components when necessary to respond to actions beyond the control of the index sponsor.

   b. Discussed Committee of Annuity Insurers Comment Letter

Eric A. Arnold (Eversheds Sutherland) summarized the comment letter from the Committee of Annuity Insurers. He explained that the Committee of Annuity Insurers is concerned with the increase in the required operating history of an index from 10 to 20 years under revised draft Section 6(F)(9)(b). He said the proposed lengthening to 20 years is arbitrary, and there is no evidence to support a conclusion that a 20-year, rather than a 10-year period, is more likely to be representative of different economic cycles. He also said the Committee of Annuity Insurers is concerned that increasing the length of required operating history could create: 1) operational burdens on the current illustration systems; and 2) the disruption to existing products. The Committee of Annuity Insurers would prefer to retain the 10-year history requirement, but extending to 15 years might be workable.
Mr. Arnold said the Committee of Annuity Insurers, like the IALC, is concerned about the language in Section 6F(9)(b)(i), requiring that an index be constructed entirely of a “combination of indices,” and he recommends replacing the term “indices” with the term “components,” and conditioning the inclusion of a “component” in a reference index upon the component itself having been in existence and having a performance history for the required time period. The Committee of Annuity Insurers also supports the inclusion of a drafting note clarifying the meaning of terms such as “component” and “performance history.”

Mr. Arnold said the Committee of Annuity Insurers questioned the meaning of the requirement in Section 6F(9)(b)(ii) that “the method of combination is such that a unique twenty (20) calendar year history of the index can be constructed.” He said the Committee of Annuity Insurers does not understand what this means or its purpose.

Mr. Arnold said the Committee of Annuity Insurers, like the IALC, is also concerned with the requirement in Section 6(F)(9)(b)(iii), which provides if an algorithm or other method of combination is used to construct a reference index, it must be “fixed from the creation of the index.” He said the concern expressed in the letter is that this language, if strictly interpreted, could prevent index sponsors from modifying algorithms or other methods of combining index components in two common situations that should not create consumer protection concerns where modification becomes necessary in response to significant market-related or other events.

Mr. Arnold said the Committee of Annuity Insurers is concerned about the scope of the requirement in Section 6F(9)(b)(iv), allowing for a consumer or the commissioner to inspect information about the algorithm or other method supporting an index. He said there needs to be some clarity around what information is subject to inspection. He said the comment letter highlights some of the practical concerns, not the least of which are contractual agreements with index sponsors that prohibit insurers from sharing certain contractually defined confidential materials.

Mr. Arnold said the Committee of Annuity Insurers raised concerns about the disclosures in Section 6G(4)(b)(i)-(ii). He said the Committee of Annuity Insurers is generally supportive of the concepts and principles outlined in the disclosures. However, they are concerned with the ability of the insurer issuing the fixed index annuity to independently confirm the accuracy of the disclosure that includes “either the weights used in combining the indices are constant over time, or the weights are based on an algorithm that is consistently applied over time but may produce different weights in different years.” The Committee of Annuity Insurers recommends that the model allow the insurer to rely on annual certifications from the index sponsor for the purposes of this requirement.

Mr. Robinson said the primary reason for the change in Section 6F(9)(b), from allowing the illustration of indices that have been in existence for at least 10 years to at least 20 years, was the need for sufficient time to have passed in order for the requirement to illustrate the best 10 years and the worst 10 years to be meaningful. He said the idea is for there to be a unique history of the index that can be verified through mathematical verification using the algorithm. Mr. Gendron said if an insurer cannot show a consumer what is in an index, it should not be illustrated. Mr. Robinson explained that the reason for the “fixed from creation” language was to prevent a situation where one algorithm was used for a number of years and then switched to another algorithm, which is then a new index.

c. Discussed Academy Comment Letter

Beth Keith (American Academy of Actuaries—Academy) summarized the comment letter of the Academy’s Annuity Illustration Work Group. She said the Academy supports changing the required index history to 15 years as a reasonable compromise between 10 years, which may not cover the most recent business cycle, and 20 years, which may exclude viable indices. She said the Academy letter also commented on the use of “index” as opposed to “component.” The Academy letter opined that the use of the term “index” would exclude certain types of common index components, such as ETFs. Ms. Keith said the Academy recommends adding the following language to expand on the term “index” or “component”: “Any index, whether used independently or as part of a combination index, must be a published index or a passively managed investment vehicle that tracks a published index.” She said the letter suggests the following language to streamline the disclosures required in Section 6G(4)(b)(i) and (ii):

(i) For combination indices, include the following additional statements:
   I. The index has not been in existence throughout the period used in the illustration, but it is a weighted average of indices that have been in existence throughout the illustration period.
   II. Some of the illustrated index values are calculations of what the index would have been if it were in existence.
III. The method used to weigh the indices does not change over time; however, the method may produce different weights in different years.

IV. Additional explanation of the method used to determine the weights is available to the consumer upon request.

d. Discussed NAFA Comment Letter

Pamela M. Heinrich (National Association for Fixed Annuities—NAFA) summarized NAFA’s comment letter. She said the NAFA letter makes many of the same points already raised in the IALC and Committee of Annuity Insurers letters: 1) requiring the index to comprise “a combination of indices” rather than comprising “components” is problematic and unduly restrictive; 2) requiring the algorithm to “be fixed from the creation of the index” would hobble index sponsors’ ability to make necessary modifications to the index in response to significant market events; 3) requiring the algorithm be made available to the consumer would expose proprietary information unhelpful for consumers in understanding how the index works; and 4) new disclosure requirements should be refined to reflect the independent relationship between an index sponsor and the issuing insurer, which makes it difficult for insurers to warrant the accuracy of index disclosures and limit the ability of consumers to request continued clarification on index algorithms.

Mr. Robinson responded to the concern raised in the letter that “the increase to 20 years would eliminate the vast majority of indices currently being used to illustrate fixed indexed annuities, severely restricting consumer choice and creating an unfair advantage within the financial and retirement services industry.” He explained that the restriction is only on the ability to illustrate, not to sell, a particular product. He said any interference such a restriction may have on illustrating a particular index would be, by its terms, only temporary. As a result, he said the assertion that the 20-year limitation on illustrations would severely restrict consumer choice over-states the issue.

Birny Birnbaum (Center for Economic Justice—CEJ) said he is concerned that the industry wants to sell anything with a published price and opposes a 20-year time frame based on how many current indices will be affected. He said he disagrees with the industry’s assumption that all current products are good products and any elimination of current products is harmful to consumers. He said the consumer protection goal and the goal of insurers concerned with reputational risk should be to eliminate misleading illustrations based on products fabricated to produce such misleading illustrations. He said the industry arguments in support of volatility controlled indices conflate the role of an index with the role of an annuity. He said it is not the index that caps the risk; it is the annuity structure that is designed to reduce the risk to the consumer.

Mr. Birnbaum also suggested that the minimum time in existence for indices that comprise a composite index be changed to 30 years for an index in existence for less than 20 years. He said there is a significant distinction between an index that has been in existence for 20 years and a composite index comprising other indices. For an index that has been in existence for 20 years, the opportunity for data mining favorable historical returns effectively does not exist because the index was created prior to current data mining practices. In contrast, with a composite index, there is the possibility of data mining specific indices and weights over a recent 20-year time frame to produce favorable illustrations. This difference is significant and logically leads to a longer time in existence for indices used in a composite index.

Mr. Birnbaum also suggested changing the time in existence requirement to a fixed date. He suggested applying the requirements to indices that have not been in existence continuously since Jan. 1, 1999. He said the fixed date will create operational efficiencies for insurers, if, for example, the worst 10-year period is from 1999 to 2008. He said there would be no reason to eliminate that data point for consumers as we move into 2020 and beyond. He also said setting a fixed starting date (instead of a rolling 20-year time frame) should result in fewer changes to best and worst ten-year outcomes resulting in operational efficiencies for insurers and improved understanding by consumers.

The Working Group agreed to continue discussions via conference call in early June.

Having no further business, the Annuity Disclosure (A) Working Group adjourned.
Annuity Suitability (A) Working Group
New York, New York
August 3, 2019

The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met in New York, NY, Aug. 3, 2019. The following Working Group members participated: Jillian Froment, Chair (OH); Doug Ommen, Vice Chair (IA); Steve Ostlund (AL); Jodi Lerner and Perry Kupferman (CA); Fleur McKendell (DE); Dean L. Cameron (ID); Tate Flott (KS); Renee Campbell and Randall Gregg (MI); Bruce R. Ramge and Matt Holman (NE); James Regalbuto (NY); Matt Gendron and Sarah Neil (RI); Carter Lawrence and Lorrie Brouse (TN); and Mark Afable and Richard Wicka (WI). Also participating were: Keith Schraad (AZ); Stephen C. Taylor (DC); Karl Knable (IN); Paul Hanson (MN); Mary Mealer (MO); Jon Godfread (ND); and Scott A. White (VA).

1. **Adopted its June 20 and Spring National Meeting Minutes**

The Working Group met June 20 and April 6. During its June 20 meeting, the Working Group discussed potential revisions to the Suitability in Annuity Transactions Model Regulation (#275). Ms. Lerner requested revisions to the language in the June 20 minutes to state “verbal and written communications.” The Working Group agreed to make the revision.

Ms. Brouse made a motion, seconded by Mr. Ostlund, to adopt the Working Group’s June 20, as revised (Attachment Four-A) and April 6 minutes (see NAIC Proceedings – Spring 2019, Life Insurance and Annuities (A) Committee, Attachment Two). The motion passed unanimously.

2. **Continued Discussion of Parking Lot Topic Issues Related to Proposed Revisions to Model #275**

Director Froment reminded the Working Group of its goals for its June 20 meeting and its subsequent meetings, which was to develop a framework for revising Model #275 to include a best interest standard of conduct that is more than the model’s current suitability standard, but not a fiduciary standard. She outlined what the Working Group planned to discuss during its meeting. She said the Working Group did not request written comments on these topics, but stakeholders are always welcome to submit written comments later.

   a. **Care Obligation**

The Working Group discussed whether the care obligation should require a producer or insurer to have a reasonable basis to believe the consumer would benefit from the features of the annuity when making a recommendation, which is found in Section 6A(2) of Model #275. Director Froment asked for comments from Working Group members.

Ms. Lerner said that any annuity would have something of benefit to a consumer. As such, she said she does not see this as an important issue. Director Ramge suggested revising the language to read “annuity and its features.” Mr. Gendron expressed support for the revised language. Birny Birnbaum (Center for Economic Justice—CEJ) discussed the CEJ’s comments on Section 6A(2) and Section 6A(3). He said the CEJ believes Section 6A(2) and Section 6A(3) are suitability standards—not best interest standards. He also questioned the meaning of some of the terminology, such as “product as a whole.” He said the CEJ suggests replacing both Section 6A(2) and Section 6A(3) with the following language: “a reasonable basis to conclude the recommended product or action best addresses the totality of the consumer’s insurance needs and financial objectives known at the time of the recommendation and based on the information provided by the consumer and other information about the consumer reasonably obtained from other sources.”

Commissioner Ommen said a best interest standard of conduct includes some elements of a suitability standard of conduct. He recommended retaining Section 6A(2). The Working Group discussed the language “product as a whole.” Director Ramge suggested deleting “address” in Section 6A(3) to “advance.” The Working Group discussed his suggestion and decided to continue discussion of his suggestion later. Director Froment stated that the outline she is working on would reflect retaining Section 6A(2) and Section 6A(3) under the care obligation with the expectation that the language would have to be refined.
Robbie Meyers (American Council of Life Insurers—ACLI) said the ACLI is concerned with using the phrase “best suited,” which Iowa included in its recent comments to the Working Group. She said the ACLI is concerned because: 1) it is not defined; 2) it could be construed to require a producer or insurer to recommend the “best” product; and 3) there is only one “best” product for the consumer to be recommended. The Working Group took her comments under advisement.

b. Documentation Obligation

The Working Group next discussed the topic under the documentation obligation to require the producer or insurer to obtain a consumer-signed statement of the consumer’s refusal to provide the profile information, which is in Section 6E(2). Mr. Gendron said Rhode Island has identified a practice by some producers advising consumers not to provide the profile information. He recommended removing the provision because producers need this information to make a recommendation. Mr. Hanson said he believes such practices would be caught in the supervision system. Commissioner Ommen discussed Iowa’s suggested language on the issue. He also noted that the current model requires producers to make reasonable efforts to obtain the profile information. He recommended retaining the language.

Ms. Lerner suggested the Working Group consider adding a provision in the supervision obligation to address this issue by including some sort of red flag alerting insurers to follow up in situations when a consumer refuses to provide the information. Mr. Gendron suggested possibly establishing a different type of oversight when a consumer does not want to provide the profile information and no recommendation is made. Director Cameron discussed his experiences with these situations. He said he believes there is a role for insurers to address situations where producers are allegedly telling consumers not to provide their financial information.

Mr. Birnbaum said the CEJ does not believe sales should be made in situations where the customer does not provide the profile information and no recommendation is made. He discussed the CEJ’s reasoning for its position. He suggested, however, that if the Working Group retains this provision, the revisions should require the producer or insurer to prepare and sign a statement documenting the refusal and other elements of the transaction. Gary Sanders (National Association of Insurance and Financial Advisors—NAIFA) said NAIFA believes that if the customer refuses to provide the profile information or provides insufficient information, the product can be sold, but without a recommendation. He said NAIFA believes the customer should be free to buy an annuity without a recommendation if that is what the customer wants. After additional discussion, Director Froment said there appears to be commonality among the Working Group that consumers: 1) should understand the ramifications of not providing their profile information or providing insufficient information; and 2) should be able to purchase an annuity without a recommendation.

c. Supervision Obligation

The Working Group next discussed a provision in Section 6F(3) of Model #275, which provides that an insurer only has to supervise its own products. Ms. Lerner noted previous Working Group discussions about this provision. She said she believes this is an issue particularly with replacements, when there should be a review, but not supervision, of the products, including any securities, the consumer already owns before making a recommendation.

Mr. Birnbaum discussed the CEJ’s comments on this provision. He noted that the full provision in Model #275 states: “An insurer is not required to include in its system of supervision an insurance producer’s recommendations to consumers of products other than the annuities offered by the insurer.” He said there is a difference between an insurer being responsible for supervising recommendations and sales of the products it offers versus a supervision system that does not take into account other products available to a consumer. He said that the CEJ believes the current producer recommendation supervision system in the model does not preclude consideration of other products available to the consumer. He said that if that is the case, then the CEJ does not object to the current language.

3. Discussed the Working Group’s Next Steps

Director Froment discussed the Working Group’s next steps. She said she has spoken with a few Working Group members to see if they would serve on a technical draft group to develop a draft of revisions to Model #275 based on the framework, including its guardrails and principles, developed by the Working Group during its June meeting in Columbus, OH, its July conference calls and today’s meeting. The goal is to have the technical drafting group meet after the Summer National Meeting in late August or early September. She said that upon receipt of the draft from the technical drafting group, the Working Group
Draft Pending Adoption
Attachment Four
Life Insurance and Annuities (A) Committee
8/4/19

will review it and set a public comment period to receive comments on the draft. The Working Group plans to set a regular day and time to begin meeting weekly via conference call beginning in early October through November to discuss the comments received. The Working Group’s goal is to present a draft to the Life Insurance and Annuities (A) Committee for its consideration prior to or at the Fall National Meeting.

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

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The Annuity Suitability (A) Working Group of the Life Insurance and Annuities (A) Committee met in Columbus, OH, June 20, 2019. The following Working Group members participated: Jillian Froment, Chair (OH); Doug Ommen, Vice Chair (IA); Steve Ostlund (AL); Jodi Lerner (CA); Fleur McKendell (DE); Karl Fromm (ID); Shannon Lloyd (KS); Renee Campbell (MI); Matt Holman (NE); James Regalbuto (NY); Matt Gendron and Sarah Neil (RI); Lorrie Brouse (TN); and Richard Wicka (WI). Also participating were: Michelle Brugh Rafeld (OH); and Amanda Baird (OH).

1. Discussed the Framework for Incorporating a Best Interest Standard into Model #275

Director Froment said that prior to the meeting, the Working Group requested comments from stakeholders by June 11 on: “If the model were to require ‘best interest’ as the appropriate standard of conduct, how should ‘best interest’ be defined in order to provide an objective standard for compliance by industry and for regulatory oversight?” She noted that just a prior to the meeting, the U.S. Securities and Exchange Commission (SEC) adopted its final regulation best interest (Regulation BI).

Director Froment outlined the goals for the Working Group’s meeting. She said those goals include determining what “best interest” means to Working Group members so it could be evaluated for possible inclusion as a standard of conduct in the Suitability of Annuity Transactions Model Regulation (#275) and the obligations under such a standard a producer or insurer must satisfy to meet its requirements. She explained that in reviewing the comments received by the June 11 public comment deadline, she saw themes expressed in the comments, which were used to develop a high-level summary comparison document between the provisions in the SEC’s Regulation BI and the Iowa Department of Insurance’s (DOI) comments (Attachment Four-A1). She said she plans to use this document to guide the Working Group’s discussion.

The Working Group first discussed whether the following obligations should be included in a best interest conduct standard: 1) a disclosure obligation; 2) a care obligation; 3) a conflict of interest obligation; and 4) a documentation obligation. The Working Group discussed each obligation.

a. Disclosure Obligation

Director Froment asked the Working Group members what broad requirements they believe should be included in a disclosure obligation. She asked if this obligation should include a disclosure of terms of the relationship between the producer or insurer and the consumer. Mr. Gendron suggested the Working Group consider components of the client relationship (CRS) form included in the SEC’s Regulation BI for inclusion in the Model #275 revisions for producers and insurers to use to satisfy the disclosure obligation. He noted that broker-dealers subject to the SEC’s Regulation BI requirements will be using such a form and that consumers will probably expect something similar from producers and insurers. Commissioner Ommen agreed with Mr. Gendron. Mr. Regalbuto said he was not sure the CRS form could be used because of the differences between the types of products broker-dealers and producers and insurers sell. The Working Group discussed the elements of the disclosure obligation and generally agreed that disclosure in some form and manner is appropriate.

b. Conflict of Interest Obligation

The Working Group next discussed the conflict of interest obligation and the Iowa DOI’s language for this obligation requiring producers and insurers to avoid or otherwise reasonably manage material conflicts of interest and to discuss specific information to the consumer related to compensation. Commissioner Ommen explained that Iowa’s suggested language aligns with the SEC’s Regulation BI. Mr. Ostlund suggested that some of the language was duplicative of language in the potential disclosure obligation. The Working Group discussed how a producer or insurer would be able to comply with these requirements. After additional discussion, the Working Group agreed that it is important to include a conflict of interest obligation in a best interest conduct standard.

c. Care Obligation/Documentation Obligation

Commissioner Ommen discussed the Iowa DOI’s language for the care obligation and its importance. The Working Group discussed the Iowa DOI’s suggested language, noting that it is not contemplating a fiduciary-type “best interest” standard of
conduct. Ms. Lerner agreed because at this point in the Working Group’s drafting process, the potential language for such a standard does not require the producer or the insurer to place the consumer’s needs first. The Working Group discussed whether the Iowa DOI’s language could be enforced, which requires, among other things, the producer or insurer to have a “reasonable basis to believe” the recommended option is “best suited” for the consumer. The Working Group also discussed how and in what manner the care obligation should work with the documentation obligation. Mr. Gendron said he views the Iowa suggested language for a care obligation as support and guidance for a producer or an insurer to comply with the duty of care. The Working Group continued its discussion, deciding that some of this language and its meaning, such as “product as a whole” and “basis or bases of the recommendation,” requires further future discussion.

d. Supervision System/Compliance Obligation

The Working Group discussed the Iowa DOI’s suggested language requiring an insurer to establish a supervision system for its own products. Ms. Lerner expressed concern with such language because in her experience, some insurers have ignored red flags, particularly in the case of replacements. Mr. Regalbuto suggested insurers should have an affirmative requirement not to create sales programs designed to incentivize producers to make recommendations not in the consumer’s best interest. The Working Group agreed to continue its discussions of this issue later during the meeting. The Working Group agreed a “best interest” conduct standard framework should include a supervision system/compliance obligation requirement.

2. Discussed a “Best Interest” Conduct Standard

The Working Group discussed what requirements should be included in a “best interest” conduct standard. Ms. Lerner reiterated her concern that the language currently being contemplated is not a “best interest” conduct standard. Mr. Regalbuto agreed, saying that the language in the SEC’s Regulation BI requires a broker-dealer not to place their financial or other interest ahead of the consumer when making a recommendation. He urged the Working Group to avoid using such language. Some Working Group members discussed their concern that if they include certain language for a best interest conduct standard, consumers will be adversely affected because the type and scope of products available to them will be limited.

Mr. Regalbuto provided a scenario involving similar products, both of which are suitable, where he believes the producer or insurer would consider their own interest in making the ultimate decision on which product to recommend. He said this is not a best interest conduct standard. A best interest conduct standard requires the producer or insurer to only consider the consumer’s interest in making a recommendation. Ms. Brouse asked if the disclosure obligation addresses the issue. Mr. Regalbuto said he does not believe it does because consumers receive multiple disclosures and may not understand. He reiterated that a best interest conduct standard, in his opinion, requires that the consumer’s interest be considered first. Commissioner Ommen said he believes the SEC’s Regulation BI places the consumer’s interest first, but not exclusively. He said he believes this is a best interest conduct standard. Mr. Regalbuto discussed the language in New York’s recently adopted rule concerning best interest and its use of the language “without regard to.”

The Working Group discussed whether it should include language for a “best interest” conduct standard, but not call it “best interest.” Commissioner Ommen said he considered this option, but because the SEC is calling its conduct standard a “best interest” standard, he decided it would be best to do the same in the Model #275 revisions to avoid confusion in the marketplace. Mr. Regalbuto suggested that some other Working Group members do not believe the SEC’s Regulation BI establishes a “best interest” conduct standard. If so, he believes this creates an opportunity for the NAIC to send a message and establish a true “best interest” conduct standard in its revisions.

The Working Group deferred additional discussion of this issue to a future date.

3. Discussed Potential Elements to Be Included in the Best Interest Framework Obligations

The Working Group discussed in more detail potential requirements (Attachment Four-A2) to be included in the obligations—disclosure obligation, care obligation, conflict of interest obligation and documentation obligation—it agreed should be included in a best interest” conduct standard.

a. Disclosure Obligation

Director Froment asked the Working Group if, in outlining the scope and terms of the sales relationship with the consumer, the disclosure obligation should require producers to disclose their qualifications and provide a checklist disclosing what products
they may or may not be able to sell to inform the consumer on what limitations the producers or insurers have on the types of products they can sell and ultimately recommend.

Ms. Neil said the Working Group should consider what information should be disclosed to the consumer at the initial sales meeting. Mr. Ostlund suggested this information is part of the documentation obligation. Ms. Lerner said she believes this information is part of the producer’s verbal and written communications with the consumer. The Working Group discussed if such language is part of the documentation obligation. Director Froment said she believes disclosure is what the consumer needs to know at the initial sales meeting, and documentation is based on the actual completed transaction. The Working Group discussed whether potential conflicts of interest, such as the fact that the producer will be compensated, should be disclosed to the consumer at the initial sales meeting. Commissioner Ommen said such a potential conflict of interest with respect to compensation may be true for commission-only producers, but it is not necessarily true for other compensation arrangements. Director Froment provided an example of a real estate agent and the disclosures provided to the consumer at the time the consumer hires the agent to sell or buy a home. She characterized such disclosures as “explaining the nature of the relationship.”

Director Froment requested comments from interested parties. Wes Bissett (Independent Insurance Agents and Brokers of America—IIABA) expressed concern with including language in disclosure obligation requiring producers to disclose their “limitations” regarding the types of products they can sell and ultimately recommend to a consumer. He said such language needs to be framed more clearly. He also said the IIABA does not believe compensation should be part of the disclosures made during the initial sales meeting with the consumer. He also said developing a form that a producer could provide to the consumer would be helpful to assist with compliance with the disclosure obligation. Kim O’Brien (Fixed Annuity Consumer Choice Campaign—FACC Campaign; and Americans for Asset Protection—AAP) expressed support for Mr. Bissett’s comments concerning developing a form or a template. She noted that the FACC Campaign and the AAP submitted comments on the SEC’s CRS form. Birny Birnbaum (Center for Economic Justice—CEJ) suggested the Working Group consider the purpose of consumer disclosures and design such disclosures to accomplish that goal, as well as consumer test the disclosures to be provided to consumers. He also suggested the disclosures should include specific key questions producers should ask consumers. Additionally, he agreed that creating a template would be helpful to ensure consumers understand what a producer can and cannot sell.

Sarah Ferman (American Bankers Association—ABA) said the Working Group needs to clarify the potential provisions in the disclosure obligation with respect to their application to banks, particularly for disclosures concerning limitations on the types of products a producer is authorized and licensed to sell. Gary Sanders (National Association of Insurance and Financial Advisors—NAIFA) expressed concern that adding more disclosure requirements could adversely affect the sales process.

b. Conflict of Interest Obligation

The Working Group next discussed what potential requirements should be in the conflict of interest obligation. Commissioner Ommen discussed the rationale of including language requiring a producer or insurer to avoid or reasonably manage material conflicts of interest. Ms. Rafeld expressed concern with an insurer’s ability to supervise such a requirement for compliance and the ability of state insurance regulators to enforce it. The Working Group also discussed the potential requirement to disclose information related to compensation and if compensation should be disclosed as part of the conflict of interest obligation.

Director Froment requested comments from interested parties. Mr. Bissett suggested that disclosing compensation should not be part of the conflict of interest obligation. Mr. Sanders agreed. He also suggested that such information, particularly a specific dollar amount, might not be meaningful to consumers. Michael Gugig (Transamerica), speaking for himself and not on behalf of Transamerica, agreed. He said it is not possible for producers to provide a specific dollar amount they will be compensated at an initial sales meeting with the consumer. He recommended the Working Group consider requiring broad disclosures related to compensation and leave it up to the consumer to ask for more information.

The Working Group discussed its possible approach. Mr. Birnbaum questioned the need for such a provision. He said disclosure is not enough, but if the Working Group decides to take this approach, then it would need to pair the compensation with the product. Jim Szostek (American Council of Life Insurers—ACLI) said that the ACLI supports an upfront general disclosure to the consumer that the producer will be compensated but providing an actual dollar amount of that compensation might be too complicated. He also agreed with previous commenters that the mere fact of receiving cash compensation does not necessarily create a conflict. Commissioner Ommen asked Mr. Szostek if he agrees with Mr. Birnbaum that the NAIC should consumer test these conflict of interest disclosures to see if consumers understand. Mr. Szostek said the SEC conducted some testing of its CRS form. As such, it might be valuable for the NAIC to see the results of that testing.
The Working Group discussed what consumers might want to know with respect to conflict of interest. After discussion, the Working Group decided that disclosing information related to compensation might not be appropriate for a conflict of interest obligation, but, perhaps, it would be more appropriate as part of the disclosure obligation or the care obligation. Ms. Rafeld questioned whether receiving a commission is a material conflict of interest. The Working Group also agreed to discuss this issue of material conflict of interest later during a future conference call.

c. Care Obligation

Commissioner Ommen discussed the Iowa DOI’s suggested revisions related to a care obligation. He noted that the SEC removed the word “prudence” in its Regulation BI. He suggested removing the word. Mr. Regalbuto explained the importance of retaining it because the products involved are risk management products. Other Working Group members expressed support for deleting “prudence.” After additional discussion, the Working Group decided to defer making a decision on removing the word “prudence” and discuss further during a future conference call.

Ms. Lerner discussed the California DOI’s suggested language for a care obligation adding additional language regarding “reasonableness” that would require a producer or an insurer to act with reasonable diligence, care, skill and prudence that a prudent person acting “in like capacity and familiar with such matters” would use under the circumstance. Mr. Regalbuto expressed support for the suggested language. The Working Group discussed Ms. Lerner’s suggested language and issues it raised for some Working Group members, particularly from an enforcement perspective. The Working Group discussed the Iowa DOI’s suggestion to add language on whether a recommendation is reasonable for an “ordinary” producer in a similar circumstance to recommend. The Working Group decided to defer this issue for further discussion later during a future conference call.

The Working Group next discussed whether as part of the care obligation, the producer or insurer should provide an oral or a written description of the basis of the recommendation. Commissioner Ommen said the Iowa DOI suggests oral or written because not all conversations between the producer and the consumer during the sales process will be written, but the producer or insurer will have to document the results of the conversations under the documentation obligation. Ms. Lerner suggested that it should be both oral and written. The Working Group decided to defer this issue for further discussion during a future conference call.

Director Froment requested comments from interested parties. Robbie Meyer (ACLI) said the ACLI supports a clear and consistent standard for compliance and enforcement. Mr. Birnbaum questioned the need for harmonization with the SEC’s Regulation BI. He also questioned why the Working Group is not including investment-type life products in the proposed revisions to Model #275. Director Froment asked the Working Group members about harmonization with the SEC’s Regulation BI. Mr. Gendron explained from Rhode Island’s perspective why it supports appropriate harmonization with the SEC’s Regulation BI given its available resources. Commissioner Ommen agreed with Mr. Gendron’s comments. He also said that harmonization is important for consumers. He said it is not consumer protection when companies have multiple compliance standards to follow. Mr. Regalbuto said harmonizing where possible is good; however, harmonizing just for the sake of it should not be the goal. He said he believes the Working Group’s goal should be to establish a consumer-focused conduct standard. Ms. Brouse agreed with Mr. Regalbuto’s comments in part. However, she said she is not concerned with harmonizing with the SEC’s Regulation BI to make it easier for state insurance regulators with respect to enforcement and compliance. Her concern relates to consumers and the idea that harmonizing with the SEC’s Regulation BI could minimize consumer confusion.

d. Documentation Obligation

Ms. Lerner said she does not believe it is enough to simply require a producer or an insurer as a requirement under the documentation obligation to obtain a signed statement of the consumer’s refusal to provide his or her consumer profile information. She also said she believes a producer or insurer should not be able to sell a product if it is not recommended. Ms. Neil said Rhode Island has seen some evidence that some producers are gaming the system in telling the consumers they do not have to provide their consumer profile information. Director Froment said that if an insurer has an adequate supervision system, the insurer should be able to discover such behavior. Ms. Brouse agreed with Director Froment. Mr. Wicka suggested the Working Group might want to consider including a requirement for the producer to submit the consumer profile information collected to the insurer. The Working Group agreed that it is a delicate balance to permit those consumers more knowledgeable about their needs to not provide certain information and those less sophisticated consumers who need more protection.

e. Supervision System/Compliance Obligation
The Working Group discussed the provisions for a supervision system. Mr. Regalbuto said he would add a supervision responsibility to not hold sales contests to avoid issues with compliance. The Working Group discussed his suggestion, noting that issues with sales contests could be discovered under the current supervision requirements. However, some Working Group members recognized there could be an issue with discovering noncompliant transactions involving products a producer sells for another insurer. As such, some Working Group members wondered what is or should be an insurer’s duties under its supervision system with respect to other insurers.

4. Discussed its Next Steps

Director Froment said she would like the Working Group to meet via conference call two or three times prior to the Summer National Meeting. She said that for each call, there would be a specific topic for discussion using the final issues document from this meeting (Attachment Four-A3). She said that prior to each call, the Working Group would ask for comments on the specific topic and discuss the comments received during the call. She said her goal is for the Working Group to complete a new draft for the Life Insurance and Annuities (A) Committee’s consideration by the Fall National Meeting. Director Froment also said the previous comments received by the Feb. 15 public comment deadline would be reviewed and discussed when the Working Group begins its work to develop a revised draft of revisions to Model #275.

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

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<td>o Surrender charge, loss of benefits, surrender period, fees</td>
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<td><strong>Conflict of Interest Obligation</strong></td>
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<td>• Written policies designed to:</td>
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<td>o Identity, disclose or eliminate conflicts of interest with recommendation</td>
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<td>o Identify and mitigate conflicts of interest that create inventive to place interest ahead of the customer</td>
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<td>o Identify and disclose material limitations on the securities or investment strategies; and prevent such limitations</td>
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<td>o Identify and eliminate any sales contests, sales quotas, bonuses and non-cash compensation</td>
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<td><strong>Conflict of Interest Obligation</strong></td>
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<td>o Sources and types of compensation including if by commission or contractual fee</td>
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<td>o Reasonable estimate of cash compensation</td>
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<td>o Whether compensation is one-time or multiple</td>
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<td>o Type of non-cash compensation that exceeds $500</td>
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<td><strong>Documentation Obligation</strong></td>
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<td>• At time of recommendation/sale:</td>
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<td>o Make a written record of recommendation and basis</td>
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<td>o Obtain customer signed statement of customer’s refusal to sign profile</td>
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<td><strong>Compliance Obligation</strong></td>
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<td>• Broker or dealer establishes, maintains and enforces written policies and procedures designed to achieve compliance</td>
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<td><strong>Supervision System (insurer)</strong></td>
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<td>• shall not issue annuity unless reasonable basis to believe it addresses needs and financial objectives based on profile</td>
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<td>• Can contract for compliance services, but still responsible</td>
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<td>• Only have to supervise own products</td>
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Best Interest

Disclosure Obligation
- Prior to or at time of recommendation
  - Scope and terms of relationship
  - Limitations on type products or specific insurer
  - Reasonable basis to believe consumer has been informed of features of the annuity

Care Obligation
- Exercise reasonable diligence, care, skill and prudence to:
  - Know consumer’s situation, needs and objectives; understand the available recommendation options. (consumer profile)
  - Reasonable basis after making reasonable inquiry into options that the option would be best suited to consumer
- Reasonable efforts to obtain consumer profile
- Limited to options producer is authorized or licensed to sell
- NOT a fiduciary obligation
- Reasonable for an ordinary producer in a similar circumstance to recommend
- Level of importance of factors in consumer profile may vary depending on particular circumstances; not considered in isolation
- Reasonable basis to believe consumer would benefit from features of annuity
- Reasonable basis to believe product as a whole would address consumer’s needs
- Does not require lowest compensation structure be recommended
- No ongoing monitoring obligations under this care obligation
- Oral or written description of the basis of the recommendation
- In case of exchange or replacement, take into consideration:
  - Surrender charge, loss of benefits, surrender period, fees
  - Replacing product would substantially benefit the consumer in comparison over life of product
  - Consumer had another exchange or replacement, particularly in the preceding 60 months

Conflict of Interest Obligation
- Shall avoid or otherwise reasonably manage material conflicts of interest
- Prior to/at time of recommendation/sale shall disclose:
  - Sources and types of compensation including if by commission or contractual fee
  - Reasonable estimate of cash compensation
  - Whether compensation is one-time or multiple
  - Type of non-cash compensation that exceeds $500

Documentation Obligation
- At time of recommendation/sale:
  - Make a written record of recommendation and basis
  - Obtain customer signed statement of customer’s refusal to sign profile
  - Obtain customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to do so

Supervision System (insurer)
- shall not issue annuity unless reasonable basis to believe it addresses needs and financial objectives based on profile
- shall establish supervision system designed to achieve compliance by:
  - maintain reasonable procedures to inform producers and incorporate into training
  - establish standards for training and procedures to require producer compliance
  - provide product specific training and materials
  - maintain procedures for review of recommendation prior to issuance
<table>
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<tr>
<th>Reasonable procedures to detect non-compliant recommendations</th>
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<tr>
<td>Reasonable procedures to assess if consumer provided required info</td>
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<td>Annual report to senior management regarding compliance activities</td>
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</table>

- Can contract for compliance services, but still responsible (at insurer level)
- **Only have to supervise own products (do not have to take into account other carrier’s products)**
**Best Interest**

**Disclosure Obligation**
- Prior to or at time of recommendation
  - Scope and terms of relationship
  - Limitations on type products or specific insurer
  - Reasonable basis to believe consumer has been informed of features of the annuity

**Care Obligation**
- Exercise reasonable diligence, care, and prudence to:
  - Know consumer’s situation, needs and objectives; understand the available recommendation options (consumer profile)
  - Reasonable basis after making reasonable inquiry into options that the option would be best suited to consumer
- Reasonable efforts to obtain consumer profile [Section 6.B.]
- Limited to options producer is authorized or licensed to sell
- NOT a fiduciary obligation
- Reasonable for an ordinary producer in a similar circumstance to recommend
- Level of importance of factors in consumer profile may vary depending on particular circumstances; not considered in isolation
- Reasonable basis to believe consumer would benefit from features of annuity [Section 6A(2)]
- Reasonable basis to believe product as a whole would address consumer’s needs [Section 6A(3)]
- Does not require lowest compensation structure be recommended
- No ongoing monitoring obligations under this care obligation
- Oral or written description of the basis of the recommendation
- In case of exchange or replacement, take into consideration:
  - Surrender charge, loss of benefits, surrender period, fees [Section 6A(4)(a)]
  - Replacing product would substantially benefit the consumer in comparison over life of product
  - Consumer had another exchange or replacement, particularly in the preceding 60 months [Section 6A(4)(c) but with 36 months]

**Conflict of Interest Obligation**
- Shall avoid or otherwise reasonably manage material conflicts of interest
- Prior to/at time of recommendation/sale shall disclose:
  - Sources and types of compensation including if by commission or contractual fee
  - Reasonable estimate of cash compensation
  - Whether compensation is one-time or multiple
  - Type of non-cash compensation that exceeds $500

**Documentation Obligation**
- At time of recommendation/sale:
  - Make a written record of recommendation and basis [Section 6E(1)]
  - Obtain customer signed statement of customer’s refusal to provide profile information [Section 6E(2)]
  - Obtain customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to do so [Section 6E(3)]

**Supervision System (insurer)**
- shall not issue annuity unless reasonable basis to believe it addresses needs and financial objectives based on profile [Combination of Sections 6A(1) and 6C]
- shall establish supervision system designed to achieve compliance by [Section 6F(1)]:
  - maintain reasonable procedures to inform producers and incorporate into training [Section 6F(1)(a)]
- establish standards for training and procedures to require producer compliance [Section 6F(1)(b)]
- provide product specific training and materials [Section 6F(1)(c)]
- maintain procedures for review of recommendation prior to issuance [Section 6F(1)(d)]
- reasonable procedures to detect non-compliant recommendations [Section 6F(1)(e)]
- reasonable procedures to assess if consumer provided required info [Section 6F(1)(e)]
- Annual report to senior management regarding compliance activities [Section 6F(1)(f)]
- Can contract for compliance services, but still responsible (at insurer level) [Section 6F(2)(a)]
- Only have to supervise own products (do not have to take into account other carrier’s products) [Section 6F(3)]

Added: References to existing NAIC Model Law #275 “Suitability in Annuity Transactions Model Regulation” (2nd Quarter 2015)

Parking Lot

- Reasonable basis to believe consumer has been informed of features of the annuity
  (not discarded, to be placed elsewhere)
The Life Insurance Illustration Issues (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call May 15, 2019. The following Working Group members participated: Richard Wicka, Chair (WI); Jodi Lerner and Ahmad Kamil (CA); Chris Struk (FL); Mary Mealer (MO); Robert E. Harkins (NE); and Tynesia Dorsey (OH). Also participating were: Mike Chrysler (IL); Tate Flott (KS); Denise Lamy (NH); Jennifer Lloyd (PA); and David Hippen (WA).

1. **Reviewed its Charge and Work Plan**

Mr. Wicka reminded the Working Group of its 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.” He reminded the Working Group that it had initially decided to add a requirement for a policy overview document in both Model #580 and Model #582 to fulfill the Working Group’s charge. However, in September 2018, the Working Group agreed to simplify the approach it had been working on by revising just Model #580 to include the requirement of a policy overview document to accompany all life insurance policies for delivery with the Life Insurance Buyer’s Guide (Buyer’s Guide). This new approach eliminates the need for revisions to Model #582.

Mr. Wicka explained that the purpose of this conference call was to discuss the April 24 draft revisions to Model #580, as well as the April 24 draft sample overview document. He said the sample overview document is not intended to be a required format, but it is an example of how to comply with the policy overview requirements in the April 24 draft revisions to Model #580. He said he would like to have these documents ready for adoption by the Life Insurance and Annuities (A) Committee at the Summer National Meeting.

2. **Discussed April 24 Draft of Model #580 and Sample Overview Form**

Ms. Lerner questioned delivering this policy overview document at the same time as the Buyer’s Guide. She said, in her experience, the Buyer’s Guide is not delivered before the time of policy delivery. She said in order for the policy overview to be meaningful, it should be delivered at the time of application; otherwise, it could easily become one of the pages and pages of papers people get with their policies that they never read.

Mr. Wicka explained that the policy overview document is tied to the policy summary referenced in the Working Group’s charge, which is currently distributed with the Buyer’s Guide. He said changing the timing of the distribution of the Buyer’s Guide is outside the scope of the Working Group’s charge, and it requires direction from the Life Insurance and Annuities (A) Committee to review.

Ms. Lerner also suggested that there should be separate sample overview documents for each type of policy. Ms. Mealer agreed that it would be useful to have samples for all types of policies. Mr. Chrysler agreed, but he cautioned that things get more difficult when they get more detailed. Mr. Struk said developing policy-specific samples will address his concern that an overview of some of the more complicated policies might get too lengthy to be helpful. He also suggested including a statement that the overview does not replace the policy. Mr. Wicka said he would develop additional samples for review by the Working Group.

Biny Birnbaum (Center for Economic Justice—CEJ) said he thought there was still an open question on the timing of delivery, and he requested additional time to submit comments. He said it makes sense to give the policy overview with the Buyer’s Guide and the delivery of both is essential prior to policy delivery. He said it would be useful for the Working Group to agree on the purpose of the policy overview to guide its decision making. He said the Working Group should agree that the purpose of a policy overview of a product’s features and costs is to facilitate consumer understanding and comparison shopping.

Mr. Birnbaum said he noticed that “nonguaranteed elements” is a defined term, but “guaranteed elements” is not. He also said the term “illustration” is used in the draft, and it should include a drafting note cross-referencing Model #582. He suggested that, given the purpose of policy overview, there is no need to include “name” or “date of birth.” He also said the sample...
template uses insurance jargon, and it needs to use simpler language to be helpful. Michael Lovendusky (American Council of Life Insurers—ACLI) said the ACLI can agree with deleting “name” and “date of birth” from the policy overview document. Mr. Wicka asked Mr. Birnbaum to submit suggested language in his comments on this draft.

The Working Group agreed, after NAIC staff addresses any typos or technical errors in the draft revisions to Model #580 and the sample overview, they will be exposed for a public comment period ending June 21.

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

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Draft: 7/29/19

Life Insurance Online Guide (A) Working Group
Conference Call
July 24, 2019

The Life Insurance Online Guide (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call July 24, 2019. The following Working Group members participated: Mary Mealer, Chair (MO); Teresa Winer (GA); Robert E. Harkins (NE); Jana Jarrett (OH); and Sarah Neil (RI). Also participating were: Mike Chrysler (IL); and Denise Lamy (NH).

1. **Discussed Submitted Language for the Online Guide**

Ms. Mealer explained that NAIC consumer representatives Birny Birnbaum (Center for Economic Justice—CEJ) and Brenda J. Cude (University of Georgia) drafted revisions to the suggested definitions reviewed by the Working Group during its June 10 conference call. The revised definitions were circulated to the Working Group, interested state insurance regulators, and interested parties; and they were posted on the Working Group’s web page.

   a. **Discussed Rider**

   The Working group discussed the following revised definition and note provided by Mr. Birnbaum and Ms. Cude:

   **What is a “Rider” to a Life Insurance Policy?** An insurance rider changes the base policy. For example, many life insurance riders add benefits or options for the policyholder. There is usually an extra premium for riders that add coverage or benefits or give the policyholder options not in the base policy. Some riders that you buy after the policy was issued may require evidence of insurability (link / pop up to “evidence of insurability”).

   Different insurers may offer different riders. Some riders are available only for some types of life insurance. This online guide generally describes common riders, but you should get the details—eligibility, coverage, benefits, restrictions, initial cost, future costs, etc.—for the specific rider you’re considering, and be sure the rider makes sense for you.

   **[Note: Applies to All Types of Policies [Is this true?]]**

   *Note to the drafting group: Each definition should indicate what types of life insurance for which the definition or description is applicable. The applicable insurance type is not part of the consumer disclosure, but it serves two purposes. First, to make sure the working group is on the same page regarding which rider definitions go with which types of insurance. Second, when the NAIC starts to build the online tool, it will be necessary to associated definitions and descriptions with specific types of insurance—term, whole, universal, variable, variable universal, indexed, endowment, etc.*

   The Working Group liked the revised language. Kim O’Brien (Americans for Annuity Protection) said some riders may be available only with certain policies (not necessarily with all policies of a particular type). The Working Group agreed to add this concept to the definition. The Working Group also discussed that this term applies to all types of life insurance policies, and the definition does not vary as applied to different types of life insurance.

   b. **Discussed Guaranteed Insurability or Guaranteed Renewal Rider**

   The Working Group discussed the following revised definition provided by Mr. Birnbaum and Ms. Cude:

   **Guaranteed Insurability or Guaranteed Renewal Rider: Term life insurance** (link / pop up to “term life insurance”) is designed to remain in force (link / pop up to “in force”) for a set number of years—the term of the policy. A guaranteed insurability or guaranteed renewal rider lets you extend the term of the coverage or increase the amount of coverage after you bought the policy. In some cases, this rider will let you extend the coverage beyond the original term without new medical underwriting or new evidence of insurability.

   The Working Group liked the revised language and agreed that this term applies to all types of life insurance policies, and the definition does not vary as applied to different types of life insurance.
c. Discussed Accidental Death and Dismemberment Rider

The Working Group discussed the following revised definition and note provided by Mr. Birnbaum and Ms. Cude:

**Accidental Death and Dismemberment Rider:** When you buy life insurance, the death benefit (or face amount) of the policy is the amount the insurance company will pay your beneficiary if you die. With an accidental death rider, the insurance company will pay more than the death benefit. If you're considering this rider, be sure to learn the insurer’s definition of accidental death. What types of accidental deaths would be eligible for the increased benefit payment? You should also keep in mind that very few (less than 5%) insured deaths are accidental.

The accidental dismemberment rider, sometimes combined with accidental death coverage, pays you a benefit if you lose an arm, hand, finger, leg, foot or eye due to an accident. As with the accidental death rider, be sure you know before you buy the rider what body parts are covered and what type of accidents qualify for benefits.

The Working Group generally liked the revised language, but it questioned whether the statement “you should also keep in mind that very few (less than 5%) insured deaths are accidental” was providing advice or needed a citation with the statistic. Ms. O’Brien said she was involved in a case where a person who was involved in an at-risk profession was filing action against an agent for not offering this type of rider. Ms. Mealer suggested referencing what “cause” or types of accidental deaths would be eligible to get at “at-risk professions or activities.” The Working Group discussed that this term should really reference “Accidental Death Rider and Accidental Death and Dismemberment Rider.” They are two types of riders that would apply to all types of life insurance policies, and the definition does not vary as applied to different types of life insurance.

d. Discussed Waiver of Premium Rider

The Working Group discussed the following revised definition provided by Mr. Birnbaum and Ms. Cude:

**Waiver of Premium Rider:** With this rider, if you become disabled or unable to work due to illness or injury, you don’t have to pay your premium until you return to work or start earning an income again. Once you return to work or start earning an income again, you must start paying the premium again. Be sure you know what types of disabilities or illnesses are eligible for a waiver of premium rider before you buy.

The Working Group discussed that there may be additional eligibility criteria associated with this rider, such as age, that a consumer should be aware of. Ms. Mealer agreed to revise this definition to add a reference to the eligibility restrictions. The Working Group agreed that this rider applies to all types of life insurance policies, and the definition does not vary as applied to different types of life insurance.

e. Discussed Disability Income Benefit Rider

The Working Group discussed the following revised definition provided by Mr. Birnbaum and Ms. Cude:

**Disability Income Benefit Rider:** With this rider, you can receive regular payments if you meet the life insurance company’s definition of disabled and can’t work. The amount you’ll receive and the number of payments depends on the terms of the rider.

Like the definition of “waiver of premium rider,” the Working Group agreed that a reference to eligibility restrictions should be added to this definition as well. The Working Group agreed that this rider applies to all types of life insurance policies, and the definition does not vary as applied to different types of life insurance.

f. Discussed Accelerated Death Benefit Rider

The Working Group discussed the following revised definition provided by Mr. Birnbaum and Ms. Cude:

**Accelerated Death Benefit Rider:** With this rider, you can receive payments from your death benefit before your death if you become terminally ill and have a short life expectancy, such as one year. For instance, someone diagnosed with cancer with a life expectancy of six months could ask to be paid part of the death benefit even though they’re still alive. Any part of the death benefit paid to you reduces the policy’s final death benefit.
The Working Group liked the revised language and agreed that this term applies to all types of life insurance policies, and the definition does not vary as applied to different types of life insurance.

g. Discussed Term Conversion Rider

The Working Group discussed the following revised definition provided by Mr. Birnbaum and Ms. Cude:

**Term Conversion Rider**: This rider lets you convert your term insurance into permanent insurance (without medical underwriting). Be sure to learn when and how you can convert your policy. There may be eligibility criteria and time frames or deadlines to convert your policy.

Ms. Cude had included a note that “eligibility criteria or deadlines” is still too complicated. The Working Group discussed using language like age and timing restrictions or referring to limits on the rider’s availability under certain circumstances. Ms. Mealer said she would draft some language for the Working Group to review. Mr. Birnbaum suggested that if this rider only applies to term life insurance policies, it should be called a “conversion rider.” He also said he had some thoughts as to how to include the eligibility issue and would forward them to Ms. Mealer.

h. Discussed Long-Term Care Rider

The Working Group discussed the following revised definition provided by Mr. Birnbaum and Ms. Cude:

**Long-Term Care Rider**: This rider, like the accelerated death benefit rider, pays a benefit before you die if you meet the eligibility requirements for long-term care. Be sure to learn what’s required to be eligible for benefits. Usually you must be unable to do a certain number of activities of daily living or be cognitively impaired. Ask what type of benefit the rider provides. It could be a single payment or a set of monthly payments. Also ask if there’s a cap on how much of the death benefit you can use. Any part of the death benefit you use for LTC will reduce the policy’s final death benefit.

The Working Group liked the revised language and agreed that this term applies to all types of life insurance policies, and the definition does not vary as applied to different types of life insurance. Ms. O’Brien suggested replacing the term “cap” with a more consumer friendly word like “limit.”

i. Discussed Return of Premium Rider

The Working Group discussed the following revised definition provided by Mr. Birnbaum and Ms. Cude:

**Return of Premium Rider**: This rider lets you collect the premiums (minus any loans) or withdrawals you paid if you live to the end of the policy term. Before you buy this rider, compare the extra premium you’ll pay for the rider to the amount of premium that might be returned to you.

The Working Group discussed whether the last sentence was too prescriptive. Mr. Birnbaum thought it was not. Ms. O’Brien suggested softening the language to say something along the lines of “consider how much you’ll pay as opposed to how much money you’ll get back.” Ms. Mealer said she would revise the last sentence. The Working Group agreed that this term applies to all types of life insurance policies, and the definition does not vary as applied to different types of life insurance.

j. Discussed Critical Illness Rider

The Working Group discussed the following revised definition provided by Mr. Birnbaum and Ms. Cude:

**Critical Illness Rider**: This rider pays a lump sum if you’re diagnosed with a critical illness listed in the rider.

The Working Group agreed that the definition should be revised to include a statement that the consumer should review the policy definition of critical illness to know what is and is not included. The Working Group agreed that this term applies to all types of life insurance policies, and the definition does not vary as applied to different types of life insurance.
k. Discussed Child Protection Rider

The Working Group discussed the following revised definition provided by Mr. Birnbaum and Ms. Cude:

**Child Protection Rider:** This rider lets the parent add a child to their term life policy.

The Working Group thought that the wording of the definition could be misunderstood to mean that a child could be the beneficiary. The Working Group discussed revising the definition to say, “This rider lets a parent add term life insurance coverage on their child.” The Working Group agreed that this term applies to all types of life insurance policies, and the definition does not vary as applied to different types of life insurance.

l. Discussed Dividend

The Working Group discussed the following revised definition provided by Mr. Birnbaum and Ms. Cude:

**Dividend:** A dividend is a part of the insurance company’s profits paid to policyholders who have participating policies. This is similar to a company payment if you’re an investor or stockholder. Participating policies are usually whole life policies. Ask the insurance company and/or agent to learn which of their policies participate. You’ll have several choices about how to use the dividends paid to you. Some of those options are:

- **Paid-Up Additions:** You can use the dividend to increase the death benefit. This will also increase the policy’s cash value. The cash value and dividends grow tax-deferred income.
- **Cash Payment:** The annual dividends can be paid in cash. A paper check is usually mailed directly to you.

Ms. O’Brien suggested, and the Working Group agreed to, revising the sentence in the term “dividend” to say, “ask the insurance company and/or agent to learn which of their policies pay dividends.” The Working Group also agreed to revise “paid-up additions” to say, “you can use the dividend to add to the death benefit.” The Working Group agreed to continue to discuss the remaining definitions during its next conference call.

2. Discussed Next Steps

Ms. Mealer said a revised document would be drafted and distributed. She said she would report the Working Group’s progress to the Life Insurance and Annuities (A) Committee at the upcoming Summer National Meeting.

Having no further business, the Life Insurance Online Guide (A) Working Group adjourned.
The Life Insurance Online Guide (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call July 8, 2019. The following Working Group members participated: Mary Mealer, Chair (MO); Teresa Winer (GA); Robert E. Harkins (NE); Robert Seese (OH); and Sarah Neil (RI). Also participating were: Perry Kupferman (CA); Mike Chrysler (IL); and Denise Lamy (NH).

1. **Heard a Presentation from the NAIC Communications Director**

Laura Kane (NAIC) spoke to the Working Group about plans to revamp the consumer-facing sections of the NAIC website. She explained that details have not been worked out yet, but the idea is to replace Insure U and the Consumer Information Source (CIS) tools with a consistent look and feel across all product lines. She said the NAIC is partnering with a firm to do consumer testing to make sure the new website is consumer friendly and navigating information flows smoothly and logically. She said the NAIC not only intends to test the location of information on the website, it will be utilizing quizzes to test consumer comprehension. She said she is looking forward to working with the Working Group, and she is open to any ideas and incorporating information that comes out of the Working Group into the website. She mentioned that September is “life insurance month” and the Communications Division will be pushing out a tool kit to the states that includes information from the *Life Insurance Buyer’s Guide* (Buyer’s Guide) that was recently developed. She mentioned that information from the Buyer’s Guide will also be incorporated into the website in the near future, but the larger scope of re-doing the website is a longer-term project. Ms. Mealer wondered how soon the NAIC would need information to be included in the tool kit for September’s “life insurance month.” Ms. Kane said there was likely not time this year, but there is always next year.

Birny Birnbaum (Center for Economic Justice—CEJ) said the Working Group was the result of observations made by consumer representatives and the industry during the development of the Buyer’s Guide that consumers are not using paper guides. As a result, the Buyer’s Guide became a much shorter set of curated frequently asked questions (FAQs), with the idea that an online resource could become the way to educate consumers about this increasingly complex product; and the Working Group developed an outline that uses a “decision-tree” format. Mr. Birnbaum said the online guide is designed to help people when they are shopping for life insurance, as opposed to a campaign to alert people to a need. Ms. Kane agreed that the website should definitely be a resource for unbiased information on life insurance, but another aspect of what the NAIC will be working on is a campaign to tell people about the resource, so consumers know that the information exists and where to find it. The information is only useful if consumers access it. Ms. Kane also cautioned that the NAIC does not sell insurance and has to be careful that information on the website is not construed to offer advice or recommend one product over another.

Mr. Birnbaum also said he and Brenda J. Cude (University of Georgia) worked on a title insurance online guide that was designed for the states to customize for their own markets. He said life insurance and annuities are much more standardized and better suited for an online guide housed on the NAIC website that states could link to. Ms. Kane said she looks forward to partnering with the Working Group as it develops the life insurance online guide.

2. **Discussed Submitted Language for the Online Guide**

The Working Group continued discussing suggested definitions submitted by state insurance regulators and interested parties prior to its last conference call on June 10.

   a. **Discussed Guarantee Against Lapse or No Lapse Guarantee and Death Benefit Options**

Susanne Bassmann (Prudential) submitted language for the terms “guaranteed against lapse/no lapse guarantee” as well as “death benefit options.” She reviewed the language that she put together. Mr. Birnbaum said while Ms. Bassmann was knowledgeable and accurately defined the terms, it was not presented in a way that is understandable to an average consumer. Ms. Mealer suggested that Mr. Birnbaum work with Ms. Bassmann and funded consumer representative and readability expert, Ms. Cude, to revise the definitions for review by the Working Group during its next conference call.
Paul Skalecki (Northwest Mutual) observed that the death benefit options listed applied to Universal Life products. Mr. Birnbaum suggested, and the Working Group agreed, in future drafts, the definitions should indicate to which products they apply.

b. **Discussed Term Conversion**

Ms. Neil reviewed the draft definition of “term conversion.” Mr. Birnbaum said the first paragraph expressed a value judgment, and he suggested removing that from the definition. Ms. Neil said she will revise the definition for consideration by the Working Group during its next conference call.

c. **Discussed Endowment Life Insurance**

Mr. Chrysler drafted the language for “endowment life insurance.” The Working Group discussed that this definition should focus on what distinguishes this insurance from other types of life insurance. Randy Foster (American International Group—AIG) said this definition needs to mention that it is primarily a life insurance product and then mention special aspects of the product. Ms. Mealer agreed to revise the definition for review by the Working Group.

d. **Discussed Cash Value Withdrawals**

Ms. Winer drafted the language for “cash value withdrawals.” After discussion, Ms. Winer said she will redraft this definition for review by the Working Group.

3. **Discussed Next Steps**

Ms. Mealer said she will draft a glossary of terms that could be linked to other terms in other definitions. The Working Group plans to meet July 24 via conference call to continue discussing definitions.

Having no further business, the Life Insurance Online Guide (A) Working Group adjourned.
The Life Insurance Online Guide (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call June 10, 2019. The following Working Group members participated: Mary Mealer, Chair (MO); Teresa Winer (GA); Robert E. Harkins (NE); Jana Jarrett (OH); David Buono (PA); and Elizabeth Kelleher Dwyer and Sarah Neil (RI). Also participating were: Yada Horace (AL); Mike Chrysler (IL); Denise Lamy (NH); Deanna Osmonson (TX); Tanji Northrup (UT); and Justine Bellamy (WI).

1. Discussed Submitted Language for the Online Guide

Ms. Mealer reminded the Working Group of its charge to “develop an online resource on life insurance, including the evaluation of existing content on the NAIC website, to be published digitally for the benefit of the public.” She said during its last conference call, the Working Group agreed to focus its immediate attention on the content to include in the online guide. The Working Group asked for volunteers to work on language to submit for the Working Group’s discussion. Submissions were distributed via email and posted on the Working Group’s web page.

Ms. Mealer said she submitted a definition of “rider” and the 10 most common life insurance riders. She explained that she compiled the list of riders after reviewing product filings and looking through various websites. Ms. Mealer also said she assumes that the primary audience for the online guide will be first-time buyers and people with limited knowledge of life insurance. Brenda J. Cude (University of Georgia) said that she has suggested revisions for readability but would like to wait until the Working Group is settled on the content before submitting her edits.

Birny Birnbaum (Center for Economic Justice—CEJ) suggested that different lists of riders should be developed to link with the different types of life insurance coverage. For example, a “term conversion rider” only applies to term life insurance. He said that while some of the other riders may apply to more than one kind of life insurance policy, the definitions should be tailored to a specific type of policy. Ms. Mealer said she does not disagree and suggested that those kinds of refinements could be made once the Working Group gets further along in the process. The Working Group also agreed to include a disclaimer in the final guide explaining that these definitions are general and that the actual language in a policy may vary.

Ms. Mealer reviewed her suggested definitions and asked for feedback from state insurance regulators and interested parties.

a. Rider

Ms. Neil mentioned that riders may be subject to a separate incontestability period and wondered whether the definition should mention this. The Working Group agreed but suggested that this issue might be better mentioned under specific riders. After additional discussion, the Working Group agreed on the following:

Rider – A rider is a change or modification to the policy that can increase the benefits, offer additional rights or restrict benefits. Riders that add benefits require a separate premium and may require evidence of insurability if added after the policy was issued. If you take out a loan or partially withdraw any cash value, the benefits and values of riders will be affected.

b. Guaranteed Insurability Rider:

Donna Megregian (American Academy of Actuaries) mentioned that a “guaranteed insurability rider” is not the same thing as a “renewability provision,” which is the way a product is filed, and the Working Group agreed. The Working Group discussed whether to include language stating that this rider may appeal to younger adults because they may make changes as life events occur. Ms. Megregian said the other riders do not include to whom the rider may appeal and suggested either adding a statement to all the riders or deleting it from the definition of this rider. Birny Birnbaum (Center for Economic Justice—CEJ) suggested stating how the rider may be used, rather than suggesting to whom it may appeal. The Working Group agreed to the following:

Guaranteed Insurability Rider – This rider lets you buy additional coverage at a later point in life, or allows you to renew a policy, such as when a term life policy ends, or increase your whole life benefit amounts, without medical
underwriting or evidence of insurability. This rider allows changes to be made to the insured amount as life events occur.

c. **Accidental Death:**

**Accidental Death** – If your death is a result of an accident, as defined in the policy, this rider allows you to collect additional benefits on top of the face amount or death benefit. Some accidental death riders will also pay for accidental dismemberment, loss of an arm for example. This payment is in addition to the death benefit under the policy.

d. **Waiver of Premium:**

Ms. Megregian said that waiver of premium only applies if someone is unable to work for an extended period of time. After discussion, the Working Group agreed to the following:

**Waiver of Premium** – If you become disabled or unable to work due to illness or injury for an extended period of time, you don’t have to pay your premium. The policy remains in effect, and once back at work or earning an income, you must start paying the premiums again.

e. **Disability Income Benefit Rider:**

**Disability Income Benefit Rider** – You collect a regular payment from the insurance company if you meet the company’s definition of disabled and cannot work. The rider will tell you the amount you will receive while disabled and the number of payments available.

f. **Accelerated Death Benefit Rider:**

**Accelerated Death Benefit Rider** – This rider lets you collect from your death benefit before death if you become terminally ill with a short life expectancy, such as one year. For instance, someone diagnosed with cancer with a life expectancy of six months can request payment of a portion of the death benefit even though still alive. Any payments made under this this type of rider will reduce the final death benefit payment.

g. **Term Conversion Rider:**

**Term Conversion Rider** – This rider allows you to convert your term insurance into permanent insurance without medical underwriting. There is usually a deadline to convert from term to permanent insurance. (Link term-only riders to term product.)

h. **Long-Term Care Rider:**

The Working Group discussed the fact that long-term care (LTC) riders may reduce the death benefit not only by the amount paid for LTC, but may also include interest charges, early withdrawal penalties or other costs. After discussion, the Working Group agreed to the following:

**Long-Term Care Rider** – This rider is a variation of an accelerated death rider in that it pays you a lump sum or periodic payments if you qualify for long-term care. There may be a cap on how much of the death benefit you can use. The death benefit is reduced by the amount paid for long-term care and other associated costs.

i. **Return of Premium Rider:**

The Working Group agreed that this rider should explain that the amount returned will likely not be the entire premium consumers paid. The Working Group agreed to the following:

**Return of Premium Rider** – This rider allows you to collect the premiums (minus any loans or withdrawals) you paid if you live to the end of the policy term.

j. **Critical Illness Rider:**
Critical Illness Rider – This rider pays a lump sum to you if you are diagnosed with a critical illness listed in the rider. The death benefit is reduced by the amount of critical illness benefit.

k. Child(ren) Protection Rider:

Child(ren) Protection Rider – This rider allows the parent to add term life coverage on their child.

l. Dividend

The Working Group discussed dividends. All types of life insurance policies may pay dividends, but the vast majority are whole life policies. Ms. Cude encouraged the Working Group to start the definition with the most important thing consumers should know. After discussion, the Working Group agreed to the following:

Dividend – Some types of insurance companies offer a dividend, which is a payment by the insurance company to the policyholder. A dividend is a portion of the insurance company’s profits that are paid to policyholders who have participating policies as if you were an investor or stockholder. Participating policies are usually whole life policies that pays dividends. However, be sure to inquire with the insurance company and/or agent to find out which of their policies participate. The policyholder is offered several choices of what to do with the dividends when they are paid. Some options that may be available are as follows:

Paid-Up Additions – You can use the dividend to purchase an additional amount of insurance that will be added to the overall death benefit each year, as well as increase the cash value. The cash value and dividends grow income tax-deferred.

Cash Payment – You can have the annual dividends paid directly to you.

Dividend Accumulation – You can place dividends into an interest-bearing account that earns a specified interest rate set by the insurance company. Keep in mind that any interest earned is taxable to you annually.

Reduction of Premium – You can use the dividend to pay the premium directly, which helps reduce your out-of-pocket cost each year.

Reduction of Loan – If you have an outstanding loan, or you’re thinking about applying for one, you can use the dividend to reduce the overall loan principal.

Reduction of Loan Interest – Similar to the Reduction of Loan option, you can also use the dividend to reduce the loan interest that is due each year, usually on the policy anniversary, to help lower your out-of-pocket cost.

This is a brief overview of dividend options that may available under your policy. Be sure to talk to your insurance company and/or agent, though, to find out what options may be available to you.

The Working Group plans to meet the second week of July via conference call to continue discussing definitions.

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