LIFE INSURANCE AND ANNUITIES (A) COMMITTEE

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Life Insurance and Annuities (A) Committee
Washington, DC
September 22, 2009

The Life Insurance and Annuities (A) Committee met in Washington, DC, Sept. 22, 2009. The following Committee members participated: Thomas R. Sullivan, Chair (NY); Adam Hamm, Vice Chair (ND); Jim L. Ridling represented by Elizabeth Bookwalter (AL); Steve Poizner represented by Perry Kupferman (CA); Gennet Purcell (DC); Kevin McCarty and Mary Beth Senkewicz (FL); Susan E. Voss and Jim Mumford (IA); James J. Donelon represented by Ron Musser (LA); Glenn Wilson represented by Blaine Shepherd (MN); Ann Frohman (NE); Scott J. Kipper represented by Kimberly Everett (NV); James J. Wrynn represented by Kermitt Brooks and Gail Keren (NY); and Sean Dilweg and Kim Shaul (WI). Also participating was: Larry Bruning (KS).

1. Adoption of Conference Call Minutes

Commissioner McCarty motioned, and Commissioner Hamm seconded, to adopt the July 28 joint conference call minutes (Attachment One) and the July 28 and Sept. 9 conference call minutes (Attachments Two and Three). The motion passed unanimously.

2. Adoption of 2010 Committee Charges

Jolie Matthews (NAIC) reviewed the Committee's 2010 proposed charges. She noted that most of the changes from the Committee's 2009 adopted charges were technical. She said the 2009 charge related to the Indexed Annuities Working Group had been deleted because the Working Group had completed its work. The Committee voted to disband the Working Group at the Summer National Meeting. Ms. Bookwalter motioned, and Commissioner Voss seconded, to adopt the 2010 charges (Attachment Four). The motion passed unanimously. Connecticut, Iowa, Nebraska, North Dakota and Wisconsin agreed to sponsor the 2010 charges.

3. Federal Legislative Update

Ms. Matthews provided a legislative update of federal bills of interest to the Committee. On Sept. 10, Sen. Herb Kohl (D-WI), chair of the Senate Special Committee on Aging, along with Sen. Claire McCaskill (D-MO), Sen. Robert Casey (D-PA) and Sen. Kirsten Gillibrand (D-NY), introduced a new version of the Senior Investment Protection Act of 2009, S. 1661. Also, on Sept. 10, Rep. Paul Hodes (D-NH) introduced the House version, H.R. 3551, along with four co-sponsors. Both of these bills have been referred to their committees of jurisdiction and no further action has been taken.

Much like the previous version, the stated purpose of the bill is to protect older Americans from misleading and fraudulent marketing practices, with the goal of increasing retirement security. The bill would provide grants to the states to assist in the detection, prevention and prosecution of deceptive sales practices perpetrated on seniors. To receive funds, a state would need to adopt senior designation and suitability standards. At a minimum, a state would have to adopt the NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (#278) to receive grant funds. However, unlike the previous version, the bill is more prescriptive as to the required minimum standards a state would have to satisfy regarding suitability in order to be eligible for grant funds. The bill requires that the suitability of the annuity products conform to the Financial Industry Regulatory Authority's (FINRA) Rule 2821.

Ms. Matthews noted that H.R. 2733, Fixed Indexed Annuities and Insurance Products Classification Act of 2009, introduced June 4 by U.S. Reps. Gregory Meeks (D-NY) and Tom Price (R-GA), continues to gain co-sponsors. To date, the bill has 40 co-sponsors. The bill would nullify the U.S. Securities and Exchange Commission (SEC) Rule 151A, Indexed Annuities and Certain Other Insurance Contracts, and clarify that indexed annuities are regulated solely at the state level. The bill has been referred to the U.S. House Financial Services Committee. On June 25, Sen. Ben Nelson (D-NE) introduced companion legislation in the U.S. Senate. That bill, S. 1389, has six co-sponsors. Ms. Matthews said NAIC Government Relations staff will continue to monitor the bill's progress and will update the Committee should action be taken on either bill.

Ms. Matthews noted that, at the Summer National Meeting, the Committee received an update on H.R. 2748, The Retirement Security Needs Lifetime Pay Act. That bill was introduced June 8 by U.S. Reps. Earl Pomeroy (D-ND) and Ginny Brown-Waite (R-FL). She said that, while no further activity has taken place on the bill, similar legislation has been introduced in the Senate, S. 1297. H.R. 2748 provides tax incentives for workers to annuitize part of their retirement savings. Specifically, the bill amends the Internal Revenue Code to encourage workers to annuitize some of their retirement savings by providing a

50% tax exclusion for up $10,000 of lifetime annuity payments annually. It also excludes from taxes 25% of lifetime income payments from individual retirement accounts (IRAs), qualified plans and similar employer-sponsored retirement savings plans other than defined benefit plans. The bill also excludes the value of longevity insurance from amounts subject to required minimum distributions (RMDs), and clarifies the taxation of partial annuity payments. The Senate version, S. 1297, The Retirement Security for Life Act of 2009, amends the Internal Revenue Code to allow an exclusion from gross income for 50% of the amount otherwise includible in gross income as guaranteed payments from certain annuity or life insurance contracts. The bill limits the amount of such exclusion to $20,000 in any taxable year. It also provides for an inflation adjustment of the $20,000 limitation beginning in 2011. Ms. Matthews noted Commissioner Voss' upcoming testimony on behalf of the NAIC before the House Financial Services Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises at a hearing titled, "Recent Innovations in Securitization" on the issue of life settlements.

4. Consider Adoption of Working Group Reports:

a. Annuity Disclosure Working Group

Mr. Mumford reported that the Annuity Disclosure Working Group met Sept. 21. During the meeting, the Working Group adopted its Aug. 14 and Sept. 11 conference call minutes. Mr. Mumford said the Working Group agreed to recommend that the Committee send two versions of the Sept. 16 draft guaranty association disclosure template—one version that includes language about the free-look period during which time a contract may be returned, and one version without the free-look period information—to the Receivership and Insolvency (E) Task Force for its consideration. Mr. Mumford explained that the memorandum notes that it is the opinion of the Working Group that the Receivership and Insolvency Task Force, in the context of revising the Life and Health Insurance Guaranty Association Model Act (#520), is in the best position to decide whether information on free-look periods could appropriately be included in the guaranty association disclosure and whether an additional reference to the free-look period would then need to be included in Section 19 of the model act. Mr. Mumford said the Working Group approved distributing for comment revised buyer's guides on fixed-deferred, fixed-indexed and variable annuities. He said the Working Group continued its discussion of the annuity illustration issue. The Working Group agreed to distribute for comment the American Academy of Actuaries' (AAA) revised draft of the American Council of Life Insurer's (ACLI) proposed draft annuity illustration guidelines. Mr. Mumford said the Working Group intends to hold an interim conference call at the beginning of November to discuss a new draft of proposed annuity illustration guidelines.

Wayne Mehlman (ACLI) said that only one version of the guaranty association coverage disclosure template should be forwarded to the Receivership and Insolvency Task Force—the version without the free-look information. Mr. Mehlman said the content of the guaranty association coverage disclosure should be limited to the information referenced in Section 19 of the model act about guaranty fund association coverage. The inclusion of information regarding the free-look period has to do with the contract and, as such, should be included with in the contract documents. In addition, Mr. Mehlman asserted that the inclusion of the free-look period information in the guaranty association coverage disclosure document invited buyers to re-think their purchase based on guaranty association coverage, which would circumvent the prohibition in the model act against using the existence of the guaranty association as an inducement to purchase an insurance product covered by the guaranty association. Joni Forsythe (National Organization of Life & Health Insurance Guaranty Associations—NOLHGA) questioned whether the Working Group was free to include additional information not specified in the statute because this is a statutorily prescribed notice. Ms Senkewicz explained that the model act specifically makes reference to the inclusion of additional information as directed by the commissioner, so information about the free-look period could properly be included.

Birny Birnbaum (Center for Economic Justice—CEJ) explained that the NAIC funded consumer representatives had submitted a draft guaranty association coverage disclosure template that, in his opinion, was more consumer-friendly and easier to understand than the current draft. Consumer representatives, who analyzed the current draft, placed it at a graduate reading level. Mr. Birnbaum said consumer disclosures are about giving consumers relevant information at the appropriate time. Mr. Birnbaum explained that the guaranty association coverage disclosure template is intended to impart information that might influence a consumer's decision, which does not violate the advertising prohibition in the model act. For example, the requirement that the disclosure include information indicating where the consumer can research the financial health of insurers is intended to give information that might influence the consumer's decision. He said that including information about the free-look period is appropriate, as it helps ensure that the disclosure is meaningful and consumers understand that they can change their mind based on the information they receive in the disclosure. Mr. Birnbaum said he accepted the Working Group's decision to report two versions of the guaranty association coverage disclosure template to the Receivership and Insolvency Task Force, because there will be an opportunity for him to make these arguments before the Task Force to resolve the issue. Commissioner Hamm motioned, and Director Frohman seconded, to adopt the Annuity Disclosure Working Group report (Attachment Five). The motion passed unanimously, which included adopting the Working Group's recommendation to forward two versions of the draft guaranty fund coverage association template to the Receivership and Insolvency Task Force for its consideration.

b. Suitability of Annuity Sales Working Group

Ms. Shaul reported that the Suitability of Annuity Sales Working Group met Sept. 21. During its meeting, the Working Group reviewed and discussed a recently distributed subgroup proposal of proposed revisions to the Suitability in Annuity Transactions Model Regulation (#275). Ms. Shaul said the Working Group voted to replace the Working Group's July 2 exposure draft with the subgroup's Sept. 4 draft proposal. This draft will be open for additional comments until Oct. 15. The Working Group also voted, consistent with its charge, to affirmatively pursue revising the model regulation rather than continuing to discuss the issue of developing a model bulletin. Ms. Shaul noted that the Working Group reached this decision after extensive discussion and consideration of some of the comments received on the subgroup's draft proposal. The Working Group agreed to ask this Committee for a one-year extension to complete its work on the model regulation. Ms. Shaul said the Working Group anticipates, however, completing its work by year-end 2009. Commissioner Dilweg motioned, and Commissioner Voss seconded, to adopt the Suitability of Annuity Sales Working Group report, which included granting the Working Group's request for a one-year extension to complete its work (Attachment Six). The motioned passed unanimously.

5. Life and Health Actuarial Task Force Report

Mr. Bruning reported that the Life and Health Actuarial Task Force met Sept. 21. He said the Task Force approved continuing the Task Force's 2009 charges for 2010 and adding a new charge to review some aspects of the Standard Nonforfeiture Law for Individual Deferred Annuities (#805). Mr. Bruning noted that Utah agreed to spearhead this effort. The Task Force discussed the appropriate experience mortality tables and the margins on those mortality tables for the principle-based reserving system and for a net premium reserve system. It also discussed several issues related to the development of a new valuation mortality table for payout annuities. The Task Force heard a presentation by the ACLI regarding an additional net premium reserve methodology for VM-20, the section of the Valuation Manual for life insurance products. Mr. Bruning said the Task Force anticipated receiving a report in mid-October from the ACLI regarding this testing. Mr. Bruning said the Task Force received reports from its subgroups on various portions of the Valuation Manual. VM-00 was amended and released for comment. Mr. Bruning said the Task Force adopted amendments to Actuarial Guideline XXXIII—Determining CARVM Reserves for Annuity Contracts with Elective Benefits related to guaranteed lifetime income benefits. Director Frohman motioned, and Mr. Shepherd seconded, to adopt the Life and Health Actuarial Task Force report, which included adopting the revisions to Actuarial Guideline XXXIII—Determining CARVM Reserves for Annuity Contracts with Elective Benefits. The motion passed unanimously.

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

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Joint Life Insurance and Annuities (A) Committee,
Solvency Modernization Initiative (EX) Task Force
and Principles-Based Reserving (EX) Working Group
Conference Call
July 28, 2009

The Life Insurance and Annuities (A) Committee, the Solvency Modernization Initiative (EX) Task Force and the Principles-Based Reserving (EX) Working Group of the Solvency Modernization Initiative (EX) Task Force met via conference call July 28, 2009. The following Committee members participated: Kermitt Brooks, Chair (NY); Adam Hamm, Vice Chair (ND); Jim L. Ridling represented by David Parsons (AL); Steve Poizner represented by Sheldon Summers (CA); Thomas Sullivan represented by Mark Franklin (CT); Thomas E. Hampton represented by Philip Barlow (DC); Kevin McCarty represented by Mary Beth Senkewicz (FL); Susan E. Voss represented by Jim Armstrong (IA); James J. Donelon (LA); Glenn Wilson represented by Jaki Gardner (MN); Ann Frohman (NE); Scott Kipper represented by Annette James (NV); and Sean Dilweg (WI). The following Task Force members participated: Alfred W. Gross, Chair (VA); Steve Poizner represented by Sheldon Summers (CA); Thomas R. Sullivan represented by Mark Franklin (CT); Thomas E. Hampton represented by Philip Barlow (DC); Kevin McCarty represented by Mary Beth Senkewicz (FL); Sandy Praeger represented by Larry Bruning (KS); Ann Frohman (NE); Kermitt Brooks represented by Joe Fritsch (NY); Mary Jo Hudson (OH); Joel Ario represented by Brad Harker (PA); Sean Dilweg (WI). The following Working Group members participated: Thomas E. Hampton, Chair represented by Philip Barlow (DC); Susan Voss, Vice Chair, represented by Jim Armstrong (IA); Jim Ridling represented by David Parsons (AL) Linda Hall represented by Katie Campbell (AK); Steve Poizner represented by Sheldon Summers (CA); Thomas Sullivan represented by Mark Franklin (CT); Kevin McCarty represented by Al Willis (FL); Sandy Praeger represented by Larry Bruning (KS); Ann Frohman (NE); Kermitt Brooks represented by Lou Felice (NY); Adam Hamm (ND) Mary Jo Hudson (OH); Teresa Miller represented by Rae Taylor (OR); Joel Ario represented by Brad Harker (PA); Alfred Gross (VA). Also participating was Thomas Hampton (DC). Also participating was Bill Carmello (NY).

1. Opening Comments

Mr. Barlow noted that the purpose of the call was to consider adoption of the revised Standard Valuation Law (#820) by each of the respective NAIC groups, as exposed by the Principles-Based Reserving (EX) Working Group. He stated that he believed it was appropriate that action first be considered by the Working Group, then the Solvency Modernization Initiative (EX) Task Force and then the Life Insurance and Annuities (A) Committee.

Commissioner Hampton stated that one of the things the Working Group wanted to do was move the Standard Valuation Law through the NAIC committee process, but the intent is that the proposed law would not be given to state legislatures for consideration until it is accompanied by an initial draft of the Valuation Manual.

2. Overview of Standard Valuation Law

Mr. Bruning provided an overview of the revised Standard Valuation Law as adopted by the Life and Health Actuarial Task Force. He highlighted those sections of the law where changes had been made and the overall reasons for the changes. He also highlighted some of the more significant issues considered in the project. Mr. Bruning discussed how the proposed changes to the law replace the formulaic approach to deal with the ever-changing, and increasingly complex, products being introduced in the marketplace. He noted how, in the past several years, the Life and Health Actuarial Task Force has been constantly making changes to address the new and changing products. However, because of the paradigm shift toward principle-based reserving, the project has proposed to put certain floors into place and is also only applicable to new business written on or after the effective date of the change.

Mr. Carmello asked Mr. Bruning to expand upon the floor minimums. As an example, Mr. Bruning discussed how the variable annuities line of business has a standard scenario as its floor. He discussed how there will be a deterministic reserve used as a floor for certain life insurance products. Mr. Carmello noted that when you consider floors, it should be an objective floor. Mr. Bruning noted that the floors would be detailed in the Valuation Manual, not the Standard Valuation Law.

Mr. Carmello noted that he did not believe that complexity of the products was the reason why the Life and Health Actuarial Task Force embarked upon the principle-based reserving project. He stated that it was his opinion that the reason this project

began was that the mortality rates required under the law for term and universal life were too strong in comparison to the insurers' pricing. He noted that this created loopholes that were exploited, and thus the need for new reserve standards.

Commissioner Dilweg asked if there was any new guidance from the Internal Revenue Service (IRS) regarding the tax issue. Mr. Bruning responded that the IRS had not yet issued anything definitive regarding principle-based reserving, because the idea of minimum net floors was introduced just more than a year ago.

3. Consider Adoption of Standard Valuation Law

Mr. Bruning made a motion that the Principles-Based Reserving Working Group adopt the revised Standard Valuation Law. The motion was seconded by Director Hudson.

Donna Claire (American Academy of Actuaries—AAA) stated her organization's support for the revised Standard Valuation Law, as discussed within their comment letter (Attachment One-A).

John Bruins (American Council of Life Insurers—ACLI) discussed his organization's concerns regarding the revised Standard Valuation Law, as discussed within their comment letter (Attachment One-B). He highlighted his organization's concern regarding the potential for future needed changes to the Standard Valuation Law, simply because the work on the Valuation Manual was not complete. He also highlighted his organization's concern regarding uniformity with respect to principle-based reserving. He noted that the revised Standard Valuation Law allows regulators too much discretion, which could create a lack of uniformity. Mr. Bruning responded that the "commissioner discretion" language was added to allow state legislatures to delegate to the regulator those situations where the guidance did not specifically address a particular issue. He noted that the current law allows a similar type of discretion in the form of regulations or bulletins. Mr. Bruning stated that he believes the revised law is in a form today that is complete.

Mr. Carmello noted that one of the reasons that some support the movement to principle-based reserving is the belief that it will address all risks. He asked Ms. Claire if she believed that was already captured in the asset adequacy analysis requirements. Ms. Claire replied that methodology does come up with a similar type of reserve, but that not all companies are required to perform cash-flow testing. She added that she did not believe an insurer's senior management would have a good enough understanding of asset adequacy and how that correlates to the formulaic reserve. Mr. Carmello noted that principle-based reserving also has exceptions. He noted that the need for reserves to be adequate was already required by asset adequacy, but that the purpose of this project was to lower reserves for some products. Ms. Claire responded that it is anticipated that reserves will decrease for some products, but might increase for others.

Mr. Felice noted his concern regarding moving forward with the law without the Valuation Manual being complete. He noted that he was not clear what the catch-up process would be for incorporating additional changes and was not clear what the NAIC was gaining by adopting the revised law at this time. Mr. Bruning discussed how the Life and Health Actuarial Task Force wanted to move this off its agenda, as it has a great deal of other work to complete. Commissioner Donelon asked if anyone could speculate how long it would take to complete the Valuation Manual. Mr. Barlow explained how the Valuation Manual was intended be a "living document." Mr. Bruning noted that for year-end 2009, the NAIC would institute its first principle-based reserving method for variable annuities with guaranteed minimum living death benefits. He discussed how the actuarial guidance that requires this could be moved into the Valuation Manual today as the first product for the manual — and that additional lines of business could be incorporated at any time. Commissioner Donelon asked about the ACLI's concerns. Mr. Bruning noted that the Life and Health Actuarial Task Force was waiting on the ACLI in order to complete the net minimum floor for life insurance. Commissioner Dilweg suggested that the product be held at the Life Insurance and Annuities Committee and again noted his concern regarding how the IRS views the related tax issue. Mr. Bruning noted that completing the Valuation Manual is an important issue for the NAIC; however, the issue currently on the table is adopting the revised Standard Valuation Law — and delaying a vote on that issue would be a distraction to the project. Mr. Felice asked what the NAIC would do with the revised law until the manual is complete. Mr. Barlow noted that he thought it was acceptable for the full NAIC membership to adopt the law, and for it not to be provided to state legislators until the Valuation Manual is complete. Mr. Parsons expressed his concern that this might conflict with the NAIC's new model law process. Mr. Barlow noted that this model already went through that process.

Ms. Senkewicz called for a vote on the motion. The motion passed, with Alaska, Arkansas, California, Connecticut, Florida, Iowa, Kansas, Nebraska, North Dakota, Ohio, Oregon, Pennsylvania and Virginia voting for the motion; Alabama and New York voted against the motion.

Ms. Campbell noted that she believes the ACLI comment letter misrepresents the issue relative to the commissioner being able to opt out of using the Valuation Manual. She noted that this language was only in place to address two items: 1) if a specific valuation for an issue was not addressed in the Valuation Manual; or 2) if the commissioner believed the practice used by the insurer was not consistent with the law. She also noted that the Life and Health Actuarial Task Force specifically asked the ACLI several times if there were any changes needed to the Standard Valuation Law to address the net premium reserve requirement. She stated that each time this was asked, the ACLI responded that the current form of the law was sufficient and no changes were needed. Mr. Bruins responded that the ACLI has an issue with a last-minute change of wording in Section 12. Mr. Fritsch noted that it was premature to adopt the law, especially if the IRS releases a tax position that changes the view of the issue. Commissioner Gross noted that — although it was clear that all of the details are not known with respect to timing — he was voting for the revised Standard Valuation Law, because he believes it is important for the NAIC to show that it is not dragging its feet on its commitment to modernize regulatory practices. Mr. Carmello asked how the recent comments from the ACLI would be addressed. Mr. Barlow noted that Mr. Bruning already indicated he did not believe any changes were needed to address the ACLI's comments. Commissioner Dilweg noted that he was especially concerned about variable annuities because of the current financial crisis and asked if that would be the first product included in the Valuation Manual. Mr. Barlow indicated that the variable annuities standard would be effective for year-end 2009 regardless of any action taken today, but that this new guidance could be included in the manual. Mr. Bruning added that term and universal life with secondary guarantees would be drafted first; these, along with variable annuities, were significant and would represent a good first package to present to state legislatures.

Director Hudson made a motion that the Solvency Modernization Initiative Task Force adopt the revised Standard Valuation Law. The motion was seconded by Ms. Senkewicz. The motion passed, with California, Connecticut, District of Columbia, Florida, Kansas, Nebraska, Ohio and Pennsylvania voting for the motion; New York and Wisconsin voted against the motion.

Ms. Senkewicz made a motion that the Life Insurance and Annuities Committee adopt the revised Standard Valuation Law. The motion was seconded by Mr. Armstrong. Acting Superintendent Brooks expressed concern about adopting the revised Standard Valuation Law at this time because the Valuation Manual is not complete. He noted that the ACLI's letter expressed the need for regulators to see all of the "moving parts." He added that it was more appropriate that the vote considers all relevant information, including the Valuation Manual. Commissioner Donelon agreed, noting that it would be better to hold the model at the Life Insurance and Annuities Committee, as opposed to the Executive (EX) Committee/Plenary. Commissioner Dilweg asked about the timing of the Life Insurance and Annuities Committee compared to the Executive Committee/Plenary and wondered if this issue could be decided at the Fall National Meeting. Todd Sells (NAIC) indicated that the Executive Committee/Plenary would need more than five days' notice to be able to consider the model for adoption at the Fall National Meeting. Ms. Senkewicz indicated that — provided that the Life Insurance and Annuities Committee was discussing the issues, and not holding things up — she was willing to speak to those that had concerns. Commissioner Dilweg indicated that it would be great if Commissioner Hampton could provide an update on all of the moving parts. Acting Superintendent Brooks noted that he would contact Commissioner Hampton and ask that such an update be provided. Commissioner Donelon indicated that he could not vote on the item without first attempting to address the ACLI's concerns. Acting Superintendent Brooks suggested that the Life Insurance and Annuities Committee hold a conference call no later than 10 days prior to the Fall National Meeting to reconsider the issue at that time. Ms. Senkewicz indicated that she was wary of delay tactics; however, provided a call was held, she did not have a concern with not voting on the issue today. Ms. Senkewicz withdrew the motion to adopt the revised Standard Valuation Law. Mr. Armstrong withdrew his second of the motion.

Having no further business, the joint Life Insurance and Annuities (A) Committee, the Solvency Modernization Initiative (EX) Task Force and the Principles-Based Reserving (EX) Working Group adjourned.

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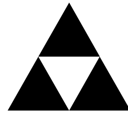

AMERICAN ACADEMY *of* ACTUARIES

Memorandum

TO: Adam Hamm, Vice Chair, NAIC A Committee
Alfred Gross, Chair, Solvency Modernization Initiative Task Force
Thomas Hampton, Chair, PBR (EX) Working Group

FROM: Donna Claire, Chair, American Academy of Actuaries[1] Life Financial Soundness/Risk Management Committee

SUBJECT: Revisions to the SVL

DATE: July 14, 2009

On behalf of the American Academy of Actuaries' Life Financial Soundness and Risk Management Committee (Committee) I would like to take this opportunity to comment on the proposed revisions to the Standard Valuation Law (SVL) as approved/adopted/reported by the Life & Health Actuarial Task Force (LHATF). The Committee has followed the work of LHATF over the past several years as the SVL proposed revisions were being made. The Committee has participated in the discussions, and appreciates the efforts put in by the Principles-Based Reserving (EX) Working Group and Solvency Modernization Initiative Task Force, A Committee, and LHATF.

The Committee supports the revisions made to the SVL. One advantage to the revised SVL over the current law is that it enables the establishment of a reserve system that recognizes all the benefits, guarantees and funding associated with life insurance contracts and their risks. The amended SVL will also benefit consumers by defining a reserve framework that will help enable companies to price products with reserves more closely aligned with the risks assumed and to avoid some of the complex features that have been recently added to products in response to formulaic reserve calculations.

The economic climate has changed, as have the products being sold by life insurance companies. The current law, which had served well for a number of years, has more recently required more and more detailed revisions, or "patches," to accommodate the changing environment. The changes now being established by the proposed revisions to the SVL would authorize a uniform procedure for making any further changes to the reserve standards when accompanied by the new SVL Valuation Manual (VM). This procedure enables greater uniformity of reserve requirements across states.

As you know, the new VM has not yet been finalized, and LHATF is currently working to complete an initial version of the VM. The VM will contain provisions such as those addressing the risks that should be covered by reserves (versus capital),

[1] The American Academy of Actuaries is a 16,000-member professional association whose mission is to serve the public on behalf of the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

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the extent to which minimum formulaic floors on reserves are utilized, definitions, and provisions regarding governance. The Committee looks forward to continuing to work with the LHATF and others to complete this effort, as well.

In summary, the Committee encourages the NAIC to adopt the proposed revisions to the SVL. Such revisions will serve consumers, regulators, and the industry well into the future.

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July 16, 2009

The Honorable Adam Hamm
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The Honorable Al Gross
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Re Amendments to the Standard Valuation Law

The ACLI is pleased to submit the following comments regarding the proposed amendments to the Standard Valuation Law (SVL) on behalf of our member companies. The American Council of Life Insurers represents 340 member companies operating in the United States, of which 332 are legal reserve life insurance companies, and 8 are fraternal benefit societies. These 340 member companies account for 93% of total life insurance company assets, 94% of the life insurance premiums, and 94% of annuity considerations in the United States.

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Importance of a Coordinated Final Package

A substantial amount of effort has gone into the development of modifications to the reserve system for life insurance, with the final package to consist of a number of documents. The amendments to the Standard Valuation Law appear to be substantially complete, however completion of the valuation process itself, which is to be documented in the Valuation Manual, is still pending. Additionally, changes will be needed to other laws and regulations. For example, the Standard Nonforfeiture Law (SNFL) refers to a section of the SVL that will no longer apply, and therefore a change is needed to the SNFL. We recommend that the NAIC and the states consider and act on the entire package of documents, and not address the components on a piecemeal basis.

Importance of a Complete and Coordinated Final Package

Just as we encourage the NAIC to consider the package as a whole, ACLI member companies will not support adoption of the SVL amendments by states prior to completion of the Valuation Manual as it applies to Life Insurance policies. At this point, the following items remain in development or need to be addressed:

- The Valuation Manual needs to be substantially completed for those portions impacting the Life Insurance business;
- The reserve methods for life insurance need to be completed for all products within the initial scope;
- ACLI is developing a net premium reserve formula to be included as a floor value for all of the life insurance reserve calculations. Our current plans are to have a completed proposal covering the major life products to LHATF prior to the Winter National Meeting, but that will still need discussion and validation, integration with the other components of the proposed method, as well as expansion to other life products.

LHATF continues to make changes to the draft as they address outstanding issues. Industry testing of the formulas, processes, and requirements as drafted has not been completed, and that testing may raise issues that need to be addressed and which could lead to significant changes to reserve requirements. Although the Society of Actuaries, is nearing completion of its preliminary research project on the impact of the methodology, that research will not reflect recent changes, nor will the Net Premium calculation be reflected.

Importance of National Uniformity

ACLI believes that national uniformity of reserve standards is essential to the success of this new reserve system. As drafted, these amendments to the SVL promote uniformity

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by authorizing the technical valuation requirements to be documented in a valuation manual. Unfortunately, uniformity is still only encouraged, not required. The SVL continues to allow commissioners, not legislatures, to override the uniform requirements. The SVL provides a commissioner the ability to override the Valuation Manual by regulation if, in their judgment, the Valuation Manual is incomplete or insufficient. (Section 11.E.) In addition, the SVL allows a commissioner to require any company to revise any assumption that they deem not sufficient (Section 11.G.). We strongly encourage a Standard Valuation Law framework which requires a greater degree of uniformity with methods or other requirements that are incorporated into the Valuation Manual, since these will have been vetted in the NAIC process, discussed and voted on by peers, and adopted only after a supermajority vote (75%) of the NAIC.

Proposed Standard Valuation Law Revisions

As we have reviewed the language of the SVL for this upcoming discussion by the Life and Annuities (A) Committee, the Principles Based (Ex) Working Group, and the Solvency Modernization Initiative Task Force, we have become concerned that some of the later changes to the wording may have created a situation whereby the SVL does not appropriately take into account the Net Premium Reserve component. Specifically, there is a concern that reserves resulting from the Net Premium Calculation may not meet the Principle-Based Reserve criteria of Section 12 of the SVL. We believe any ambiguity on this issue should be corrected within the SVL prior to adoption since the ACLI will not support the adoption unless it adequately accommodates the Net Premium Reserve.

We also recommend an addition to Section 12. A. 3. b. As currently drafted, item i. allows the regulators to prescribe assumptions, and ii. allows the company to determine the assumption if there are specific statistics that relate directly to the assumption. A significant part of actuarial work is to make judgments when no specific statistics are available. As drafted, the industry will not be able to develop valuation assumptions whenever there is an absence of statistically credible data. An item iii. should be added to say that the company can develop assumptions using actuarially sound judgment and the most relevant data available. As with all other assumptions, these will need to be documented and justified.

If the A Committee agrees with these proposed changes, ACLI will submit specific language changes within 4 weeks.

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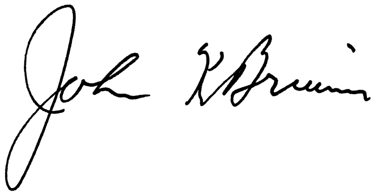
Project Completion

We applaud the efforts of the NAIC to keep this project moving as quickly as possible. Because of the significant impact this project could have to the insurance industry, it continues to be important to factor in industry input and testing as key components of the package continue to evolve. If the resulting reserves can meet the objectives of being appropriately but not excessively conservative, a package of laws and regulations could be completed for presentation to states for action sometime in 2010.

Sincerely,



Cc Dan Daveline

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Draft: 8/19/09

Life Insurance and Annuities (A) Committee
Conference Call
July 28, 2009

The Life Insurance and Annuities (A) Committee met via conference call July 28, 2009. The following Committee members participated: Kermitt Brooks, Chair (NY); Adam Hamm, Vice Chair (ND); Jim L. Ridling represented by David Parsons (AL); Steve Poizner represented by Sheldon Summers (CA); Thomas Sullivan (CT); Thomas E. Hampton (DC); Kevin McCarty represented by Mary Beth Senkewicz and Eric Lingswiler (FL); Susan E. Voss represented by Jim Armstrong (IA); James J. Donelon (LA); Glenn Wilson represented by Jaki Gardner (MN); Ann Frohman and John Rink (NE); Scott Kipper represented by Annette James (NV); and Sean Dilweg (WI). Also participating were: Joe Musgrove (AR); and Larry Bruning (KS).

Jolie Matthews (NAIC) explained that the Life and Health Actuarial Task Force adopted revisions to the Model Regulation Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities (#815) (See Attachment Thirty-One of the Life and Health Actuarial Task Force, 2nd Quarter 2009 *Proceedings*) at the Summer National Meeting. The purpose of the revisions is to permit the retroactive application of the 2001 Commissioners' Standard Ordinary (CSO) preferred mortality tables for contracts based on the 2001 CSO and issued prior to Jan. 1, 2007, with commissioner approval. Model #815 is the last of the four proposals considered by the Task Force related to the 2008 capital and surplus relief package. The Committee adopted the other three proposals at the Summer National Meeting. Ms. Matthews said the Committee deferred voting on the revisions to model #815 in order to allow an additional period to receive comments. She explained that the Task Force's vote was contentious. The final vote ended in a tie, with two abstentions. The chair of the Task Force broke the tie in favor of the motion to adopt the revisions. Ms. Matthews said, during the Committee's discussion of the model #815 revisions at the Summer National Meeting, it was noted that the Task Force vote was most likely not based on whether capital and surplus relief was needed, but was based on an accounting anomaly dealing with reinsurance and this was still an issue. Ms. Matthews said the Savings Bank Life Insurance Company of Massachusetts and the American Council of Life Insurers (ACLI) each submitted a comment letter related to this issue.

Paul Graham (ACLI) explained ACLI's comment letter and the suggested revisions to Section 5D (Attachment Two-A). He said the Statutory Accounting Principles (E) Working Group has been studying this accounting anomaly for several years. The ACLI is working with this group to craft a general solution. Mr. Graham said the anomaly appears only when the following three conditions occur: 1) the gross premium charged by the insurer is less than the valuation net premium calculated using the NAIC prescribed mortality and interest rates; 2) the insurer coinsures the policies; and 3) the payment mode of the policy is more frequent than the payment mode of the payments to the reinsurer. If the three conditions are met, the ceding insurer could have a deferred premium asset (for mean reserves) or unearned premium reserve (for mid-terminal reserves) that, on a net of reinsurance basis, produces a temporary increase to surplus that completely unwinds over the course of the year as premiums are paid. Mr. Graham said, instead of effectively banning the use of the 2001 CSO Preferred Class Structure Mortality Table if the three conditions listed above exist, as the Task Force revisions would do, the ACLI believes that the best way to address this accounting anomaly is to allow the preferred mortality tables to be used in as many cases as possible and then check to see if the resulting reserves, including the deferred premium asset or unearned premium reserve, are adequate. If the reserves are adequate, then the retroactive application of the 2001 CSO Preferred Class Structure Mortality Table should be allowed. If the reserves are not adequate, then retroactive application should not be allowed. For those companies that would fall into the conditions stated in Section 5D of the adopted revisions, the burden of proof to demonstrate adequacy is on the company when requesting the commissioner to permit retroactive application of the preferred mortality table. Mr. Graham asked the Committee to consider the ACLI's suggested revisions for Section 5D that reflect this position.

Acting Superintendent Brooks asked whether the Task Force had considered the ACLI's suggested revisions during its discussions. Mr. Graham said the ACLI developed its suggested revisions after the Task Force adopted the revisions at the Summer National Meeting. Mr. Summers said the Statutory Accounting Principles (E) Working Group is looking to address the anomaly on a prospective basis, not on a retrospective basis. Mr. Bruning said he did not believe the language in Section 5D prohibited the use of the preferred mortality table. Mr. Summers pointed out the language in Section 5D that permits a company to estimate and adjust its accounting on an aggregate basis in order to meet the conditions to use the 2001 CSO Preferred Class Structure Mortality Table. Mr. Rink said some believe that Section 5D would not allow some companies to use the preferred table. Mr. Summers moved, and Ms. Senkewicz seconded to adopt the revisions to model #815. Director Frohman said she believed that the ACLI's suggested revisions to Section 5D were reasonable. She noted the close votes taken by the Task Force. After additional discussion, the motion failed because of the lack of a sufficient number of

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Committee members to adopt the provisions under the NAIC model law development procedures. Director Frohman motioned, and Mr. Parsons seconded, to adopt the ACLI's suggested revisions. The motion failed due to the lack of a sufficient number of Committee votes to adopt the revisions under the NAIC model law development procedures. Mr. Musgrove suggested that the Committee refer model #815 back to the Task Force to re-examine these issues. It was noted that the Task Force had already examined these issues. After additional discussion, Ms. Gardner motioned, and Mr. Lingswiler seconded, to reconsider the vote by which the revisions adopted by the Task Force failed. The motion passed. Ms. Gardner motioned, and Mr. Summers seconded, to adopt the revisions by the Task Force. The motion passed, with nine voting for the motion and one voting against the motion.

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

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APPENDIX I

Revisions to Model 815
Adopted LHATF 6/12/09
ACLI modifications 7/17/09

The NAIC solicits comments on this draft. Revision marks show changes from the existing model. Comments should be sent to John Engelhardt, NAIC, at JEngelha@naic.org.

MODEL REGULATION PERMITTING THE RECOGNITION OF PREFERRED MORTALITY TABLES FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES

Table of Contents

Section 1. Authority
Section 2. Purpose
Section 3. Definitions
Section 4. 2001 CSO Preferred Class Structure Table
Section 5. Conditions
Section 6. Separability
Section 7. Effective Date

Section 1. Authority

This regulation is promulgated by the Commissioner of Insurance pursuant to Sections [insert applicable references to Section 4A(c) of the Standard Valuation Law and Sections [insert applicable references to Sections 5A and 5B of the Valuation of Life Insurance Model Regulation] of the [insert state] Insurance Regulations.

Drafting Note: The reference to the Valuation of Life Insurance Policies Model Regulation should be omitted by states that have not adopted that model.

Section 2. Purpose

The purpose of this regulation is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with [insert applicable references to Section 4A(c) of the Standard Valuation Law and Sections [insert applicable references to Sections 5A and 5B of the Valuation of Life Insurance Model Regulation] of the [insert state] Insurance Regulations.

Section 3. Definitions

A. "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the *Proceedings of the NAIC (2nd Quarter 2002)* and supplemented by the 2001 CSO Preferred Class Structure Mortality Table defined below in Subsection B. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO Mortality Table include the following:

(1) "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

(2) "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

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(3) “Composite mortality tables” means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(4) “Smoker and nonsmoker mortality tables” means mortality tables with separate rates of mortality for smokers and nonsmokers.

B. “2001 CSO Preferred Class Structure Mortality Table” means mortality tables with separate rates of mortality for super preferred nonsmokers, preferred nonsmokers, residual standard nonsmokers, preferred smokers, and residual standard smoker splits of the 2001 CSO Nonsmoker and Smoker Tables, as adopted by the NAIC at the September, 2006 national meeting and published in the *NAIC Proceedings {3rd Quarter 2006}*. Unless the context indicates otherwise, the “2001 CSO Preferred Class Structure Mortality Table” includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

C. “Statistical agent” means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

Section 4. 2001 CSO Preferred Class Structure Table

At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this regulation, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. For policies issued on or after [insert the effective date of adoption of the NAIC Model Regulation 814, Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits], and prior to January 1, 2007, these tables may be substituted with the consent of the commissioner and subject to the conditions of Section 5. In determining such consent, the commissioner may rely on the consent of the commissioner of the company’s state of domicile. No such election shall be made until the company demonstrates at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of the NAIC model regulation, “Recognition of the 2001 CSO Mortality Table For Use In Determining Minimum Reserve Liabilities And Nonforfeiture Benefits Model Regulation.”

Section 5. Conditions

A. For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the super preferred nonsmoker, preferred nonsmoker, and residual standard nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the residual standard nonsmoker table, the appointed actuary shall certify that:

(1) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(2) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

B. For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the preferred smoker and residual standard smoker tables to substitute for the smoker mortality table found

in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the preferred smoker table, the appointed actuary shall certify that:

(1) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table corresponding to the valuation table being used for that class.

(2) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table.

C. Unless exempted by the commissioner, every authorized insurer using the 2001 CSO Preferred Class Structure Table shall annually file with the commissioner, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this regulation. The form of the reports shall be established by the commissioner or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner.

D. Prior to substituting ~~The use of~~ the 2001 CSO Preferred Class Structure Table for the 2001 CSO table for the valuation of any policies issued prior to January 1, 2007, the company shall demonstrate reserve sufficiency, as defined below, ~~shall not be permitted in any statutory financial statement in which a~~ if the company reports, with respect to any policy or portion of a policy coinsured, either of the following:

(1) In cases where the mode of payment of the reinsurance premium is less frequent than the mode of payment of the policy premium, a reserve credit that exceeds, by more than the amount specified in this paragraph as Y, the gross reserve calculated before reinsurance. Y is the amount of the gross reinsurance premium that (a) provides coverage for the period from the next policy premium due date to the earlier of the end of the policy year and the next reinsurance premium due date, and (b) would be refunded to the ceding entity upon the termination of the policy.

(2) In cases where the mode of payment of the reinsurance premium is more frequent than the mode of payment of the policy premium, a reserve credit that is less than the gross reserve, calculated before reinsurance, by an amount that is less than the amount specified in this paragraph as Z. Z is the amount of the gross reinsurance premium that the ceding entity would need to pay the assuming company to provide reinsurance coverage from the period of the next reinsurance premium due date to the next policy premium due date minus any liability established for the proportionate amount not remitted to the reinsurer.

{For purposes of this condition, both the reserve credit and the gross reserve before reinsurance (i) for the mean reserve method shall be defined as the mean reserve minus the deferred premium asset, and (ii) for the mid-terminal reserve method shall include the unearned premium reserve. A company may estimate and adjust its accounting on an aggregate basis in order to meet the conditions to use the 2001 CSO Preferred Class Structure Table.}
If applicable, the company shall demonstrate to the satisfaction of the commissioner that the reserves for all contracts issued prior to 1/1/2007 and valued on the 2001 CSO including the 2001 CSO Preferred Class Structure Table, including unearned premium reserves and reduced by any deferred premium asset, are sufficient to pay the guaranteed benefits of the contracts. The demonstration shall use anticipated mortality assumptions containing a margin of 3.5 deaths per 1000 divided by life expectancy.

Section 6. Separability

If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected.

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Section 7. Effective Date

The effective date of this regulation is January 1, 2007.

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Draft: 9/16/09

Life Insurance and Annuities (A) Committee
Conference Call
September 9, 2009

The Life Insurance and Annuities (A) Committee met via conference call Sept. 9, 2009. The following Committee members participated: Thomas R. Sullivan, Chair (CT); Adam Hamm, Vice Chair (ND); Jim L. Ridling represented by Steve Ostlund (AL); Steve Poizner represented by Perry Kupferman (CA); Gennet Purcell represented by Philip Barlow (DC); Kevin McCarty and Mary Beth Senkewicz (FL); Susan E. Voss (IA); James J. Donelon (LA); Glenn Wilson represented by Manny Munson-Regala and Blaine Shepherd (MN); Ann Frohman (NE); Scott J. Kipper (NV); James J. Wrynn represented by Kermitt Brooks and Bill Carmello (NY); and Sean Dilweg (WI). Also participating were: Katie Campbell (AK); Joe Musgrove (AR); Susan Christy (IL); Larry Bruning (KS); Malinda Shepherd (KY); Mike Boerner (TX); and Tomasz Serbinowski (UT).

1. Opening Comments

Commissioner Sullivan said the purpose of the conference call was to consider adopting the revisions to the Standard Valuation Law (#820) (See Attachment Seven of the Life and Health Actuarial Task Force, 2nd Quarter 2009 *Proceedings*). He explained that during a joint conference call on July 28 with the Principles-Based Reserving (EX) Working Group, the Solvency Modernization Initiative (EX) Task Force and this Committee, the revisions were adopted by both the Principles-Based Reserving (EX) Working Group and the Solvency Modernization Initiative (EX) Task Force. This Committee deferred voting on the revisions until it could receive additional information about the interplay between the revisions and the Valuation Manual.

2. Discussion and Adoption of Standard Valuation Law Revisions

Commissioner Sullivan said the Committee received comments from the New York State Insurance Department, the American Council of Life Insurers (ACLI) and the American Academy of Actuaries (AAA). Mr. Bruning said the Life and Health Actuarial Task Force met last week to review the comments. After discussion, the Task Force agreed to accept the revision proposed by the ACLI for Section 12 with some modifications. This revision would add a new subsection, Section 12C, regarding the inclusion of a prescribed formulaic reserve component. Mr. Bruning said the remainder of ACLI's comments and AAA's comments were considered wordsmithing; therefore, making these changes would not improve the current draft. As such, the Task Force did not accept these suggested revisions.

Mr. Brooks said New York's comment letter was written shortly after the appointment of its new superintendent, James J. Wrynn. He said, however, that Acting Superintendent Wrynn shares the concerns noted in the comment letter. Mr. Brooks said that, based on those concerns, New York would abstain from voting on whether to adopt the revisions to the Standard Valuation Law.

John Bruins (ACLI) explained ACLI's comments (Attachment Three-A). He said the comments reiterated those submitted for the July 28 joint conference call, but specific recommendations are included in this comment letter, including a markup of the Standard Valuation Law draft showing the specific changes ACLI is recommending. Mr. Bruins said ACLI believes that national uniformity of reserve standards is essential to the success of the new reserve system. He said developing valuation assumptions is extremely complicated and time consuming. As such, companies need to be able to rely on one set of assumptions across all states. However, the current revisions to the Standard Valuation Law do not ensure such uniformity. Therefore, ACLI suggests revising Section 11G to permit the commissioner to require a company to increase the reserves for policies if, in the commissioner's opinion, the reserves do not meet the minimum valuation standards defined in the Valuation Manual. Mr. Carmello said the Task Force spent considerable time on this issue and decided not to accept the ACLI recommendation. He said regulators want to be able to challenge any method or assumption if it is not correct. Commissioner Sullivan agreed and said the revisions to the Standard Valuation Law on this issue are similar to what is included in the *Accounting Practices and Procedures Manual* (*AP&P Manual*). He said giving such discretion to the commissioner has worked for the AP&P Manual and should work for the Valuation Manual, as well.

Mr. Bruins explained ACLI's suggestion to delete Section 11D(3)(b). Mr. Bruning said this provision is necessary because it describes what the Valuation Manual must contain with respect to certain assumptions. He said assumptions are to be based on credible company data, but if no such data is available, then the assumptions must be prescribed in the Valuation Manual.

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Mr. Bruins explained ACLI's rationale for suggesting that language be added to Section 12A(3) to allow a company to develop valuation assumptions whenever there is an absence of statistically credible data. Mr. Bruning said this language was not necessary and could be addressed in the Valuation Manual. Paul Graham (ACLI) asked whether the Valuation Manual could address the situation with respect to a new product where there are no statistics. The Task Force has not prescribed in the Valuation Manual how to address this situation. Donna Claire (AAA) said AAA shared the same concerns as ACLI on this issue; however, the discussion of this issue during the Task Force's call alleviated AAA's concerns because the Task Force said it could be addressed in the Valuation Manual.

Commissioner Dilweg raised his concerns about adopting the Standard Valuation Law revisions at this time because the Valuation Manual is not complete. Commissioner Hamm suggested conditioning the adoption of the Standard Valuation Law revisions on the completion of the Valuation Manual. Commissioner McCarty motioned, and Commissioner Voss seconded, to adopt the revisions to the Standard Valuation Law with the additional revision suggested by the Task Force for adding a new subsection to Section 12 and conditioned the motion to adopt the Standard Valuation Law upon the completion of the Valuation Manual by the end of the year. Commissioner Sullivan requested discussion from the Committee members.

Commissioner Dilweg said he was concerned about the scope of the Standard Valuation Law. He suggested narrowing the scope to only include life insurance products, excluding annuities, health and long-term care insurance products. He also suggested revising Section 11 to include a reserve floor for life insurance products. Commissioner Donelon asked whether conditioning the adoption of the Standard Valuation Law revisions on the completion of the Valuation Manual by the end of the year addressed Commissioner Dilweg's concerns about the timing of adopting the revisions. Commissioner Dilweg said it did not completely address his concerns because the Standard Valuation Law would be "wide-open" until the Valuation Manual is complete. He also said the Standard Valuation Law should be revised to include an additional safeguard that sets a prescribed reserve floor for life insurance products. Commissioner McCarty said that, going forward, it is anticipated that the Valuation Manual would include these protections. Commissioner Dilweg asked whether the Committee would have to take it on faith that the Valuation Manual would include these protections. Commissioner Hamm suggested revising the motion to include another condition that would require the Valuation Manual to include appropriate safeguards for minimum reserves. Commissioner McCarty agreed as maker of the motion, and Commissioner Voss as the second to the motion, to amend the motion to include this additional condition. Commissioner Sullivan asked for additional discussion.

Mr. Bruning commented on Wisconsin's suggested revisions to the model's scope. He said it is the intent that principle-based reserving would ultimately apply to fixed annuities and health insurance products. Currently, however, the Valuation Manual provides that state laws related to these products remain the same. He said Wisconsin's suggested revision would require the Task Force to revise the model to include these products once the Valuation Manual includes these products. Mr. Bruning said the Task Force wants to avoid requiring states to go back to their legislatures. He reiterated that existing state laws are the minimum until the Valuation Manual changes this.

Mr. Ostlund asked for a clarification on the motion. Commissioner McCarty said the motion was to adopt the revisions to the Standard Valuation Law with the additional revision to Section 12, as approved by the Task Force, subject to two conditions: (1) the Valuation Manual will be completed by the end of 2009; and (2) the Valuation Manual will include safeguards for minimum prescribed formulaic reserves. The motion passed with Alabama, California, District of Columbia, Florida, Iowa, Louisiana, Minnesota, Nebraska, Nevada, North Dakota and Wisconsin voting in favor of the motion and New York abstaining (Attachment Three-B).

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

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John Bruins
Senior Actuary
202.624.2169 t
johnbruins@acli.com

September 1, 2009

The Honorable Thomas Sullivan
Chair, NAIC Life Insurance and Annuities (A) Committee
Commissioner, Connecticut Insurance Department
153 Market Street, 7th Floor
Hartford, CT 06103

Re: Amendments to the Standard Valuation Law

Commissioner Sullivan:

On the July 28, 2009 conference call of the NAIC Life and Annuities 'A' Committee, the ACLI[1] committed to providing recommended language to address the concerns that we had raised with the exposed version of the amendments to the Standard Valuation Law. The following highlights our specific concerns and recommended actions. Comments from our prior letter are given in *italics*, followed by our recommended changes. Attached is a mark-up of the exposure showing the specific changes recommended.

Importance of National Uniformity

ACLI believes that national uniformity of reserve standards is essential to the success of this new reserve system. As drafted, these amendments to the SVL promote uniformity by authorizing the technical valuation requirements to be documented in a valuation manual. Unfortunately, uniformity is still only encouraged, not required. The SVL continues to allow commissioners, not legislatures, to override the uniform requirements. The SVL provides a commissioner the ability to override the Valuation Manual by regulation if, in their judgment, the Valuation Manual is incomplete or insufficient. (Section 11.E.) In addition, the SVL allows a commissioner to require any company to revise any assumption that they deem not sufficient (Section 11.G.). We strongly encourage a Standard Valuation Law framework which requires a greater degree of uniformity with methods or other requirements that are incorporated into the Valuation Manual, since these will have been vetted in the NAIC process, discussed and voted on by peers, and adopted only after a supermajority vote (75%) of the NAIC.

Recommended changes:

Section 11.E. No changes recommended.

Section 11.G.

[1] The American Council of Life Insurers represents 340 member companies operating in the United States, of which 332 are legal reserve life insurance companies, and 8 are fraternal benefit societies. These 340 member companies account for 93% of total life insurance company assets, 94% of the life insurance premiums, and 94% of annuity considerations in the United States.

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The commissioner may require a company to increase the reserves for policies issued after the effective date of the Valuation Manual if, in the opinion of the commissioner, they do not meet the minimum valuation standards defined in the Valuation Manual. The commissioner may take other disciplinary action as permitted pursuant to [insert applicable law].

Rationale – Rather than have the possibility of differing assumptions required by different states resulting in potentially substantial additional work effort, the focus should be on the adequacy of the resulting reserves.

Proposed Standard Valuation Law Revisions

As we have reviewed the language of the SVL for this upcoming discussion by the Life and Annuities (A) Committee, the Principles Based (Ex) Working Group, and the Solvency Modernization Initiative Task Force, we have become concerned that some of the later changes to the wording may have created a situation whereby the SVL does not appropriately take into account the Net Premium Reserve component. Specifically, there is a concern that reserves resulting from the Net Premium Calculation may not meet the Principle-Based Reserve criteria of Section 12 of the SVL. We believe any ambiguity on this issue should be corrected within the SVL prior to adoption since the ACLI will not support the adoption unless it adequately accommodates the Net Premium Reserve.

Proposed changes:

Insert a new Section 12.B.

Notwithstanding the provisions of Section 12.A., a 'principle-based valuation' shall not preclude a prescribed formulaic reserve component.

(Revise the labeling of 12.B. to become 12.C.}

We also recommend an addition to Section 12. A. 3. b. As currently drafted, item i. allows the regulators to prescribe assumptions, and ii. allows the company to determine the assumption if there are specific statistics that relate directly to the assumption. A significant part of actuarial work is to make judgments when no specific statistics are available. As drafted, the industry will not be able to develop valuation assumptions whenever there is an absence of statistically credible data. An item iii. should be added to say that the company can develop assumptions using actuarially sound judgment and the most relevant data available. As with all other assumptions, these will need to be documented and justified.

Recommended changes:

Delete Section 11.D.3.b.

Delete this paragraph.

Rationale: Section 11 defines the requirements for the Valuation Manual. Since assumptions and methods can either be defined, or left to the company to develop and justify, this section is not needed. As written, it creates a void when a factor meeting the specified conditions is not prescribed in the manual. Since Section 12 provides the authority to prescribe assumptions, this section is not necessary.

Insert a new Section 12.A.3.b. (iii)

For assumptions that are not prescribed and cannot be established on the basis of company or other relevant, statistically credible experience, be established by the company using generally accepted actuarial methods and techniques or other methods as defined in the Valuation Manual.

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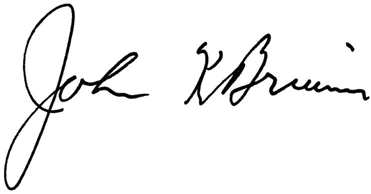
Attached is a mark-up of the SVL changes as adopted by LHATF. We will be pleased to discuss these proposed changes on your Sept. 9 conference call and ask that you accept these proposals in the final draft.

Project Completion

We applaud the efforts of the NAIC to keep this project moving as quickly as possible. Because of the significant impact this project could have to the insurance industry, it continues to be important to factor in industry input and testing as key components of the package continue to evolve. If the resulting reserves can meet the objectives of being appropriately but not excessively conservative, a package of laws and regulations could be completed for presentation to states for action sometime in 2010.

Sincerely,



Cc Jolie Matthews

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Draft: 9/9/09
Revisions to Model 820
Adopted by the Life Insurance and Annuities (A) Committee, 9/9/09

STANDARD VALUATION LAW

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Section 1. Title and Definitions

A. This Act shall be known as the Standard Valuation Law.

B. For the purposes of this Act the following definitions shall apply on or after the operative date of the valuation manual:

(1) The term "accident and health insurance" means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.

(2) The term "appointed actuary" means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in Section 3A of this Act.

(3) The term "company" means an entity, which (a) has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this State and has at least one such policy in force or on claim or (b) has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this State.

(4) The term "deposit-type contract" means contracts that do not incorporate mortality or morbidity risks and as may be specified in the valuation manual.

(5) The term "life insurance" means contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual.

(6) The term "NAIC" means the National Association of Insurance Commissioners.

(7) The term “policyholder behavior” means any action a policyholder, contract holder or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this Act including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.

(8) The term “principle-based valuation” means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with Section 12 of this Act as specified in the valuation manual.

(9) The term “qualified actuary” means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual.

(10) The term “tail risk” means a risk that occurs either where the frequency of low probability events is higher than expected under a normal probability distribution or where there are observed events of very significant size or magnitude.

(11) The term “valuation manual” means the manual of valuation instructions adopted by the NAIC as specified in this Act or as subsequently amended.

Drafting Note: The term commissioner means the insurance supervisory official of a State or jurisdiction of the United States and therefore, the term commissioner should be replaced with the appropriate title in the adopting State or jurisdiction. In addition, the term State should be replaced with the appropriate term for the adopting jurisdiction.

Drafting Note: It is critical that each state retain the terms “accident and health”, “deposit-type contract”, and “life insurance” in this section because the terms are specifically defined for purposes of the standard valuation law and applicability of the valuation manual standards for such contracts issued on or after the operative date of the valuation manual.

Section 2. Reserve Valuation

A. Policies and Contracts Issued Prior to the Operative Date of the Valuation Manual

(1) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this ~~s~~State issued on or after [insert the original effective date of the Standard Valuation Law in this State] and prior to the operative date of the valuation manual~~, and may certify the amount of reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or other) used in the calculation of the reserves~~. In calculating reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any ~~s~~State or other jurisdiction when the valuation complies with the minimum standard provided ~~here~~in this Act~~ and if the official of that state or jurisdiction accepts as sufficient and for all valid legal purposes the certificate of valuation of the commissioner when the certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction~~.

(2) The provisions set forth in Sections 4, 4a, 4b, 5, 5a, 6, 7, 8, 9, and 10 of this Act shall apply to all policies and contracts, as appropriate, subject to this Act issued on or after [insert the original effective date of the Standard Valuation Law in this State] and prior to the operative date of the

valuation manual and the provisions set forth in Sections 11 and 12 of this Act shall not apply to any such policies and contracts.

(3) The minimum standard for the valuation of policies and contracts issued prior to [insert the original effective date of the Standard Valuation Law in this State] shall be that provided by the laws in effect immediately prior to that date.

Drafting Note: The Standard Valuation Law prior to the operative date of the valuation manual applies to deposit-type contracts. There is no intent to change the valuation standards for deposit-type contracts.

Drafting Note: The dates inserted should remain unchanged from those appearing in the State's existing Standard Valuation Law.

B. Policies and Contracts Issued On or After the Operative Date of the Valuation Manual

(1) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of any State or other jurisdiction when the valuation complies with the minimum standard provided in this Act.

(2) The provisions set forth in Sections 11 and 12 of this Act shall apply to all policies and contracts issued on or after the operative date of the valuation manual.

Section 3. Actuarial Opinion of Reserves

~~This section shall become operative at the end of the first full calendar year following the year of enactment.~~

A. Actuarial Opinion Prior to the Operative Date of the Valuation Manual

~~A.~~(1) General

Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner shall define by regulation the specifics of this opinion and add any other items deemed to be necessary to its scope.

~~B.~~(2) Actuarial Analysis of Reserves and Assets Supporting Reserves

(~~1~~a) Every life insurance company , except as exempted by regulation , shall also annually include in the opinion required by ~~S~~subsection ~~A~~(1) of this section, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(~~2~~b) The commissioner may provide by regulation for a transition period for establishing any higher reserves that the qualified actuary may deem necessary in order to render the opinion required by this section.

~~C.~~(3) Requirement for Opinion Under ~~B~~Section 3A(2)

Each opinion required by ~~S~~subsection (2) shall be governed by the following provisions:

(~~1~~a) A memorandum, in form and substance acceptable to the commissioner as specified by regulation, shall be prepared to support each actuarial opinion.

(~~2~~b) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by regulation or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the regulations or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

~~D.~~(4) Requirement for All Opinions Subject to Section 3A

Every opinion required by Section 3A shall be governed by the following provisions:

(~~1~~a) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, [ ].

Drafting Note: The date inserted should remain unchanged from the one appearing in the State's existing Standard Valuation Law.

(~~2~~b) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by regulation.

(~~3~~c) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the commissioner may by regulation prescribe.

(~~4~~d) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(~~5~~e) For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in the regulation.

(~~6~~f) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person (other than the insurance company and the commissioner) for any act, error, omission, decision or conduct with respect to the actuary's opinion.

(~~7~~g) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in regulations by the commissioner.

(~~8~~h) Except as provided in ~~P~~paragraphs (~~12~~l), (~~13~~m) and (~~14~~n), documents, materials or other information in the possession or control of the Department of Insurance that are a

memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

(~~9~~i) Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to ~~P~~paragraph (~~8~~h).

(~~10~~j) In order to assist in the performance of the commissioner's duties, the commissioner:

(~~a~~i) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to ~~P~~paragraph (~~8~~h) with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(~~b~~ii) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(~~c~~iii) [Optional provision] May enter into agreements governing sharing and use of information consistent with Paragraphs (~~8~~h) to (~~10~~j).

Drafting Note: The language in ~~P~~paragraph (~~10~~j)(~~a~~i) assumes the recipient has the authority to protect the applicable confidentiality or privilege, but does not address the verification of that authority, which would presumably occur in the context of a broader information sharing agreement.

(~~11~~k) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the comissioner under this section or as a result of sharing as authorized in ~~P~~paragraph (~~10~~j).

(~~12~~l) A memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this section or by regulations promulgated hereunder.

(~~13~~m) The memorandum or other material may otherwise be released by the commissioner with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material.

(~~14~~n) Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

B. Actuarial Opinion of Reserves after the Operative Date of the Valuation Manual

(1) General

Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in this State and subject to regulation by the commissioner shall annually submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this State. The valuation manual will prescribe the specifics of this opinion including any items deemed to be necessary to its scope.

(2) Actuarial Analysis of Reserves and Assets Supporting Reserves

Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in this State and subject to regulation by the commissioner, except as exempted in the valuation manual, shall also annually include in the opinion required by subsection (1) of this section, an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(3) Requirements for Opinions Subject to Section 3B(2)

Each opinion required by subsection 3B shall be governed by the following provisions:

(a) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the commissioner, shall be prepared to support each actuarial opinion.

(b) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified in the valuation manual or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the commissioner.

(4) Requirement for All Opinions Subject to Section 3B

Every opinion shall be governed by the following provisions:

(a) The opinion shall be in form and substance as specified in the valuation manual and acceptable to the commissioner.

(b) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after the operative date of the valuation manual.

(c) The opinion shall apply to all policies and contracts subject to Section 3B(2), plus other actuarial liabilities as may be specified in the valuation manual.

(d) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board or its successor, and on such additional standards as may be prescribed in the valuation manual.

(e) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another State if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.

(f) Except in cases of fraud or willful misconduct, the appointed actuary shall not be liable for damages to any person (other than the insurance company and the commissioner) for any act, error, omission, decision or conduct with respect to the appointed actuary's opinion.

(g) Disciplinary action by the commissioner against the company or the appointed actuary shall be defined in regulations by the commissioner.

Drafting Note: States may need to adopt regulations to address disciplinary action.

Section 4. Computation of Minimum Standard

Except as ~~otherwise~~ provided in Sections 4a, 4b and 10, the minimum standard for the valuation of ~~all~~ policies and contracts issued prior to the effective date of this Act shall be that provided by the laws in effect immediately prior to that date. Except as otherwise provided in Sections 4a, 4b and 10, the minimum standard for the valuation of all policies and contracts issued on or after ~~the effective date of this Act~~[insert original effective date of the Standard Valuation Law in this State] shall be the commissioners reserve valuation methods defined in Sections 5, 5a, 8 and 10, three and one-half percent (3 1/2%) interest, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after [insert effective date of 1972 NAIC amendments to the Standard Valuation Law], four percent (4%) interest for policies issued prior to [insert effective date of 1976 NAIC amendments to the Standard Valuation Law], five and one-half percent (5 1/2%) interest for single premium life insurance policies and four and one-half percent (4 1/2%) interest for all other policies issued on and after [insert effective date of 1976 NAIC amendments to the Standard Valuation Law], and the following tables:

A. For ~~all~~ ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in the policies: the Commissioners 1941 Standard Ordinary Mortality Table for policies issued prior to the operative date of Section 5a of the Standard Nonforfeiture Law for Life Insurance as amended, the Commissioners 1958 Standard Ordinary Mortality Table for policies issued on or after the operative date of Section 5a of the Standard Nonforfeiture Law for Life Insurance as amended and prior to the operative date of Section 5c of the Standard Nonforfeiture Law for Life Insurance as amended, provided that for any category of policies issued on female risks, all modified net premiums and present values referred to in this Act may be calculated according to an age not more than six (6) years younger than the actual age of the insured; and for policies issued on or after the operative date of Section 5c of the Standard Nonforfeiture Law for Life Insurance as amended:

(~~a~~1) The Commissioners 1980 Standard Ordinary Mortality Table;

(~~b~~2) At the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; or

(~~c~~3) Any ordinary mortality table, adopted after 1980 by the ~~National Association of Insurance Commissioners~~NAIC, ~~that~~ which is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies;

B. For ~~all~~ industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies: the 1941 Standard Industrial Mortality Table for policies issued prior to the operative date of Section 5b of the Standard Nonforfeiture Law for Life Insurance as amended, and for policies issued on or after the operative date of Section 5b, the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table adopted after 1980 by the ~~National Association of Insurance Commissioners~~ NAIC that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for the policies;

C. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies: the 1937 Standard Annuity Mortality Table, or at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner;

D. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies: the Group Annuity Mortality Table for 1951, a modification of the table approved by the commissioner, or at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

E. For total and permanent disability benefits in or supplementary to ordinary policies or contracts: for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after 1980 by the ~~National Association of Insurance Commissioners~~ NAIC, that are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for those policies; for policies or contracts issued on or after January 1, 1961 and prior to January 1, 1966, either those tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

F. For accidental death benefits in or supplementary to policies issued on or after January 1, 1966: the 1959 Accidental Death Benefits Table or any accidental death benefits table adopted after 1980 by the ~~National Association of Insurance Commissioners~~ NAIC that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for those policies, for policies issued on or after January 1, 1961 and prior to January 1, 1966, either that table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table for calculating the reserves for life insurance policies; and

G. For group life insurance, life insurance issued on the substandard basis and other special benefits: tables approved by the commissioner.

Drafting Note: The dates inserted should remain unchanged from those appearing in the State's existing Standard Valuation Law.

Section 4a. Computation of Minimum Standard for Annuities

A. Except as provided in Section 4b, the minimum standard ~~for the~~ of valuation ~~of all~~ for individual annuity and pure endowment contracts issued on or after the operative date of this Section 4a and for ~~all~~ annuities and pure endowments purchased on or after the operative date under group annuity and pure endowment contracts, shall be the commissioners reserve valuation methods defined in Sections 5 and 5a and the following tables and interest rates:

(1) For individual annuity and pure endowment contracts issued prior to [insert effective date of 1976 NAIC amendments to the Standard Valuation Law], excluding any disability and accidental death benefits in those contracts: the 1971 Individual Annuity Mortality Table, or any modification of

this table approved by the commissioner, and six percent (6%) interest for single premium immediate annuity contracts and four percent (4%) interest for all other individual annuity and pure endowment contracts;

(2) For individual single premium immediate annuity contracts issued on or after [insert effective date of 1976 NAIC amendments to the Standard Valuation Law], excluding any disability and accidental death benefits in those contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the ~~National Association of Insurance Commissioners~~ NAIC that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for these contracts, or any modification of these tables approved by the commissioner, and seven and one-half percent (7 1/2%) interest;

(3) For individual annuity and pure endowment contracts issued on or after [insert effective date of 1976 NAIC amendments to the Standard Valuation Law], other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in those contracts: the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the ~~National Association of Insurance Commissioners~~ NAIC, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for those contracts, or any modification of these tables approved by the commissioner, and five and one-half percent (5 1/2%) interest for single premium deferred annuity and pure endowment contracts and four and one-half percent (4 1/2%) interest for all other individual annuity and pure endowment contracts;

(4) For ~~all~~ annuities and pure endowments purchased prior to [insert effective date of 1976 NAIC amendments to the Standard Valuation Law] under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts: the 1971 Group Annuity Mortality Table or any modification of this table approved by the commissioner, and six percent (6%) interest; and

(5) For ~~all~~ annuities and pure endowments purchased on or after [insert effective date of 1976 NAIC amendments to the Standard Valuation Law] under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under those contracts: the 1971 Group Annuity Mortality Table, or any group annuity mortality table adopted after 1980 by the ~~National Association of Insurance Commissioners~~ NAIC that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for annuities and pure endowments, or any modification of these tables approved by the commissioner, and seven and one-half percent (7 1/2%) interest;

B. After [insert effective date of 1972 NAIC amendments to the Standard Valuation Law], any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1979, which shall be the operative date of this section for that company. If a company makes no election, the operative date of this section for that company shall be January 1, 1979.

Drafting Note: The dates inserted should remain unchanged from those appearing in the State's existing Standard Valuation Law.

Section 4b. Computation of Minimum Standard by Calendar Year of Issue

A. The interest rates used in determining the minimum standard for the valuation of the following shall be the calendar year statutory valuation interest rates as defined in this section:

(1) ~~All life~~ Life insurance policies issued in a particular calendar year, on or after the operative date of Section 5c of the Standard Nonforfeiture Law for Life Insurance as amended;

(2) ~~All individual~~Individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 19[ ] [insert the calendar year next following the effective~~ year of passage of this amendatory Act~~ date of the 1980 NAIC amendments to the Standard Valuation Law];

(3) ~~All annuities~~Annuities and pure endowments purchased in a particular calendar year on or after January 1, 19[ ] [insert the calendar year next following the effective~~ year of passage of this amendatory Act~~ date of the 1980 NAIC amendments to the Standard Valuation Law] under group annuity and pure endowment contracts; and

(4) The net increase, if any, in a particular calendar year after January 1, 19[ ] [insert the calendar year next following the effective~~ year of passage of this amendatory Act~~ date of the 1980 NAIC amendments to the Standard Valuation Law], in amounts held under guaranteed interest contracts.

Drafting Note: The dates inserted should remain unchanged from those appearing in the State's existing Standard Valuation Law.

B. Calendar Year Statutory Valuation Interest Rates

(1) The calendar year statutory valuation interest rates, *I*, shall be determined as follows and the results rounded to the nearer one-quarter of one percent (1/4 of 1%):

(a) For life insurance:

$$I = .03 + W \cdot (R_1 - .03) + \frac{W}{2} \cdot (R_2 - .09)$$

(b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

$$I = .03 + W \cdot (R - .03)$$

Where R_1 is the lesser of R and .09,
R_2 is the greater of R and .09,
R is the reference interest rate defined in this section,
W is the weighting factor defined in this section;

(c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in ~~S~~subparagraph (b) above, the formula for life insurance stated in ~~S~~subparagraph (a) above shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten (10) years and the formula for single premium immediate annuities stated in ~~S~~subparagraph (b) above shall apply to annuities and guaranteed interest contracts with guarantee duration of ten (10) years or less;

(d) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in ~~S~~subparagraph (b) above shall apply.

(e) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in ~~S~~subparagraph (b) above shall apply.

(2) However, if the calendar year statutory valuation interest rate for a life insurance policy issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent (1/2 of 1%), the calendar year statutory valuation interest rate for the life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined in 1979) and shall be determined for each subsequent calendar year regardless of when Section 5c of the Standard Nonforfeiture Law for Life Insurance as amended becomes operative.

C. Weighting Factors

(1) The weighting factors referred to in the formulas stated above are given in the following tables:

(a) Weighting Factors for Life Insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(b) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

.80

(c) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in ~~S~~subparagraph (b) above, shall be as specified in ~~I~~items (i), (ii) and (iii) below, according to the rules and definitions in ~~I~~items (iv), (v) and (vi) below:

(i) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type		
	A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

Plan Type

		A	B	C
(ii)	For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in ~~I~~item (i) above increased by:	.15	.25	.05

		Plan Type		
		A	B	C
(iii)	For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) that do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis that do not guarantee interest rates on considerations received more than twelve (12) months beyond the valuation date, the factors shown in ~~I~~item (i) or derived in ~~I~~item (ii) increased by:	.05	.05	.05

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty (20) years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(v) Plan type as used in the above tables is defined as follows:

Plan Type A: At any time policyholder may withdraw funds only (l) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) without an adjustment but installments over five years or more, or (3) as an immediate life annuity, or (4) no withdrawal permitted.

Plan Type B: Before expiration of the interest rate guarantee, policyholder may withdraw funds only (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) without an adjustment but in installments over five years or more, or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without an adjustment in a single sum or installments over less than five years.

Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either (1) without adjustment to reflect changes in

interest rates or asset values since receipt of the funds by the insurance company, or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(vi) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

D. Reference Interest Rate

(1) The reference interest rate referred to in ~~S~~subsection B of this section shall be defined as follows:

(a) For ~~all~~ life insurance, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (l2) months, ending on June 30 of the calendar year preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody’s Investors Service, Inc.

(b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody’s Investors Service, Inc.

(c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in ~~S~~subparagraph (b) above, with guarantee duration in excess of ten (10) years, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody’s Investors Service, Inc.

(d) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in ~~S~~subparagraph (b) above, with guarantee duration of ten (10) years or less, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody’s Investors Service, Inc.

(e) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody’s Investors Service, Inc.

(f) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in

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~~S~~subparagraph (b) above, the average over a period of twelve (12) months, ending on June 30 of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

E. Alternative Method for Determining Reference Interest Rates. In the event that the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody's Investors Service, Inc. or in the event that the ~~National Association of Insurance Commissioners~~ NAIC determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc. is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate adopted by the ~~National Association of Insurance Commissioners~~ NAIC and approved by regulation promulgated by the commissioner may be substituted.

Section 5. Reserve Valuation Method—Life Insurance and Endowment Benefits

A. Except as otherwise provided in Sections 5a, 8 and 10, reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided for by those policies, over the then present value of any future modified net premiums therefor. The modified net premiums for a policy shall be the uniform percentage of the respective contract ~~the~~ premiums for the benefits such that the present value, at the date of issue of the policy, of all modified net premiums shall be equal to the sum of the then present value of the benefits provided for by the policy and the excess of (1) over (2), as follows:

(1) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of the policy.

(2) A net one-year term premium for the benefits provided for in the first policy year.

B. For a life insurance policy issued on or after January 1, 19[ ] [insert the fourth calendar year commencing after the effective date ~~of this amendatory Act~~ of the 1980 NAIC amendments to the Standard Valuation Law] for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination in an amount greater than the excess premium, the reserve according to the commissioners reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than the excess premium shall, except as otherwise provided in Section 8, be the greater of the reserve as of the policy anniversary calculated as described in the preceding paragraph and the reserve as of the policy anniversary calculated as described in that paragraph, but with (i) the value defined in ~~S~~subsection A of that paragraph being reduced by fifteen percent (15%) of the amount of such excess first year premium, (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, (iii) the policy being assumed to mature on that date as an endowment, and (iv) the cash surrender value provided on that date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in Sections 4 and 4b shall be used.

Drafting Note: The date inserted should remain unchanged from the one appearing in the State's existing Standard Valuation Law.

C. Reserves according to the commissioners reserve valuation method shall be calculated by a method consistent with the principles of the preceding paragraphs of this section for:

(1) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

(2) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended;

(3) Disability and accidental death benefits in all policies and contracts; and

(4) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts.

Section 5a. Reserve Valuation Method—Annuity and Pure Endowment Benefits

A. This section shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended.

B. Reserves according to the commissioners annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in the contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by the contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of the contract, that become payable prior to the end of the respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

Section 6. Minimum Reserves

A. In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after ~~the effective date of this Act~~[insert original effective date of the Standard Valuation Law in this State], be less than the aggregate reserves calculated in accordance with the methods set forth in Sections 5, 5a, 8 and 9 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

B. In no event shall the aggregate reserves for all policies, contracts and benefits be less than the aggregate reserves determined by the ~~qualified~~ appointed actuary to be necessary to render the opinion required by Section 3.

Drafting Note: The date inserted should remain unchanged from the one appearing in the State's existing Standard Valuation Law.

Section 7. Optional Reserve Calculation

A. Reserves for ~~all~~ policies and contracts issued prior to ~~the effective date of this Act~~ [insert original effective date of the Standard Valuation Law in this State] may be calculated, at the option of the company,

according to any standards that produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to that date.

B. Reserves for any category of policies, contracts or benefits established by the commissioner, issued on or after ~~the effective date of this Act~~ [insert original effective date of the Standard Valuation Law in this State], may be calculated, at the option of the company, according to any standards that produce greater aggregate reserves for the category than those calculated according to the minimum standard provided herein, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be ~~higher~~ greater than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided ~~there~~ in the policies or contracts.

C. A company ~~that shall have adopted~~, which adopts at any time a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided ~~here~~ under this Act, may~~,~~ adopt a lower standard of valuation with the approval of the commissioner, ~~adopt a lower standard of valuation,~~ but not lower than the minimum provided herein; provided that, for the purposes of this section, the holding of additional reserves previously determined by ~~a qualified~~ the appointed actuary to be necessary to render the opinion required by Section 3 shall not be deemed to be the adoption of a higher standard of valuation.

Drafting Note: The dates inserted should remain unchanged from those appearing in the State's existing Standard Valuation Law.

Section 8. Reserve Calculation—Valuation Net Premium Exceeding the Gross Premium Charged

If in any contract year the gross premium charged by a ~~life insurance~~ company on a policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy or contract, or the reserve calculated by the method actually used for the policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in Sections 4 and 4b.

For a life insurance policy issued on or after January 1, 19[ ] [insert the fourth calendar year commencing after the effective date ~~of this amendatory Act~~ of the 1980 NAIC amendments to the Standard Valuation Law] for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination in an amount greater than the excess premium, the provisions of this section shall be applied as if the method actually used in calculating the reserve for the policy were the method described in Section 5, ignoring the second paragraph of Section 5. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with Section 5, including the second paragraph of that section, and the minimum reserve calculated in accordance with this section.

Drafting Note: The date inserted should remain unchanged from the one appearing in the State's existing Standard Valuation Law.

Section 9. Reserve Calculation—Indeterminate Premium Plans

In the case of a plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of a plan of life insurance or annuity that is of such a nature that the minimum reserves cannot be determined by the methods described in Sections 5, 5a and 8, the reserves that are held under the plan shall:

A. Be appropriate in relation to the benefits and the pattern of premiums for that plan; and

B. Be computed by a method that is consistent with the principles of this Standard Valuation Law, as determined by regulations promulgated by the commissioner.

Drafting Note: If desired the following paragraph may be added.

"Notwithstanding any other provision in the laws of this sState, a policy, contract or certificate providing life insurance under such a plan shall be affirmatively approved by the commissioner before it can be marketed, issued, delivered or used in this sState."

If the previous paragraph is enacted in a sState where prior filing and approval of life insurance policy forms has not been previously required by statute, this paragraph would mandate such action for plans requiring approval under Section 9. If the previous paragraph is enacted in a sState where approval is deemed under certain circumstances, the deemed provision would be overridden by the terms of this section. In some sStates specific reference must be made to any statutory provision that is overridden.

Section 10. Minimum Standards for Accident and Health ~~[Disability, Accident and Sickness] Plans~~Insurance Contracts

~~The commissioner shall promulgate a regulation containing the minimum standards applicable to the valuation of health [disability, sickness and accident] plans.~~ For accident and health insurance contracts issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under Section 2B. For [disability, accident and sickness, accident and health] insurance contracts issued on or after [insert the original effective date of the Standard Valuation Law in the State] and prior to the operative date of the valuation manual the minimum standard of valuation is the standard adopted by the commissioner by regulation.

Drafting Note: States should substitute their state specific terminology for accident and health contracts in place of the bracketed terms. However, it is critical that each state retain the terms "accident and health" in the title and first sentence of this section because the term is specifically defined for purposes of the standard valuation law and applicability of the valuation manual standards for such contracts issued on or after the operative date of the valuation manual.

Section 11. Valuation Manual for Policies Issued On or After the Operative Date of the Valuation Manual

A. For policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under Section 2B, except as provided under paragraphs E or G of this section.

B. The operative date of the valuation manual is January 1 of the first calendar year following the first July 1 as of which all of the following have occurred:

(1) The valuation manual has been adopted by the NAIC by an affirmative vote of at least forty-two (42) members, or three-fourths of the members voting, whichever is greater.

(2) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by States representing greater than 75% of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements; health annual statements; or fraternal annual statements.

(3) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least forty-two (42) of the following fifty-five (55) jurisdictions: The fifty States of the United States, American Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto Rico.

C. Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January 1 following the date when [all of the following have occurred]:

(1) The change to the valuation manual has been adopted by the NAIC by an affirmative vote representing:

(a) At least three-fourths (3/4) of the members of the NAIC voting, but not less than a majority of the total membership, and

(b) Members of the NAIC representing jurisdictions totaling greater than 75% of the direct premiums written as reported in the following annual statements most recently available prior to the vote in subsection C(1)(a): life, accident and health annual statements, health annual statements, or fraternal annual statements.

Drafting Note: The following section is optional:

[(2) The valuation manual becomes effective pursuant to [an order of] [regulation adopted by] the commissioner.]

D. The valuation manual must specify all of the following:

(1) Minimum valuation standards for and definitions of the policies or contracts subject to Section 2B. Such minimum valuation standards shall be:

(a) The commissioner's reserve valuation method for life insurance contracts, other than annuity contracts, subject to Section 2B;

(b) The commissioners annuity reserve valuation method for annuity contracts subject to Section 2B; and

(c) Minimum reserves for all other policies or contracts subject to Section 2B.

(2) Which policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation in Section 12A and the minimum valuation standards consistent with those requirements;

(3) For policies and contracts subject to a principle-based valuation under Section 12:

(a) Requirements for the format of reports to the commissioner under Section 12B(2) and which shall include information necessary to determine if the valuation is appropriate and in compliance with this Act;

(b) Assumptions shall be prescribed for risks over which the company does not have significant control or influence.

(c) Procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of such procedures.

(4) For policies not subject to a principle-based valuation under Section 12 the minimum valuation standard shall either

(a) Be consistent with the minimum standard of valuation prior to the operative date of the valuation manual; or

(b) Develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring.

Drafting Note: The wording of 11D(4)(b) does not preclude, for policies with significant tail risk, reflecting in the reserve conditions appropriately adverse to quantify the tail risk.

(5) Other requirements, including, but not limited to, those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules and internal controls; and

(6) The data and form of the data required under Section 13, with whom the data must be submitted, and may specify other requirements including data analyses and reporting of analyses.

E. In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the commissioner, in compliance with this Act, then the company shall, with respect to such requirements, comply with minimum valuation standards prescribed by the commissioner by regulation.

F. The commissioner may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirement set forth in this Act. The commissioner may rely upon the opinion, regarding provisions contained within this Act, of a qualified actuary engaged by the commissioner of another State, district or territory of the United States. As used in this paragraph, term "engage" includes employment and contracting.

G. The commissioner may require a company to change any assumption or method that in the opinion of the commissioner is necessary in order to comply with the requirements of the valuation manual or this Act; and the company shall adjust the reserves as required by the commissioner. The commissioner may take other disciplinary action as permitted pursuant to [insert applicable law].

Drafting Note: This section is intended to conform to the State's administrative procedures, including notice and due process.

Drafting Note: Section 11 presumes that each State is permitted under their State laws to "adopt" the valuation manual in a manner similar to how the *Accounting Practices and Procedures Manual* becomes effective in many States, without a separate regulatory process such as adoption by regulation. It is desirable that all States adopt the valuation manual requirements and that such adoption be achieved without a separate State regulatory process in order to achieve uniformity of reserve standards in all States. However, to the extent that a State may need to adopt the valuation manual through a formal State regulatory process, Sections 11B and/or 11C may be amended to reflect any State's need to adopt the valuation manual through regulation.

Section 12. Requirements of a Principle-Based Valuation

A. A company must establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

(1) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For polices or contracts with significant tail risk, reflects conditions appropriately adverse to quantify the tail risk.

(2) Incorporate assumptions, risk analysis methods and financial models and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods.

(3) Incorporate assumptions that are derived in one of the following manners:

(a) The assumption is prescribed in the valuation manual.

(b) For assumptions that are not prescribed, the assumptions shall:

(i) Be established utilizing the company's available experience, to the extent it is relevant and statistically credible; or

(ii) To the extent that company data is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience.

(4) Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.

B. A company using a principle-based valuation for one or more policies or contracts subject to this section as specified in the valuation manual shall:

(1) Establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual.

(2) Provide to the commissioner and the board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. Such controls shall be designed to assure that all material risks inherent in the liabilities and associated assets subject to such valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification shall be based on the controls in place as of the end of the preceding calendar year.

(3) Develop, and file with the commissioner upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

C. A principle-based valuation may include a prescribed formulaic reserve component.

Section 13. Experience Reporting for Policies In Force On or After the Operative Date of the Valuation Manual

A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

Section 14. Confidentiality

A. For purposes of this Section 14, "Confidential Information" shall mean:

(1) A memorandum in support of an opinion submitted under Section 3 of this Act and any other documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such memorandum;

(2) All documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in the course of an examination made under Section 11F of this Act; *provided, however*, that if an examination report or other material prepared in connection with an examination made under the [insert reference to examination law] is not held as private and confidential information under the [insert reference to examination law], an examination report or other material prepared in connection with an examination made under Section 11F of this Act shall not be "Confidential Information" to the same extent as if such examination report or other material had been prepared under the [insert reference to examination law];

(3) Any reports, documents, materials and other information developed by a company in support of, or in connection with, an annual certification by the company under Section 12B(1) of this Act evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such reports, documents, materials and other information;

(4) Any principle-based valuation report developed under Section 12B(2) of this Act and any other documents, materials and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such report; and

(5) Any documents, materials, data and other information submitted by a company under Section 13 of this Act (collectively, "experience data") and any other documents, materials, data and other information, including, but not limited to, all working papers, and copies thereof, created or produced in connection with such experience data, in each case that include any potentially company-identifying or personally identifiable information, that is provided to or obtained by the commissioner (together with any "experience data", the "experience materials") and any other documents, materials, data and other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in connection with such experience materials.

B. Privilege for, and Confidentiality of, Confidential Information

(1) Except as provided in this Section 14, a company's Confidential Information is confidential by law and privileged, and shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action; provided, however, that the commissioner is authorized to use the Confidential Information in the furtherance of any regulatory or legal action brought against the company as a part of the commissioner's official duties.

(2) Neither the commissioner nor any person who received Confidential Information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any Confidential Information.

(3) In order to assist in the performance of the commissioner's duties, the commissioner may share Confidential Information (a) with other state, federal and international regulatory agencies and with the NAIC and its affiliates and subsidiaries and (b) in the case of Confidential Information specified in Sections 14A(1) and 14A(4) only, with the Actuarial Board for Counseling and Discipline or its successor upon request stating that the Confidential Information is required for the purpose of professional disciplinary proceedings and with state, federal and international law enforcement officials; in the case of (a) and (b), provided that such recipient agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of such documents, materials, data and other information in the same manner and to the same extent as required for the commissioner.

Drafting Note: Subsection B(3) assumes the recipient has the authority to protect the applicable confidentiality or privilege, but does not address the verification of that authority, which would presumably occur in the context of a broader information sharing agreement.

(4) The commissioner may receive documents, materials, data and other information, including otherwise confidential and privileged documents, materials, data or information, from the NAIC and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions and from the Actuarial Board for Counseling and Discipline or its successor

and shall maintain as confidential or privileged any document, material, data or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

(5) The commissioner may enter into agreements governing sharing and use of information consistent with this Section 14B.

(6) No waiver of any applicable privilege or claim of confidentiality in the Confidential Information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Section 14B(3).

(7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this Section 14B shall be available and enforced in any proceeding in, and in any court of, this State.

(8) In this Section 14 "regulatory agency," "law enforcement agency" and the "NAIC" include, but are not limited to, their employees, agents, consultants and contractors.

C. Notwithstanding Section 14B, any Confidential Information specified in Sections 14A(1) and 14A(4):

(1) May be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under Section 3 of this Act or principle-based valuation report developed under Section 12B(2) of this Act by reason of an action required by this Act or by regulations promulgated hereunder;

(2) May otherwise be released by the commissioner with the written consent of the company; and

(3) Once any portion of a memorandum in support of an opinion submitted under Section 3 of this Act or a principle-based valuation report developed under Section 12B(2) of this Act is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of such memorandum or report shall no longer be confidential.

Drafting Note: The following section is optional:

[Section 15. Single State Exemption

A. The commissioner may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in [Name of State] from the requirements of Section 11 provided:

(1) The commissioner has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing; and

(2) The company computes reserves using assumptions and methods used prior to the operative date of the valuation manual in addition to any requirements established by the commissioner and promulgated by regulation.

B. For any company granted an exemption under this section, Sections 3, 4, 4a, 4b, 5, 5a, 6, 7, 8, 9 and 10 shall be applicable. With respect to any company applying this exemption, any reference to Section 11 found in Sections 3, 4, 4a, 4b, 5, 5a, 6, 7, 8, 9 and 10 shall not be applicable.]

Section [15 or16]. Effective Date

All acts and parts of acts inconsistent with the provision of this Act are hereby repealed as of ~~the effective date of this Act~~[insert original effective date of the Standard Valuation Law in this State]. This Act shall take effect ~~January 1, 1944~~[insert original effective date of the Standard Valuation Law in this State].

Drafting Note: A state that has adopted specific valuation standards, other than the SVL, will need to review those standards and make changes if needed in order for the valuation manual standards to apply (such as sunsetting the specific State standard on the operative date of the valuation manual or subsequent changes to the valuation manual).

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Draft: 9/22/09

LIFE INSURANCE AND ANNUITIES (A) COMMITTEE

The mission of the Life Insurance and Annuities (A) Committee is to consider issues relating to life insurance and annuities, review new life insurance products and establish priorities of the Life and Health Actuarial Task Force.

Ongoing Maintenance of NAIC Programs, Products or Services

1. Review model laws adopted in ~~2004~~2005 and not revised since that time. *Essential*

2. Oversee development of the principle~~s~~-based reserving system. *Essential*

3. Review and revise, as necessary, the Buyer's Guides to Fixed Deferred Annuities in conjunction with Appendix A of the Annuity Disclosure Model Regulation (#245) and the Life Insurance Buyer's Guide in conjunction with Appendix A of the Life Insurance Disclosure Model Regulation (#580). *Important*

4. Oversee changes and provide technical assistance as appropriate for the production of the *Market Share Reports for the Top 125 Life and Fraternal Insurance Groups and Companies by State*. *Essential*

5. Review and consider changes to the Suitability in Annuity Transactions Model Regulation (#275) to improve the regulation of annuity sales and to provide insurers uniform guidance in developing agent training, supervision and monitoring standards in order to better protect annuity consumers from unsuitable sales and abusive sales and marketing practices. (Delegated to the Suitability of Annuity Sales Working Group.) *Important*

6. Review and consider changes to the Annuity Disclosure Model Regulation (#245) to improve the disclosure of information provided for annuity products, both generally and specifically, and to provide insurers uniform guidance in developing disclosure information and documents and monitoring distribution thereof in order to better inform annuity consumers about the annuity product purchased and how it works. (Delegated to the Annuity Disclosure Working Group.) *Important*

~~**New Objectives and Goals** ***(representing new NAIC programs, services, or initiatives)*****:**~~

~~7. Appoint an Indexed Annuities Working Group to monitor and respond to issues, as appropriate, related to the SEC's Rule 151A on indexed annuities and certain other insurance contracts and coordinate such response with the Government Relations Leadership Council; conduct a coordinated, nationwide data call and issue a public report regarding annuity products, with a specific focus on the sales and marketing practices of indexed annuities; coordinate with the Market Actions (D) Working Group regarding any formal regulatory actions that might arise as a result of the coordinated data call; and review and analyze other emerging issues regarding indexed annuity products, as necessary. *Important*~~

Sponsors for 2010 Charges
(Except as noted, I support all charges)

Thomas R. Sullivan **Connecticut**	**Susan E. Voss** **Iowa**	**Ann Frohman** **Nebraska**
Adam Hamm **North Dakota**	**Sean Dilweg** **Wisconsin**	

Staff Support: Jolie H. Matthews/Jennifer R. Cook

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Draft: 9/30/09

Annuity Disclosure (A) Working Group
Washington, DC
September 21, 2009

The Annuity Disclosure (A) Working Group of the Life Insurance and Annuities (A) Committee met in Washington, DC, Sept. 21, 2009. The following Working Group members participated: Jim Mumford, Chair (IA); Steve Ostlund (AL); Joe Musgrove (AR); Peg Brown (CO) Mark Franklin (CT); Rosanne Mead (IA); Bill McAndrew (IL); Mary Beth Senkewicz (FL); Marlyn Burch (KS); Paul Hanson and Emmanuel Munson-Regala (MN); Jim Mealer (MO); Gail Keren (NY); Susan Real (OH); John Morris (TN); Ana Smith-Daley (TX); and Mickey Braun (UT).

1. Adoption of Aug. 14 and Sept. 11 Conference Call Minutes

Mr. Musgrove motioned, and Mr. Ostlund seconded, to adopt the Aug. 14 (Attachment Five-A) and Sept. 11 (Attachment Five-B) conference call minutes. The motion passed unanimously.

2. Discussion of Guaranty Association Coverage Disclosure

A draft Guaranty Association Coverage Disclosure document (dated Sept. 16) was distributed, along with a memorandum recommending that the Life Insurance and Annuities Committee forward two versions of the Guaranty Association Coverage Disclosure document to the Receivership and Insolvency (E) Task Force: one version to include language about the free-look period, and one version not to include the free-look language (Attachment Five-C). The memorandum explained that it is the opinion of the Working Group that the Task Force Force, in the context of revising the Life and Health Insurance Guaranty Association Model Act (#520), is the best position to decide whether information on free-look periods could appropriately be included in the Guaranty Association Disclosure.

Wayne Mehlman (American Council of Life Insurers—ACLI) spoke in opposition to the Guaranty Association Coverage Disclosure document that includes information about the free-look period. Mr. Mehlman argued that the content in Guaranty Association Disclosure document should be limited to the information referenced in Section 19 of the model act about guaranty association coverage. He stated that inclusion of information regarding the free-look period is outside the scope of the disclosure, which is to inform consumers about guaranty associations and their limitations, and unnecessarily adds information that is disclosed to the consumer in more appropriate locations elsewhere in their policy documents. In addition, Mr. Mehlman argued that the inclusion of the free-look period information in the Guaranty Association Coverage Disclosure document invites buyers to re-think their purchase based on guaranty association coverage, which actually circumvents the prohibition in the model act against using the existence of the guaranty association as an inducement to purchase insurance covered by the guaranty association.

Mr. Musgrove moved, and Mr. Ostlund seconded, to report two versions of the Guaranty Association Disclosure document, along with the explanatory memorandum, to the Life Insurance and Annuities Committee for their consideration. The motion passed without objection.

3. Discussion of Buyer's Guides

Three buyer's guides that will be appendices to the Annuity Disclosure Model Regulation (#245) were distributed with a staggered timetable for receiving comments so that revisions can be made to the guides as soon as possible. Comments on the fixed-indexed annuities guide (Attachment Five-D) are due in 30 days; comments on the fixed-deferred annuities guide (Attachment Five-E) are due in 45 days; and comments on the variable annuities guide (Attachment Five-F) are due in 60 days. As soon as comments are received on the fixed–indexed annuities guide, the drafting group will begin making revisions. Mr. Musgrove moved, and Ms. Senkewicz seconded, a motion to release the three buyer's guides for comment in accordance with the deadlines. The motion passed without objection.

4. Discussion of Article, "Helping Seniors Make Wise Decisions About Annuities"

Jack Marrion (Advantage Compendium, Ltd.) wrote an article titled, "Helping Seniors Make Wise Decisions About Annuities." The Working Group heard a presentation summarizing the article and the lessons that regulators can learn from his research.

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Seniors, starting at age 65 or 70, start to process information differently than younger people. The amount of information that seniors are able to retain at one time declines and the speed at which information is processed slows. This process is referred to as "working memory." As working memory declines, seniors become easily overwhelmed by too many choices and by being rushed. Seniors will use mental shortcuts that often do not result in good decisions. Seniors will mistake quantity for quality, ignore the true risk of a situation and choose what they recognize instead of what is best. Seniors also work hard to maintain a positive state of mind and, as a result, will block negative information. There are ways to improve a senior's decision making. First, give seniors enough time to make a decision, by providing education and giving them time to sort through information, so that a series of smaller decisions will lead to a better bigger decision. This is called "data sorting." Mr. Marrion suggested that standardized disclosures would enable seniors to use their mental energy to understand the material, rather than to search for the data they need to compare different sets of information. He said that standardized definitions for a few key terms would be beneficial, as well. Mr. Marrion recognized that giving seniors enough time to make decisions presents challenges for producers who sell annuities. Mr. Hanson shared that his department had recently learned about some inappropriate sales practices being employed to gain seniors' trust. Mr. Marrion said that studies have shown that when seniors know someone is going to try to sell them something, they are much better at fending off a salesperson's efforts to inappropriately influence them.

5. Discussion of Annuity Illustration Issue

Cande Olsen (Actuarial Resources Corporation) reviewed the American Academy of Actuaries'(AAA) revised draft of the ACLI proposed draft Annuity Illustration Guidelines. The Working Group agreed that the terminology used in the illustration should be consistent with the terminology in the buyer's guides. The NAIC funded consumer representatives agreed to flag definitions in the illustration that need to match the buyer's guides.

Ms. Olsen reviewed some changes made to the graph regarding how market value adjustments (MVAs) work. Mr. Mumford suggested that the illustration should be part of the Annuity Disclosure Model Regulation (#245), rather than included as an appendix. Ms. Olsen did not think that the AAA would object to making the illustration part of the model regulation. Mr. Ostlund questioned whether the graphs in the illustration could be mandatory, rather than optional, and if all of the information in the illustration could be represented in graph form. Ms. Olsen said she thought it would not be possible to include all of the information in a graph, noting that graphs are good for presenting complicated information in an additional way, but do not replace an explanation in numbers. Mr. Hanson asked about the use of the "current interest rate" in the chart and explained that, in his experience, the current interest rate used in the illustration usually turns out to be higher than the subsequent interest rate in almost every case, as if it is expected. Ms. Mead suggested that what Mr. Hanson described is a marketing or advertising problem and that a clear definition of "current interest rate" should be included.

Mr. Ostlund reviewed an e-mail he sent to Mr. Mumford regarding the illustration. Mr. Ostlund pointed out that the illustration and the buyer's guides need to work together and should avoid unnecessary duplication of information. The Working Group agreed. Mr. Ostlund also suggested that more than one illustration be provided, and that a worst-case scenario and a most-likely scenario should be included, rather than the unlikely scenario that is currently shown.

Kelly Ireland (ACLI) explained that ACLI has not had a chance to review the AAA revisions, but that they plan to have a revised draft based on the AAA comments. The Working Group requested comments on the underlying ACLI proposed draft by Oct. 15, and planned for the Working Group to have an interim conference call in the beginning of November to discuss a new draft of the Annuity Illustration Guidelines.

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

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Draft: 9/15/09

Annuity Disclosure (A) Working Group
Conference Call
August 14, 2009

The Annuity Disclosure (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Aug. 14, 2009. The following Working Group members participated: Jim Mumford, Chair (IA); Elizabeth Bookwalter (AL); Joe Musgrove (AR); Peg Brown (CO); Mark Franklin (CT); Mary Beth Senkewicz (FL); Brenda Wilson (MD); Diane Garber and Tamara Kopp (MO); Michael Fix (ND); Michelle Brugh (OH); Betsy Jerome (UT); and Mike Honeck (WI).

1. Discussion of Guaranty Fund Disclosure Issue

Mr. Mumford reviewed the background behind the guaranty fund disclosure issue. The Working Group began working on the guaranty fund coverage disclosure issue because of a referral from the chair of the Receivership Model Act Revision (E) Working Group to the Life Insurance and Annuities Committee (see 1st Quarter 2008 *Proceedings*, Attachment Seven of the Life Insurance and Annuities Committee). Section 19 of the Life and Health Insurance Guaranty Association Model Act (#520) (Guaranty Association Model Act), prohibits reference to the guaranty association in advertising, but also requires that a general disclosure concerning the existence of the guaranty association be made to consumers at the time of contract delivery.

The general notice on guaranty association coverage required under Section 19 of Guaranty Association Model Act has not been updated in 30 years. Following the Spring National Meeting, at the Working Group's request, the American Council of Life Insurers (ACLI) and the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) drafted a guaranty association coverage disclosure template that updates the general notice on guaranty association coverage required to be provided under Section 19 of the Guaranty Association Model Act. The draft template was discussed during the Working Group's May 14 conference call. Following the conference call, interested parties were asked to submit comments on the draft. The ACLI and NOLHGA prepared a revised draft dated June 11, 2009, that incorporated the comments received. Comments on the June 11 draft were requested by Aug. 7. Comments were submitted by Brenda Wilson (MD) and Birny Birnbaum on behalf of the NAIC funded consumer representatives (Attachment Five-A1).

Ms. Wilson's comment explained that Maryland is in the process of revising the notice that is required to be provided to consumers regarding the limitations of the Maryland Life and Health Guaranty Corporation. In particular, Maryland is concerned that purchasers of variable annuities and variable life insurance contracts might not be aware that guaranty associations do not typically cover these non-guaranteed contracts. Therefore, Ms. Wilson suggested the following addition in the current draft notice:

> **Note: Certain policies and contracts may not be covered or fully covered.** For example, coverage does not extend to any portion(s) of a policy or contract that the insurer does not guarantee. This means that the investment results or other additions to the account value of any variable life insurance policy or variable annuity contract are NOT covered by the [STATE] Life and Health Insurance Guaranty Association. There are also various residency requirements and other limitations under [STATE] law.

Mr. Birnbaum supported the additional language submitted by Ms. Wilson. Wayne Mehlman (ACLI) did not have an immediate objection to the language suggested by Ms. Wilson. Joni Forsythe (NOLHGA) did not object to the language, but questioned how state variations would be addressed. Mr. Mumford explained that each state was free to modify the notice as appropriate for use in their state.

Mr. Birnbaum reviewed the consumer representatives' proposed revisions to the June 11 draft. Mr. Birnbaum explained that the consumer representatives' proposed revisions were intended to remove irrelevant information, as well as make the notice easier to read and more consumer-friendly. Bonita Kallestad (Western Minnesota Legal Services/Mid-Minnesota Legal Assistance) said she supported the consumer representatives' revisions.

Mr. Mehlman said he was concerned that the consumer representatives' revisions included information that goes beyond the content authorized under Section 19 of the Guaranty Association Model Act and removed material that compromised the accuracy of the disclosure and that is legally required to be included in the disclosure. In particular, Mr. Mehlman suggested

that the revision to the title, "NOTICE OF LIMITED PROTECTION PROVIDED BY [STATE] LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION," was too negative. Mr. Birnbaum explained that the use of the word "limited" was not intended to be negative but, rather, was intended to state a fact. He said that consumers should understand that there are situations where they are not fully protected.

Mr. Mehlman objected to the consumer representatives' revision that changed the language from "the guaranty association was established to provide protection" to "the guaranty association was established to pay benefits," because it was too limited — i.e., guaranty associations also continue coverage. Mr. Mehlman suggested that the language advising consumers to check the insurer's financial strength before buying a policy does not belong in this notice, because this notice is intended to inform consumers about guaranty associations and accompanies the delivery of the contract. Mr. Mehlman also objected to the addition of language referencing the consumer's right to cancel the policy within 30 days, because the free-look information is irrelevant to this notice and is included in other notices provided to consumers.

Mr. Mehlman also opposed the elimination of provisions that were included in the June 11 draft. The consumer representatives' draft eliminated a paragraph in the notice that explained that guaranty associations are intended to provide protection to consumers in the event an insurer becomes insolvent. Mr. Mehlman argued that this paragraph should be retained, because it explains that guaranty association coverage is available only in the specific circumstance of insolvency. Mr. Mehlman also said that the language explaining that consumers should not rely on guaranty association coverage when selecting an insurance company needed to be retained, because Section 19C(4) of the Guaranty Association Model Act requires that the disclosure include a statement that insurance companies and agents are not allowed to use the existence of guaranty association coverage to encourage consumers to purchase insurance. The June 11 draft also included language explaining that, in the event of a conflict between the notice and state law, state law will control. Mr. Mehlman said that this information is important and useful information for a consumer to know and should be retained in the notice.

The Working Group and interested parties discussed the language in the consumer representatives' draft concerning the free-look period in the context of the time frame for providing the guaranty fund coverage disclosure. Section 19A of the Guaranty Association Model Act prohibits any person from using, in any way, the existence of a state guaranty association as an inducement to purchase insurance covered by the guaranty association. Section 19B of the Guaranty Association Model Act requires that a summary disclosure document be provided at the time of contract delivery. Mr. Mumford explained that, in his opinion, the information in the summary disclosure would be most useful to consumers prior to delivery of the contract but, barring that, the information could still be useful to the consumer at the time of contract delivery — in large part because of the consumer's ability to cancel the contract during the free-look period after contract delivery. Therefore, it seems that it would be important to mention the existence of a free-look period in the guaranty association disclosure document. Mr. Mehlman reiterated the fact that the free-look period is disclosed to consumers in other documents, and the ACLI thinks the inclusion of this additional information confuses the purpose of this notice, which is to discuss guaranty association coverage. Mr. Mumford stated that having the information about the free-look period in the guaranty fund disclosure document is more helpful to consumers than having the same information in two separate documents. Ms. Wilson said she was concerned that there are different free-look periods for different insurance products. Mr. Musgrove said he was concerned that the concept of a "free-look" is a misnomer in the context of variable annuities, because a person can never go back in time to recover exactly what the annuity was worth when it was purchased.

Mr. Mumford said that he understood the concerns raised on the call and agreed to revise the draft for the Working Group and interested parties to consider on its next conference call.

2. Discussion of Next Steps

Mr. Mumford said he planned to have draft buyer's guides available for discussion during the Working Group's next conference call. The Working Group is scheduled to meet during the Fall National Meeting, during which time the Working Group will 1) hear a presentation by Jack Marrion (Advantage Compendium, Ltd.) on studies relating to how seniors make decisions; and 2) review the draft annuity illustrations.

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

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TEMPLATE *CONSUMER REVISIONS 7/9/09 DRAFT*

**NOTICE OF LIMITED PROTECTION PROVIDED BY
[STATE] LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION**

The [STATE] Life and Health Insurance Guaranty Association ("the Association") was established to pay benefits under your life, annuity or health insurance company in the unlikely event that your insurance company is not able to pay benefits. If this should happen, the Association will typically arrange to continue coverage and pay claims, in accordance with [STATE] law. This notice provides a brief summary of the limited protection the Association provides to policyholders.

IMPORTANT: **The limited protection the Association provides is not a substitute for choosing a financially strong insurance company.** Check an insurer's financial strength before you buy a policy.

IMPORTANT: In the event your insurer is not able to pay benefits, the Association may not pay all the benefits under your policy or, in some cases, may not pay any benefits. For example, the Association will not pay benefits or any portion(s) of a policy or contract that the insurer does not guarantee. There are also various residency requirements and other limitations under [STATE] law.

IMPORTANT: You have the right to cancel your policy without charge within 30 days of receiving you policy. If, after reviewing this notice, you decide that this policy is not right for you, you can cancel the policy and purchase another policy that better fits your needs. To cancel your policy within the 30-day free-look period, contact the insurance company at:

[Phone] [Internet] [Mail]

The basic protections the Association provides are:

- Life Insurance
  - [$___,000] in death benefits
  - [$___,000] in cash surrender or withdrawal values
- Health Insurance
  - [$___,000] in hospital, medical and surgical insurance benefits
  - [$___,000] in disability [income] insurance benefits
  - [$___,000] in long-term care insurance benefits
  - [$___,000] in other types of health insurance benefits
- Annuities
  - [$___,000] in withdrawal and cash values

The maximum amount of protection for each individual, regardless of the number of policies or contracts, is [$___,000]. Special rules may apply with regard to hospital, medical and surgical insurance benefits.

To learn more about the above protections, [as well as protections relating to group contracts or retirement plans,] please visit the Association's website at [www.______________], or contact:

[STATE] Life and Health Insurance Guaranty Association
[ADDRESS]
[PHONE NUMBER]

[STATE] Department of Insurance
[ADDRESS]
[PHONE NUMBER]

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DRAFT

Draft: 9/16/09

Annuity Disclosure (A) Working Group
Conference Call
September 11, 2009

The Annuity Disclosure (A) Working Group of the Life Insurance and Annuities (A) Committee met via conference call Sept. 11, 2009. The following Working Group members participated: Jim Mumford, Chair (IA); Steve Ostlund (AL); Joe Musgrove (AR); Peg Brown (CO); Mark Franklin (CT); Mary Beth Senkewicz (FL); Brenda Wilson (MD); Marlyn Burch (KS); Paul Hanson (MN); David Hippen, Mary Kempker, Tamara Kopp and Jim Mealer (MO); Michael Fix (ND); Dennis Lauzon and Gail Keren (NY); Lynette Baker (OH); and Mike Honeck (WI).

1. Discussion of Annuity Buyer's Guides

The revisions to the Annuity Buyer's Guides have been in the drafting process since spring 2008. The decision was made early on to revise the single buyer's guide contained in an appendix to the Annuity Disclosure Model Regulation (#245), into three separate guides—one each for fixed annuities, fixed-indexed deferred annuities and variable annuities. Each guide will have similar introductory material, but then will focus on the specifics of the product being considered and address suitability. The Working Group and interested parties continue to support this approach. Kim O'Brien (National Association for Fixed Annuities—NAFA) suggested including a one-page table in all three guides that briefly compares the three products. Ms. O'Brien agreed to share an example of what she has in mind. The three guides will be distributed for comment at the Fall National Meeting.

2. Discussion of Guaranty Association Disclosure Issue

The Working Group began discussions of a revised draft of the Guaranty Association Disclosure document. On the Aug. 14 call of the Working Group, Mr. Mumford had agreed to revise the Guaranty Association Disclosure document based on the discussions that had occurred. Most notably was a discussion about the free-look period language contained in the consumer representatives' revisions to the Guaranty Association Disclosure document. Mr. Mumford had suggested some compromise language in a revised Guaranty Association Disclosure document dated Sept. 1, which included a parenthetical (Optional sentence: "Review your contract for the time limits for returning your policy if you want changes made to you purchase.") The Working Group continued to discuss whether information about the free-look period should be included in this disclosure.

Mr. Franklin said that the statement in the revised Guaranty Association Disclosure document about contract time limits for returning the policy seemed out of place and irrelevant. Ms. Senkewicz disagreed and said that people who buy these products get a number of documents and the Guaranty Association Disclosure comes to them after the sale. She indicated that pointing out the limits of coverage, alongside information about the free-look period, would help consumers understand that they can change their mind based on the information in the Guaranty Association Disclosure. Ms. Senkewicz said she preferred the format and language used by the consumer representatives in their suggested revisions (see 3rd Quarter 2009 *Proceedings*, Attachment Five-A1 of the Life Insurance and Annuities (A) Committee).

Mr. Musgrove said he talked with the Arkansas Guaranty Association about the Guaranty Association Disclosure document. Because this is a message about the guaranty association, from the guaranty association, the Arkansas Insurance Department would prefer that the notice be limited to guaranty association information—and not include extraneous information about what may or may not be included in the insurance contract.

Ms. Senkewicz said that Section 19B of the Life and Health Insurance Guaranty Association Model Act (#520) requires a summary document that describes the general purposes and current limitations of the model act and that also complies with Subsection C, which states that the summary document must contain a disclaimer that includes the information listed in Paragraphs (1) through (7). Ms. Senkewicz questioned whether the Guaranty Association Disclosure document complied with Section 19C of the model act. Specifically, she questioned whether Paragraph (6), "Explain rights available and procedures for filing a complaint to allege a violation of any provisions of this Act," and Paragraph (7), "Provide other information as directed by the commissioner including but not limited to, sources for information about the financial condition of insurers provided that the information is not proprietary and is subject to disclosure under that State's public records law," were included in the Guaranty Association Disclosure document. Wayne Mehlman (American Council of Life Insurers—ACLI) said that great care was taken to ensure that the disclosure document complied with the legal requirements

of the model act. Mr. Mehlman said that he would look into Ms. Senkewicz's specific concerns, but that the disclosure was deliberately kept brief in order to be consumer-friendly and directs consumers to the guaranty association Web site for additional information.

Birny Birnbaum (Center for Economic Justice—CEJ) reiterated his support for the revised Guaranty Association Disclosure document submitted on behalf of the consumer representatives prior to the Working Group's last conference call. Mr. Birnbaum disagreed with the argument that the scope of the disclosure had to be strictly limited to information about the guaranty association. He said that the language of Section 19B requires a summary and Section 19C states that the summary must include a disclaimer that includes the information enumerated in 19C(1)–(7). Section 19C(6) and 19C(7) clearly contemplate the inclusion of information relevant to consumers beyond just information about the guaranty association coverage, such as information indicating where the consumer can research the financial health of insurers. Section 19C also states that consumers should not rely on guaranty association coverage when selecting an insurance company; and requires the inclusion of information on how a consumer may file a complaint. Mr. Birnbaum said that information about the free-look period is no different, noting that it is particularly important in this context to make sure that consumers know that they can make a change. Ms. Senkewicz supported Mr. Birnbaum's comments and said that Section 19C states what must be included in the disclaimer, but there are no similar requirements in Section 19B for the summary. Therefore, she believes there is plenty of latitude to include information about the free-look period in the Guaranty Association Disclosure document, which is both a summary and a disclaimer.

Mr. Hanson said that the plan was to create a consumer-friendly Guaranty Association Disclosure document, because the notices distributed today are not consumer-friendly. He added that other disclosures made to the consumer contain information about the free-look period that serve to alert the consumer to their right to change their mind about their purchase. Bonita Kallestad (Western Minnesota Legal Services/Mid-Minnesota Legal Assistance) said that the free-look statement from the consumer representatives' draft should be included, as well as a statement about the financial condition of insurers as required under Section 19C(6).

Mr. Mumford said that the Working Group's intention was to develop a better, consumer-friendly and informative notice to be provided by guaranty associations in accordance with model act. Mr. Mumford suggested that the Working Group o the Committee explaining the free-look issue and suggest that the Committee send two versions of the Guaranty Association Disclosure to the Receivership and Insolvency (E) Task Force for consideration. The Task Force, in the context of revising the model act, is in the best position to decide whether information on free-look periods could appropriately be included in the Guaranty Association Disclosure document and whether an additional reference to the free-look period would then need to be included in Section 19 of the model act. Ms. Wilson reminded the Working Group that any reference to the free-look period would need to recognize that different free-look periods (which are in some cases called a "right to return") apply to different products and the Guaranty Association Disclosure document will be used in conjunction with policies beyond annuities.

3. Discussion of Annuity Illustrations

The Working Group plans to discuss annuity illustrations at the Fall National Meeting. The American Academy of Actuaries plans to submit comments for discussion at the Working Group's meeting. Mr. Mumford hopes to have a recommendation on the annuity illustrations for the Committee by the Winter National Meeting.

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

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TEMPLATE 9/16/*09 DRAFT*

**NOTICE OF
PROTECTION PROVIDED BY
[STATE] LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION**

This notice provides a **brief summary** of the [STATE] Life and Health Insurance Guaranty Association ("the Association") and the protection it provides for policyholders. This safety net was created under [STATE] law, which determines who and what is covered and the amounts of coverage.

The Association was established to provide protection in the unlikely event that your life, annuity or health insurance company becomes financially unable to meet its obligations and is taken over by the [STATE] Insurance Department. If this should happen, the Association will typically arrange to continue coverage and pay claims, in accordance with [STATE] law, with funding from assessments paid by other insurance companies.

The basic protections provided by the Association are:

- Life Insurance
  - [$___,000] in death benefits
  - [$___,000] in cash surrender or withdrawal values
- Health Insurance
  - [$___,000] in hospital, medical and surgical insurance benefits
  - [$___,000] in disability [income] insurance benefits
  - [$___,000] in long-term care insurance benefits
  - [$___,000] in other types of health insurance benefits
- Annuities
  - [$___,000] in withdrawal and cash values

The maximum amount of protection for each individual, regardless of the number of policies or contracts, is [$___,000]. Special rules may apply with regard to hospital, medical and surgical insurance benefits.

Note: Certain policies and contracts may not be covered or fully covered. For example, coverage does not extend to any portion(s) of a policy or contract that the insurer does not guarantee, such as certain investment additions to the account value of a variable life insurance policy or a variable annuity contract. There are also various residency requirements and other limitations under [STATE] law.

To learn more about the above protections, [as well as protections relating to group contracts or retirement plans,] please visit the Association's website at [www.______________], or contact:

[STATE] Life and Health Insurance Guaranty Association
[ADDRESS]
[PHONE NUMBER]

[STATE] Department of Insurance
[ADDRESS]
[PHONE NUMBER]

Insurance companies and agents are not allowed by [STATE] law to use the existence of the Association or its coverage to encourage you to purchase any form of insurance. When selecting an insurance company, you should not rely on Association coverage. If there is any inconsistency between this notice and [STATE] law, then [STATE] law will control.

Optional Paragraph:

You have the right to cancel your policy within a certain number of days as stated in your policy. If, after reviewing this notice, you decide that this policy is not right for you, you can cancel the policy within the time period stated in your policy and purchase another policy that better fits your needs. To cancel your policy, contact the insurance company at: [Phone] [Internet] [Mail]

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DRAFT

Draft: 7/15/08
Revisions to Appendix A in Model 245
Edits by K Kitt and B. Cude 9/16/09
Comments should be sent by email to Jennifer Cook at jcook@naic.org by Oct. 23, 2009.

ANNUITY DISCLOSURE MODEL REGULATION

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Appendix A. Buyer's Guide to Fixed Indexed Annuities

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APPENDIX A -- BUYER'S GUIDE TO FIXED INDEXED ANNUITIES

Drafting Note: The language of the Fixed Indexed Annuity Buyer's Guide is limited to that contained in the following pages, or to language approved by the commissioner. Companies may purchase personalized brochures from the NAIC or may request permission to reproduce the Buyer's Guide in their own type style and format.

[The face page of the Fixed Indexed Annuity Buyer's Guide shall read as follows:]

Prepared by the National Association of Insurance Commissioners

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various insurance departments to coordinate insurance laws for the benefit of all consumers.

This guide does not endorse any company or policy.

Reprinted by. . .

It's important that you understand the differences among various annuities so you can choose the kind that best fits your needs. Annuities can be deferred or immediate but this Guide focuses on *fixed indexed deferred* annuity contracts. There is, however, a brief description of two other types of deferred annuities, fixed and variable, as well as immediate annuities.

This Guide isn't meant to offer legal, financial or tax advice. You may want to consult independent advisors.

This Guide includes questions you should ask the company, your agent (a producer, broker, advisor or any other person or entity selling you the annuity). Make sure you're satisfied with the answers before you buy. If you don't understand the answers, ask again, ask the company or ask your state insurance department.

A list of common terms used with annuities and what each means starts on page ___. You may refer to that list as you read this Guide, the disclosure and your contract.

This Guide refers to the disclosure you'll receive with your annuity contract. The disclosure summarizes the terms of your contract and defines some of the words used in the contract. It will explain how your annuity increases in value and what charges are taken from your contract. Your agent should go through the disclosure with you so you understand it.

This Guide provides information that applies to all annuities on pages ____ to ____. Information about fixed indexed annuities begins on page ____.

BASIC INFORMATION ABOUT ANNUITIES

What Is an Annuity?

An annuity is a contract with an insurance company. You pay for the annuity (in a single payment or multiple payments) and the insurer promises to pay out money from the annuity to you in a series payments. Only an annuity can pay an income that can be guaranteed to last as long as you live. In some annuities, you don't receive income payments right away.

An annuity is *not* a savings account. If you buy an annuity, it should be to reach *long-term* financial goals.

All annuities have a *surrender charge* (also known as a withdrawal charge) which discourages you from taking money from your annuity or ending (surrendering) the contract before a certain point in time The number of years you'll pay a surrender charge when you take money from your annuity and the amount of each year's surrender charge vary from one annuity to the next. The charge is usually a percentage of the premiums you've paid or of the value of the account when you make the withdrawal. The charge can be much more than the interest earned on the annuity in the first few years so it's possible to lose not only the interest, but also some of your principal (the amount of the premiums you've paid) if you make a withdrawal or surrender the annuity. Every indexed annuity offers you a way to access some of your money each year without paying a surrender charge. You can find this specific information in the annuity contract and it's summarized in the disclosure.

What Are the Different Types of Annuities?

This Guide explains major differences among annuities to help you understand how each might meet your needs.

This Buyer's Guide focuses on fixed indexed deferred annuities. If you're interested in a different type of annuity, ask your agent about that buyer's guide.

Annuities differ in several ways:

- How many premiums you pay
- When the company makes income payments to you
- How the money in the annuity earns interest

How Many Premiums You Pay: Single Premium or Flexible Premium Annuities

You pay the insurance company only one payment for a *single premium* annuity. You make a series of payments for a *multiple premium* annuity; for one type of multiple premium annuity, a *flexible premium* annuity, you pay whenever you want, within set limits.

When the Company Makes Income Payments to You: Immediate or Deferred Annuities

In an *immediate* annuity, income payments start no later than one year after you pay the premium. You usually pay for an immediate annuity with one premium.

The income payments from a *deferred annuity* often start many years later. Deferred annuities have an *accumulation period* and a *payment period*. During the *accumulation period*, the money you put into the annuity, less any charges, earns interest. The earnings grow tax deferred as long as you leave them in the annuity. After the *accumulation period* ends, the *payment period* (or the *annuitization period*) begins; in the *payment period*, the company pays income to you or to someone you choose.

How the Money in an Annuity Earns Interest: Fixed, Variable, and Indexed Annuities

<u>*Fixed*</u>

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During the *accumulation period* of a *fixed deferred* annuity, your money earns interest at rates set by the insurance company or in a way spelled out in the annuity contract. The company guarantees the contract will earn no less than a minimum rate of interest. During the *payment period*, the amount of each income payment to you is set when the payments start and won't change. If you want to consider a fixed deferred annuity, please ask for that guide.

<u>*Variable*</u>

During the *accumulation period* of a *variable deferred* annuity, the insurance company puts your premiums into separate accounts. You choose the accounts depending on how much risk you want to take. You may choose accounts with no guaranteed returns that are invested in bonds, money market funds or stocks or other equities. You also may have the option to put part of your premiums into a fixed account, with a minimum guaranteed interest rate. During the *payment period* of a *variable annuity*, the amount of each income payment to you may be fixed (set at the beginning) or variable (changing with the value of the separate accounts). If you want to consider a variable deferred annuity, please ask for that guide.

<u>*Indexed*</u>

During the *accumulation period* of a *fixed indexed deferred* annuity, the return on your money depends on a market index. The index is a number that goes up and down as the market the index represents moves up and down. The company credits earnings to your annuity based on changes in the market index you select but guarantees the value of your annuity won't decrease as long as you don't withdraw the money. You also may have the option to put part of your premiums into a fixed account with a minimum guaranteed interest rate. Generally, during the *payment period* of an *indexed annuity,* the amount of each income payment to you is fixed. This Guide describes fixed indexed deferred annuities.

How Do I Decide Which Annuity Is Best for Me?

Your agent's recommendation of an annuity should be based on his/her knowledge of your current financial situation, tax status, investment objectives and needs. It's important that you discuss with your agent your total financial and life situation, so you can decide whether an annuity is a good choice for you. You should ask your agent for a disclosure that's specific to the product you're considering.

The agent will suggest annuities that are suitable for your situation. If you aren't comfortable with the agent's suggestions, explain your concerns. It's important that any annuity you choose be consistent with the amount of risk that you're willing to accept.

Annuity contracts may be broadly categorized by the amount of risk involved. The types of annuities and the level of overall risk for each are:

- Fixed Annuity — Least Risk
- Fixed Indexed Annuity — Moderate Risk
- Variable Annuity — Most Risk

As you think about the risk involved with each annuity type, ask yourself:

- Am I interested in a variable annuity with the potential for higher earnings that aren't guaranteed and willing to risk losing the premiums I've paid?
- Is the guaranteed interest rate of a fixed annuity more important to me, with little or no risk of losing my premiums, in exchange for less potential to earn interest?
- Or, am I somewhere between these two extremes and willing to take more risk in exchange for the opportunity to earn a higher rate with an indexed annuity?

You may choose to add benefits known as *riders* to your annuity. Some riders offset some of the risks of owning certain annuities. There usually is an additional cost for riders. Also, some annuities have built-in features that may offset some of the risks of an annuity.

How Can I Access My Money?

Each annuity offers more than one way to access your money: 1) by annuitizing the contract to receive income payments over time, 2) by taking a lump sum payment and *surrendering* your annuity, 3) by taking withdrawals and 4) as a death benefit to your *beneficiaries* if you die during the accumulation period. If you take money by making a withdrawal or surrendering your annuity, you'll likely pay fees and may not get back all of the premiums you've paid. The contract and the disclosure tell you how much you can take out without paying a charge and when the charges no longer apply.

One of the most important benefits of deferred annuities is your ability to use the value built up during the accumulation period to receive multiple income payments. After you *annuitize,* you receive income payments for life. Payments are usually made monthly but you may choose to receive them less often. The size of the income payments is based on the *accumulation value* of your annuity and the *benefit rate* when income payments begin. The benefit rate usually depends on your age and sex as well as the annuity payment option you choose. Payment options usually include payments that continue as long as you live, as long as you and your spouse live or for a set number of years.

There's a table of guaranteed benefit rates in each annuity contract. Most companies have current benefit rates which are greater than the guaranteed benefit rates. A company can change the current benefit rates *at any time*, but the current benefit rates can never be less than the guaranteed benefit rates. When income payments start, the insurance company uses the benefit rate in effect at that time to figure the amount of your income payment.

Another option may be to take a *lump sum payment* from your annuity and surrender or terminate it. If a lump sum payment is a choice, ask when it would be available and how much the payment would be. If it's an option, think about whether a lump sum payment may be a better choice than payouts over time. In some annuities, there's no charge if you surrender your contract when the company's current interest rate falls below a certain level. This may be called a *bailout option*.

You can make *withdrawals* from your annuity before income payments begin, but you may pay a fee (often a surrender charge). The contract and the disclosure tell you how much you can take out without paying a charge and when the charges no longer apply. Most annuities let you withdraw a percentage of your annuity's value annually (typically 10%) without paying a fee. You may lose any interest on the amount withdrawn, and you may lose part of your principal. After you've owned an annuity for a certain length of time (typically 7 to 14 years), the surrender charge period may end and you'll be able to take money out without paying a surrender charge. Many annuities let you withdraw part of the accumulation value without paying a surrender charge if certain events, such as nursing home confinement or terminal illness, occur.

Annuities have stated maturity dates. When an annuity reaches its maturity date, the contract may automatically expire or renew. You're usually given a short period of time, called a *window*, to decide if you want to renew or surrender the annuity. If you surrender during the window, you won't have to pay surrender charges. If you renew, the surrender or withdrawal charges may start over.

Some annuity contracts have a Market Value Adjustment (MVA) feature. An MVA could increase or reduce your annuity's value if you withdraw more than the penalty-free amount. In general, if interest rates are lower at the time of withdrawal than at the time the contract was issued, your annuity's value will be increased. If interest rates are higher at the time of withdrawal than at the time of issue, your annuity's value will be reduced. Every MVA calculation is different, however, so check your contract and disclosure for details.

In some flexible premium annuities, a new surrender charge may apply to each premium paid. This may be called a rolling surrender charge.

Finally, if you die during the accumulation period, your *beneficiaries* will receive some or all of the money in your annuity. In some annuities, there's a charge that reduces what your beneficiaries receive. Check your contract and disclosure.

Will I Pay Income Tax on My Annuity?

Below is a general discussion about taxes and annuities. You should consult a professional tax advisor to discuss your individual tax situation.

Under current federal law, annuities receive special tax treatment. Income tax on annuities is deferred, which means you aren't taxed on the interest your money earns while it stays in the annuity. The interest isn't tax free, however, so you pay taxes when you withdraw money. You also may have to pay a 10% tax penalty if you withdraw money before age 59 1/2. Most states' tax laws on annuities follow the federal law.

You also can use annuities to fund traditional and Roth IRAs. If you buy an annuity to fund an IRA, you'll receive a disclosure statement describing the tax treatment. You're unlikely to gain any tax advantage by funding an IRA or a qualified retirement plan with an annuity, as an IRA and a qualified retirement plan are both tax deferred regardless of how they're funded.

What Is a "Free Look" Provision?

Many states have laws which give you a set number of days to look at the annuity contract after you buy it. If you decide during that time that you don't want the annuity, you can contact the company, return the contract and get all of your money back. This is often referred to as a *free look* or *right to return* period. The free look period should be prominently stated in your contract and disclosure. Be sure to read your contract carefully during the free look period.

FIXED INDEXED DEFERRED ANNUITIES

With this basic information about annuities in mind, this section describes the type of annuity you're considering, a fixed indexed deferred annuity. First, here's a reminder about what a fixed indexed annuity is. During the *accumulation period* of an *indexed deferred* annuity, the return on your money depends on the market index you choose. The index is a number that goes up and down as the market the index represents moves up and down. The value of any index varies from day to day and isn't predictable. One of the equity indices most commonly used in indexed annuities is Standard & Poor's 500 Composite Stock Price Index (the S&P 500)[1]. You aren't directly invested in the market or the index. The company credits earnings to your annuity based on changes in the market index but guarantees the value of your annuity won't decrease as long as you don't withdraw the money. You also may have the option to put part of your premiums into a fixed account, with a minimum guaranteed interest rate. Generally, during the *payment period* of an *indexed annuity,* the amount of each income payment to you is fixed. While immediate indexed annuities may be available, this Guide describes fixed indexed deferred annuities.

How Are Indexed Annuities Different from Other Fixed Annuities?

An indexed annuity *is* different from other fixed annuities. Other fixed annuities credit a *fixed rate of interest*, which the insurance company guarantees. Indexed annuities credit interest using a formula based on changes in the performance of an equity, bond or commodity index. This formula determines how the interest, if any, is calculated and credited to your annuity's value. How much interest you get, and when you get it, depends on the features of your particular indexed annuity.

However, an indexed annuity does offer a guarantee. The guarantee for an indexed annuity is that a declared minimum interest rate will be credited on part of your initial premium if you surrender the annuity or if the index your annuity is linked to performs poorly. This guarantee is *not* credited annually. It's important to note that if there's a negative change in the index your annuity is linked to, your indexed annuity will be credited with 0% interest (not negative interest) for that particular index term.

For example, some indexed annuities guarantee the minimum value of your annuity will never be less than 87.5% of the premiums you've paid, plus at least 3% interest (less any partial withdrawals). Even if you surrender your annuity, withdraw the full amount and pay surrender charges, you won't receive less than the guaranteed minimum value. An indexed annuity with a minimum guaranteed surrender value of 87.5% of premiums credited with 3% interest would provide a return of 101.43% at the end of a six-year term [(87.5% x 1.03%) x 5)] and more for longer term periods. However, if you decided to surrender such an annuity before the fifth year, you would receive less than the premiums paid for the contract.

Floor on Index-Linked Interest

[1] S&P 500 is a registered trademark of the McGraw-Hill Companies, Inc., used with permission.

The floor is the minimum interest rate you'll earn on an annuity. All indexed annuities have a floor of at least 0%. A 0% floor assures that even if the index decreases in value, the index-linked interest that you earn will be zero and not a negative adjustment to your annuity's account value.

What Indexed Annuity Contract Features Affect Interest Credited to My Annuity?

The index used for crediting, the indexing method, the index term and the participation, cap and/or spread rates have the greatest effect on the amount of interest credited to an indexed annuity. It's important to understand the features and how they work together in an index-linked formula.

The Index

Indexed annuities credit interest using a formula based on changes in the performance of an equity, bond or commodity index. The index is an external benchmark. The annuity isn't invested directly in the investment that's the basis for the index. For example, if the annuity is linked to a stock fund you aren't buying shares of stock and dividends paid on stocks don't increase your annuity earnings. The company credits earnings to your annuity based on the index you select, but guarantees the value of your annuity won't decrease because the index goes down. Note that the past performance of an index doesn't indicate future results. Some annuities may be linked to more than one index.

Indexing Method

The indexing method is the way the amount of positive change, if any, in the index is measured. Some of the most common indexing methods, which are explained more fully later on, include annual point-to-point, term end point and monthly and daily averaging.

Index Term

The index term is the period over which index-linked interest is calculated; the interest is credited to your annuity at the end of a term. Terms are generally from one to ten years, with one year being the most common. Some annuities offer a single term while others offer multiple, consecutive terms because of multiple crediting strategy options. For flexible premium annuities, the payment of each premium may begin a new term for that premium. An annuity that credits index-linked interest less often than annually may credit none of the index-linked interest, or only part of it, if you take out money before the end of the term. It's important to understand how this will affect you if you'll be making a full or partial withdrawal before the term ends.

Participation Rate

The participation rate determines how much of the increase in the index will be used to calculate index-linked interest. For example, if the calculated change in the index is 9% and the participation rate is 70%, the index-linked interest rate for your annuity will be 6.3% (9% x 70% = 6.3%).

The company usually offers a participation rate for a specific period (from one year to the entire term). When that period is over, the company can set a new participation rate for the next period. Some annuities guarantee that the participation rate will never be lower than a set minimum or higher than a set maximum. It's common for companies to offer participation rates of less than 100%, particularly when there's no cap rate.

Cap Rate

Many annuities may put an upper limit, or cap, on the index-linked interest rate. This is the maximum rate of interest the annuity will earn. In the example given above, if a contract had a 6% cap rate, then 6% would be credited, not 6.3%. Some annuities guarantee that the cap rate will never be lower than a set minimum or higher than a set maximum. It's common for companies to use a cap rate, especially if the participation rate is 100%.

Spread Rate

In some annuities, the index-linked interest rate is computed by subtracting a specific percentage from any calculated change in the index. This spread rate, sometimes referred to as the "margin" or "asset fee," might be instead of, or in addition to, a cap or participation rate. In the example given above, if the calculated change in the index is 9% and the spread rate is 2.25%, the credited rate would be 6.75% (9% - 2.25% = 6.75%). In this example, the company subtracts the percentage only if the change in the index is positive.

Bonuses

Some indexed annuities offer a bonus. The most common type of bonus is a *premium bonus*. This type of bonus immediately increases the value of the annuity and is usually credited as a percentage of the premiums paid into the contract. In some annuities, there's a separate charge for the premium bonus. This lets the insurance company keep the surrender charges lower, relative to other annuities with a bonus. However, if you withdraw more than your penalty-free amount on such an annuity, you may lose part of your premium bonus. This type of bonus is accessible to you if you decide to surrender your contract.

Another type of bonus is a *Guaranteed Lifetime Withdrawal Benefit (GLWB) bonus*. A GLWB bonus is like a premium bonus in that it's usually a percentage of the premiums paid into the contract. However, a GLWB bonus is different in that you can't access the bonus if you surrender your annuity for cash. A GLWB bonus is credited to the benefit base value, not the accumulation value. For this reason, this type of bonus is only accessible if you take lifetime income payments through your GLWB.

The last type of bonus available on some annuities is an *annuitization bonus*. This type of bonus is very similar to a GLWB bonus but is only accessible if you take lifetime income payments through annuitization. Many two-tiered annuities offer this type of bonus.

Although bonuses can help to boost to your annuity's value, it's important to understand how they work. In general, annuities with bonuses have higher surrender charges and the surrender charges apply longer than in annuities without bonuses. In addition, all things being equal, an annuity with a bonus has less potential for gains than a non-bonus annuity. Make sure you understand the terms and conditions of any bonuses you're considering.

What Are the Features and Trade-offs of Different Indexing Methods?

Generally, indexed annuities offer preset combinations of features. It's important to understand how each works.

Features	***Trade-Offs***
Annual Point-to-Point	
The value of the index is reviewed on each policy anniversary. The change in the index is measured in this way from one year to the next. Interest, if any, is credited to your annuity each year, subject to any participation, cap or spread rates. Since the interest earned is "locked in" annually and the index value is "reset" at the end of each year, future decreases in the index won't affect the interest you've already earned.	Only the beginning and end points are considered. Since potential interest is credited annually, your annuity's participation, cap and spread rates may change each year and generally will be lower than that of other indexing methods.
Term End Point (also called Multi-Year Point to Point)	
The index-linked interest, if any, is based on the difference between the index value at the end of the index term and the index value at the start of the term. Index terms may range from 3 to 10 years. Potential interest is added to your annuity at the end of the index term as opposed to each year, subject to any participation, cap or spread rates.	Only the beginning and end points are considered. Since interest isn't credited until the term ends, you may not receive index-linked interest until the end of the term. There may be a lower spread rate or higher participation or cap rate than with some other indexing methods. Partial or full surrenders may not receive any index-linked interest if taken before the term ends.
Monthly or Daily Averaging	

Index-linked interest, if any, is determined by recording the index's value on specific dates (every month for monthly averaging, every day the market is open for daily averaging) and comparing the average of these values with the index value at the start of the term. Potential interest is added to your annuity at the end of the year, subject to any participation, cap or spread rates.

In a steady-rising market, point-to-point methods may perform better. Since potential interest is credited annually, your annuity's participation, cap and spread rates may change each year. Most products that use this indexing method lock in interest annually and reset the index value at the end of each year. This protects interest earned from being affected by future decreases. Participation and cap rates may be higher (and any spread rates may be lower) than with other indexing methods.

Monthly Point-to-Point

Similar to monthly averaging, index-linked interest, if any, is determined by comparing the change in an index's value from one monthly anniversary to the next monthly anniversary. Each month, positive changes are subject to the cap rate but negative changes are not. At the end of the term, the monthly changes are added and any positive index-linked interest is credited. If the sum is negative, zero interest is credited.

Contracts with this design have a lower cap rate than other designs because the cap rate is applied monthly, although interest is credited at the end of the term. Monthly decreases in the index will reduce any interest credited at the end of the term. Since this indexing method considers downward movements of the index, annuities using this indexing method may earn higher index-linked interest than many other indexing methods in a steadily-rising market, due to cumulative increases in the index.

What Charges May Be Subtracted from My Annuity? *{Note from B. Cude: The group hasn't written this section yet but it's likely to be needed to make this buyer's guide parallel to the others. Thus, some information here may not apply to indexed annuities.}*

Annuities have charges related to the cost of selling and management. These charges may be subtracted directly from the contract value or they may be reflected in lower interest rates. See the disclosure and ask your agent or the company to describe the charges that apply to your annuity.

Indexed annuities do not have up-front charges. There may be a charge based on the annuity's accumulation value to cover the cost of a benefit rider. A few indexed annuities charge (based on the annuity's accumulation value) to cover the cost of the crediting strategy rather than using a cap, participation or spread rates. See the disclosure and ask your agent or the company to describe the charges that apply to your annuity.

Some examples of annuity charges, fees and taxes are:

- A *contract fee* is a flat dollar amount charged either once or annually.
- A *transaction fee* is a charge for each premium payment or other transaction.
- A *percentage of premium charge* is a charge deducted from each premium paid. The percentage may vary over time.
- Some states charge a *premium tax* on annuities. The insurance company pays this tax to the state. The company may subtract the amount of the tax when you pay your premium, when you withdraw your contract value, when you start to receive income payments or when it pays a death benefit to your beneficiary.

Surrender Charges

A surrender charge is usually a percentage of the premiums you've paid or of the value of the account when you make the withdrawal. You may pay this charge to take all or part of your money out at any time during your annuity's accumulation period. The contract and the disclosure tell you how much you can take out without paying a charge and if the charge no longer applies after you've had the annuity a while.

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Your annuity may have a *limited withdrawal* feature. This feature lets you make one or more withdrawals without a charge, up to a total percentage of your annuity's accumulation value. If you make a larger withdrawal, you pay a withdrawal charge called a *partial surrender charge*. You may lose any interest above the minimum guaranteed rate on the amount withdrawn, and you may lose part of your principal.

For more information about surrender charges, review the *How Can I Access My Money?* section of this publication.

What Optional Benefits Can I Choose? *{Note from B. Cude: The group hasn't written this section yet but it's likely to be needed to make this buyer's guide parallel to the others. Thus, some information here may not apply to indexed annuities.}*

Insurance companies offer many optional benefits that you can add to your variable annuity by buying riders. Some commonly offered riders are described below. Each rider will increase the cost of your annuity. Ask your agent or the insurance company for the information you need to decide if a rider is worth the cost.

A *Guaranteed Minimum Death Benefit rider* guarantees the minimum amount of the death benefit the insurer will pay your beneficiary if you die before the insurer starts to make monthly payments to you. The insurer will make this payment regardless of the return on the investments in your subaccounts. For example, suppose you've paid $50,000 in premiums for a variable annuity and buy a rider that guarantees a death benefit that will be at least as much as the premiums you've paid. If the investments in your subaccounts have done so poorly that the contract is only worth $10,000 after five years, the rider guarantees a death benefit of at least $50,000. Some Guaranteed Minimum Death Benefit riders may also "step up" this guaranteed death benefit amount or add interest to it from time to time.

Some annuity benefits are called as *living benefits*. These benefits all provide some guarantee for the annuity owner – a guaranteed income from the annuity, guaranteed withdrawal amounts, and/or guaranteed protection of the premiums you've paid. There's an additional cost for each rider – and the cost can be significant.

A *Guaranteed Minimum Income Benefit* rider guarantees a minimum return on the investments in your subaccounts. Based on this return, you're guaranteed a minimum income. You usually must buy this rider when you buy your annuity and must annuitize to use the rider. For example, this rider might guarantee that your monthly payment will never be less than 75% of your first payment. If the first payment to you was $1,200, this rider guarantees that your monthly payment will never be less than $900, regardless of how the investments in your subaccounts do. You couldn't use this rider if you took the money from your annuity in a lump sum payment. And there may be a waiting period before you can use this rider to receive payments.

A *Guaranteed Minimum Accumulation Benefit* rider guarantees that your annuity will be worth a minimum amount by a set date, even if the investments in your subaccounts do poorly. For example, this rider might guarantee that your annuity will earn at least 8% a year by the end of ten years. If at the end of ten years your annuity has only earned 4% a year, your insurer will add the difference.

A *Guaranteed Minimum Withdrawal Benefit* rider guarantees a return of all of the premiums you've paid, regardless of how the investments in your subaccounts do. You must make annual withdrawals, with each limited to a certain percentage of the premiums you've paid. This rider does **not** return the premiums you've paid as a lump sum payment. How does it work? For example, suppose you pay $100,000 in premiums for a variable annuity and buy a rider that guarantees a 6% withdrawal rate. The rider guarantees you can withdraw $6,000 (or 6% of the $100,000 you've paid in premiums) annually without penalty even if the investments in your subaccounts have done so poorly that your annuity is only worth $70,000. The total amount of withdrawals is limited to the premiums you've paid or $100,000 in this example.

A *Guaranteed Lifetime Withdrawal Benefit* rider protects you against losses in the investments in your subaccounts. It guarantees that you can withdraw a percentage of your original principal each year without penalty *for life,* regardless of how the investments in your subaccounts do. For example, suppose you pay $100,000 in premiums for a variable annuity and buy a rider that guarantees a 6% withdrawal rate. The rider guarantees you can withdraw $6,000 (or 6% of your original $100,000 investment) annually without penalty even if your annuity's account value goes to zero. The percentage you can withdraw is usually based on your age and your annuity's benefit base value.

What Are Two-Tiered Annuities?

Most annuities are single-tiered; the annuity's account value and cash values become closer together over time. In a *two-tiered* annuity, the annuitization value and the cash value are two separate and independent values. These values are calculated separately and frequently become further apart over time in a two-tiered annuity.

The cash value of a two-tier annuity is the amount that you can withdraw in cash. The cash value balance usually earns a minimal interest rate – one set by the insurer. The annuitization value is a notional account which can only be used to buy an immediate annuity from the insurer at a price the company sets (there's a stated maximum price in the contract). Generally, on a two-tiered annuity only the annuitization value will be credited with any bonuses and index gain that you receive. Since most deferred annuities are surrendered rather than annuitized, it's very important to understand that if you buy a two-tiered annuity, you *cannot* access the annuitization value directly as cash. If you withdraw money from the cash value, it will affect your annuitization value and, during the surrender charge period, surrender charges will apply.

HOW DO I KNOW IF A FIXED INDEXED ANNUITY IS RIGHT FOR ME?

The questions listed below may help you decide. You should think about what your goals are for the money you put into the annuity. You also need to think about how much risk you're willing to take.

These are the questions you should ask yourself.

How comfortable am I with risk?

After I buy the annuity, how much money do I need to have available to cover major expenses and emergencies? How much will I have for these expected expenses?

If I had to surrender the annuity, am I comfortable with the minimum guaranteed surrender value on the contract?

Am I comfortable with the length of time that I'll pay surrender charges if I withdraw money from the annuity?

How long can I leave my money in the annuity?

Does the annuity let me get money when I need it?

How soon will I need income payments? How much retirement income will I need in addition to what I'll get elsewhere?

Will I need income payments only for myself or for myself and someone else?

If the annuity loses money, will I still have enough income to meet my needs?

These are questions you should ask the agent or the insurance company.

When is the earliest I can get money out of the annuity and how much can I get?

To which index is the annuity linked? Do I have a choice? Will I have the option in the future to change the index the annuity is linked to ?

What is the minimum guaranteed surrender value?

When is the indexed interest credited?

Does my annuity have an interest rate cap? What is it and how long is it guaranteed? Is there a minimum cap? Is the cap in addition to, or instead of, a spread or participation rate?

Does my contract have a participation rate? What is it and how long is it guaranteed? Is there a minimum participation rate? Is the participation rate in addition to, or instead of, a spread or cap rate?

Does my contract have a spread? What is it and how long is it guaranteed? Is there a maximum spread? Is the spread in addition to, or instead of, a participation rate or cap rate?

If there is a bonus, when it is credited and on what amount?

Is there a recapture provision or vesting schedule which could cause me to lose my bonus?

Do I lose any bonus if I take a lump sum rather than annuitize my accumulation value? Are there other ways I could lose the bonus?

If I take a lump sum and surrender the annuity, will the accumulated value or the way interest is credited change before I do this?

Is this a single premium or flexible premium contract?

Is there a Market Value Adjustment (MVA) feature in my annuity?

How long is the free look or right to return period?

How long is the contract term?

How much are the withdrawal charges, surrender charges and other penalties? How long do they apply?

How much can I withdraw without paying surrender charges or losing interest?

What other charges may be deducted from my premium or contract value?

How much will the total charges and fees be each year?

What happens to the money in my annuity if I die?

FINAL POINTS TO CONSIDER

Before you decide to buy an annuity, you should review the contract. Terms and conditions of each annuity contract will vary.

Ask yourself if, depending on your needs or age, and annuity and *this type* of annuity are right for you. Taking money out of an annuity may mean you'll pay income taxes and/or penalties. If you're exchanging an annuity, the new annuity may have new expenses you must pay directly or indirectly. Also, you may pay surrender charges on the old annuity. If you're selling another asset, are there penalties associated with that sale? Will you have to pay taxes on the sale?

An annuity is intended to be a long-term product. Generally, you should keep it long enough to avoid penalties.

If you're buying an annuity to fund an IRA or other tax-deferred retirement program, ask what the advantages are of this approach.

When you receive your annuity contract, **READ IT CAREFULLY!!** Also, read the disclosure the company provides. Ask the agent and company for an explanation of anything you don't understand. Do this **before** any free look period ends.

If you can't get the answers you need from the agent or company, contact your state insurance department.

ANNUITY TERMS

Accumulation Period: The time when the money you put into the annuity, less any applicable charges, earns interest.

Accumulation Value: The sum of your premiums plus any interest credited less any charges deducted.

Annuitize: Converting the lump sum of the accumulated value of your annuity to a series of payments.

Annuity: A contract with an insurance company that pays income to you, usually over time.

Bailout Option: A feature in some annuities where there's no charge if you surrender your contract when the company's current interest rate falls below a certain level.

Beneficiary: A person who receives part or all of the money in the annuity if the annuitant dies. May also be an organization such as a charity.

Benefit Base Value: A value on an annuity that features a Guaranteed Lifetime Withdrawal Benefit (GLWB); only used to calculate your lifetime income payments. The Benefit Base Value can't be taken if you cash surrender the annuity.

Benefit Rate: The rate used to determine the size of the income payments you'll receive when the accumulation period ends. Varies by age, gender, and the payment option chosen.

Bonus Interest Rate: An interest rate that's higher than the current interest rate and is credited to your accumulation value as an incentive for you to buy an annuity and to keep it. The company may only pay the bonus interest rate if you meet certain conditions, such as annuitizing the accumulated value or not taking money out.

Cap Rate: The maximum interest rate that will be used to calculate the interest to credit on an indexed annuity.

Contract Fee: A flat dollar amount that's charged either once at purchase or annually during the annuity.

Crediting Strategy: The method used to calculate your return on an indexed annuity; depends on the index used, the indexing method, the index term and the participation, cap and/or spread rates

Death Benefit: The annuity benefits paid to the beneficiary upon the death of the contract owner or annuitant.

Deferred Annuity: An annuity where your money earns interest for a period of time before it's converted into a series of payments back to you.

Disclosure: A document the insurance company is required to give you when it delivers the annuity contract; summarizes the annuity contract and specifies how interest is earned and how all charges are calculated and summarizes what happens if you take money out before it's scheduled to be paid and how much money you will lose if you do this.

Dow Jones Euro Stoxx 50: A market capitalization-weighted index of 50 blue-chip stocks from the countries that participate in the European Monetary Union.

Fixed Annuity: An annuity where your money earns interest at rates set by the insurance company or in a way spelled out in the annuity contract. The company guarantees that it will pay no less than a minimum rate of interest.

Fixed Indexed Annuity: An annuity in which the return on your money depends on the market index you choose. The company guarantees the value of your annuity won't decrease as long as you don't withdraw the money.

Flexible Premium Contract: A type of multiple premium annuity where, within set limits, you pay as much premium as you want, whenever you want.

Free Look or Right to Return Period: A set number of days to look at the annuity contract after you buy it and return the contract to get all of your money back. The number of days is set by state law.

FTSE 100: A market-weighted index of the 100 leading companies traded in Great Britain on the London Stock Exchange. The full name is Financial Times-Stock Exchange 100 Share Index.

Hang-Seng: A market-weighted index of 33 stocks making up approximately 70% of the market value of all stocks traded on the Stock Exchange of Hong Kong.

Guaranteed Lifetime Withdrawal Benefit: A fixed annuity contract feature that guarantees, at an additional cost, that an annuity owner can take annual withdrawals for life at a stated percentage, based on his/her age, even if the annuity's account value goes to zero.

Immediate Annuity: An annuity where income payments start no later than one year after you pay the premium.

Lehman Brothers Aggregate Bond Index: An index of U.S. Treasury bonds and notes and government-agency bonds (excluding mortgage-backed securities).

Limited Withdrawal: A feature that lets you make one or more withdrawals up to a set amount without paying a charge.

Market Value Adjustment (MVA): A feature in some annuities that adjusts the market value if you withdraw more than the penalty-free amount; the adjustment increases your annuity's market value if interest rates are lower at time of withdrawal than when the contract was issued and decreases the market value if interest rates are higher.

Maturity Date: The date at the end of your accumulation period in a deferred annuity where you must decide to reinvest, withdraw or annuitize the proceeds. Many guarantees in the contract are tied to this date. If you remove your money before this date you may lose money or receive less money than if you had left your money in.

Minimum Guaranteed Surrender Value: The lowest value you can receive from a cash surrender if the index on which interest crediting is based does poorly.

NASDAQ: National Association of Securities Dealers Automated Quotation. The automated quotation system for the Over-the-Counter (OTC) market, showing current bid-ask prices for thousands of stocks.

Nikkei 225: A stock market index for the Tokyo Stock Exchange.

Partial Surrender Charge: A charge paid if you take out part of the annuity value. (See Withdrawal Charge)

Participation Rate: Determines how much of the increase in the index will be used to calculate index-linked interest; may be used with a cap or a spread rate.

Payment Period: The time when the company pays income to you or to someone you choose.

Percentage Of Premium Charge: A charge deducted from each premium you pay; may be lower after the contract has been in force for a certain number of years or after all total premiums paid have reached a certain amount.

Premium Tax: A tax on annuities that some states charge.

Required Minimum Distribution (RMD): IRAs and qualified plans have certain "required" distributions. For IRAs, you must begin to withdraw funds by April 1st of the year following the calendar year you reach age 701/2. For qualified plans, withdrawals must begin by April 1st of the year following the later of (a) the year you reach age 70 1/2 or (b) the year you retire.

Rider: A benefit added to an annuity contract; changes the annuity's terms or conditions.

Rolling Surrender or Withdrawal Charge: A charge in a multiple premium annuity that may apply to each premium paid rather than to the entire accumulated value.

S&P 500 Composite Index (S&P 500): Market value index of stock market activity covering 500 leading stocks in the Standard & Poor's Index.

Single Premium Annuity: An annuity bought with only one payment to the insurance company.

Spread Rate (a.k.a. Asset Fee, Margin): A percentage subtracted from any calculated change in the equity index; may also use a cap or participation rate.

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Suitability Review: A review by your agent to recommend the amount of risk you should take if you buy an annuity and if the product you're buying is appropriate.

Surrender: To take all of the money from an annuity and terminate the contract.

Surrender Charge: A charge paid if you take out part or all of the annuity value.

Two-Tiered Annuities. An annuity with two separate and independent values, usually called the annuitization value and the cash value. These values are calculated separately and frequently become further apart over time; over time account value and cash value of a single-tier annuity become closer together.

Variable Deferred Annuity: An annuity where the insurance company puts your money into separate accounts. You decide how the company will invest the money in the accounts, depending on how much risk you want to take.

Window: A short period of time to decide if you want to renew or surrender the annuity. If you surrender during the window, you won't have to pay surrender charges. If you renew, the surrender or withdrawal charges may start over.

Withdrawal Charge: A charge paid if you take out some of the annuity value.

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Revisions to Appendix A in Model 245

Comments should be sent by email to Jennifer Cook at jcook@naic.org by Nov. 6, 2009.

ANNUITY DISCLOSURE MODEL REGULATION

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Appendix A. Buyer's Guide to Fixed Deferred Annuities

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APPENDIX A—BUYER'S GUIDE TO FIXED DEFERRED ANNUITIES

Drafting Note: The language of the Fixed Deferred Annuity Buyer's Guide is limited to that contained in the following pages, or to language approved by the commissioner. Companies may purchase personalized brochures from the NAIC or may request permission to reproduce the Buyer's Guide in their own type style and format.

[The face page of the Fixed Deferred Annuity Buyer's Guide shall read as follows:]

Prepared by the National Association of Insurance Commissioners

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various insurance departments to coordinate insurance laws for the benefit of all consumers.

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It's important that you understand the differences among various annuities so you can choose the kind that best fits your needs. Annuities can be deferred or immediate but this Guide focuses on *fixed deferred* annuity contracts. There is, however, a brief description of two other types of deferred annuities, indexed and variable, as well as immediate annuities.

This Guide isn't meant to offer legal, financial or tax advice. You may want to consult independent advisors.

This Guide includes questions you should ask the company or your agent (a producer, broker, advisor or any other person or entity selling you the annuity). Make sure you're satisfied with the answers before you buy. If you don't understand the answers, ask again, ask the company or ask your state insurance department.

A list of common terms used with annuities and what each means starts on page ___. You may refer to that list as you read this Guide, the disclosure and your contract.

This Guide refers to a disclosure you'll receive with your annuity contract. The disclosure summarizes the terms of your contract and defines some of the words used in the contract. It will explain how your annuity increases in value and what charges are taken from your contract. Your agent should go through the disclosure with you so you understand it.

This Guide provides information that applies to all annuities on pages __ to ___. Information about fixed annuities begins on page ___.

BASIC INFORMATION ABOUT ANNUITIES

What Is an Annuity?

An annuity is a contract with an insurance company. You pay for the annuity (in a single payment or multiple payments) and the insurer promises to pay out money from the annuity to you in a series of payments. Only an annuity can pay an income that can be guaranteed to last as long as you live. In some annuities, you don't receive income payments right away.

An annuity *is not* a savings account. If you buy an annuity, it should be to reach *long-term* financial goals.

All annuities have a *surrender charge* (also known as a withdrawal charge) which discourages you from taking money from your annuity or ending (surrendering) the contract before a certain point in time. The number of years you'll pay a surrender charge when you take money from your annuity and the amount of each year's surrender charge vary from one annuity to the next. The charge is usually a percentage of the premiums you've paid or of the value of the account when you make the withdrawal. The charge can be much more than the interest earned on the annuity in the first few years so it's possible to lose not only the interest, but also some of your principal (the amount of the premiums you've paid) if you make a withdrawal or surrender the annuity. Every fixed annuity offers you a way to access some of your money each year without paying a surrender charge. You can find this specific information in the annuity contract and it's summarized in the disclosure.

What Are the Different Types of Annuities?

This Guide explains major differences among annuities to help you understand how each might meet your needs.

This Buyer's Guide focuses on fixed deferred annuities. If you're interested in a different type of annuity, ask your agent about that buyer's guide.

Annuities differ in several ways:

- How many premiums you pay
- When the company makes income payments to you
- How the money in the annuity earns interest

How Many Premiums You Pay: Single Premium or Multiple Premium Annuities

You pay the insurance company only one payment for a *single premium* annuity. You make a series of payments for a *multiple premium* annuity; for one type of multiple premium annuity, a *flexible premium* annuity, you pay whenever you want, within set limits.

When the Company Makes Income Payments to You: Immediate or Deferred Annuities

In an *immediate annuity*, income payments start no later than one year after you pay the premium. You usually pay for an immediate annuity with one payment.

The income payments from a *deferred annuity* often start many years later. Deferred annuities have an *accumulation period* and a *payment period*. During the *accumulation period*, the money you put into the annuity, less any charges, earns interest. The earnings grow tax deferred as long as you leave them in the annuity. After the *accumulation period* ends, the *payment period* (or the *annuitization period*) begins; in the *payment period*; the company pays income to you or to someone you choose.

How the Money in an Annuity Earns Interest: Fixed, Variable and Indexed Annuities

<u>*Fixed*</u>

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During the *accumulation period* of a *fixed deferred* annuity, your money earns interest at rates set by the insurance company or in a way spelled out in the annuity contract. The company guarantees the contract will earn no less than a minimum rate of interest. During the *payment period*, the amount of each income payment to you is set when the payments start and won't change. This Guide describes fixed deferred annuities.

Variable

During the *accumulation period* of a *variable deferred* annuity, the insurance company puts your premiums into separate accounts. You choose the accounts, depending on how much risk you want to take. You may choose accounts with no guaranteed returns that are invested in bonds, money market funds or stocks or other equities. You also may have the option to put part of your premiums into a fixed account, with a minimum guaranteed interest rate. During the *payment period* of a *variable annuity*, the amount of each income payment to you may be fixed (set at the beginning) or variable (changing with the value of the separate accounts). If you want to consider a variable deferred annuity, please ask for that guide.

Indexed

During the *accumulation period* of an *indexed deferred* annuity, the return on your money depends on a market index. The index is a number that goes up and down as the market the index represents moves up and down. The company credits earnings to your annuity based on changes in the market index you select but guarantees the value of your annuity won't decrease as long as you don't withdraw the money. You also may have the option to put part of your premiums into a fixed account with a minimum guaranteed interest rate. Generally, during the *payment period* of an *indexed annuity,* the amount of each income payment to you is fixed. If you want to consider an indexed deferred annuity, please ask for that guide.

How Do I Decide Which Annuity Is Best for Me?

Your agent's recommendation of an annuity should be based on his/her knowledge of your current financial situation, tax status, investment objectives and needs. It's important that you discuss with your agent your total financial and life situation so you can decide whether an annuity is a good choice for you. You should ask your agent for a disclosure that's specific to the product you're considering.

The agent will suggest annuities that are suitable for your situation. If you aren't comfortable with the agent's suggestions, explain your concerns. It's important that any annuity you choose be consistent with the amount of risk that you're willing to accept.

Annuity contracts may be broadly categorized by the amount of risk involved. The types of annuities and the level of overall risk for each are:

- **Fixed Annuity** — **Least Risk**
- **Fixed Indexed Annuity** — **Moderate Risk**
- **Variable Annuity** — **Most Risk**

As you think about the risk involved with each annuity type, ask yourself:

- Am I interested in a variable annuity with the potential for higher earnings that aren't guaranteed and willing to risk losing the premiums I've paid?

- Is the guaranteed interest rate of a fixed annuity more important to me, with little or no risk of losing my premiums, in exchange for less potential to earn interest?

- Or, am I somewhere between these two extremes and willing to take more risk in exchange for the opportunity to earn a higher return with an indexed annuity?

You may choose to add benefits known as *riders* to your annuity. Some riders offset some of the risks of owning certain annuities. There usually is an additional cost for riders. Also, some annuities have built-in features that may offset some of the risks of an annuity.

How Can I Access My Money?

Each annuity offers more than one way to access your money: 1) by annuitizing the contract to receive income payments over time, 2) by taking a lump sum payment and *surrendering* your annuity, 3) by taking withdrawals and 4) as a death benefit paid to your *beneficiaries* if you die during the accumulation period. If you take money by making a withdrawal or surrendering your annuity, you'll likely pay fees and may not get back all of the premiums you've paid. The contract and the disclosure tell you how much you can take out without paying a charge and when the charges no longer apply.

One of the most important benefits of deferred annuities is your ability to use the value built up during the accumulation period to receive multiple income payments. After you *annuitize,* you receive income payments for life. Payments are usually made monthly but you may choose to receive them less often. The size of income payments is based on the *accumulation value* in your annuity and the *benefit rate* when income payments start. The benefit rate usually depends on your age and sex as well as the annuity payment option you choose. Payment options usually include payments that continue as long as you live, as long as you and your spouse live or for a set number of years.

There's a table of guaranteed benefit rates in each annuity contract. Some companies have current benefit rates which are greater than the guaranteed benefit rates. A company can change the current benefit rates *at any time*, but the current benefit rates can never be less than the guaranteed benefit rates. When income payments start, the insurance company uses the benefit rate in effect at that time to figure the amount of your income payment.

Another option may be to take a *lump sum payment* from your annuity and surrender or terminate it. If a lump sum payment is a choice, ask when it would be available and how much the payment would be. If it's an option, think about whether a lump sum payment may be a better choice for you for you than payments over time. In some annuities, there's no charge if you surrender your contract when the company's current interest rate falls below a certain level. This may be called a *bailout option*.

You can make *withdrawals* from your annuity before income payments begin, but you may pay a fee (often a surrender charge). The contract and the disclosure tell you how much you can take out without paying a charge and when the charges no longer apply. Most annuities let you withdraw a percentage of your annuity's value annually (typically 10%) without paying a fee. You may lose any interest on the amount withdrawn, and you may lose part of your principal. After you've owned an annuity for a certain length of time (typically 7 to 14 years), the surrender charge period may end and you'll be able to take money out without paying a surrender charge. Many annuities let you withdraw part of the accumulation value without paying a surrender charge if certain events, such as nursing home confinement or terminal illness, occur.

Annuities have stated maturity dates. When an annuity reaches its maturity date, the contract may automatically expire or renew. You're usually given a short period of time, called a *window*, to decide if you want to renew or surrender the annuity. If you surrender during the window, you won't have to pay surrender charges. If you renew, the surrender or withdrawal charges may start over.

Some annuities have a Market Value Adjustment (MVA) feature. An MVA could increase or reduce your annuity's value if you withdraw more than the penalty-free amount. In general, if interest rates are lower at the time of withdrawal than at the time the contract was issued, your annuity's value will be increased. If interest rates are higher at the time of withdrawal than at the time of issue, your annuity's value will be reduced. Every MVA calculation is different, however, so check your contract and disclosure for details.

In some flexible premium annuities, a new surrender charge may apply to each premium paid. This may be called a rolling surrender charge.

Finally, if you die during the accumulation period, your *beneficiaries* will receive some or all of the money in your annuity. In some annuities, there's a charge that reduces what your beneficiaries receive. Check your contract and disclosure.

Will I Pay Income Tax on My Annuity?

Below is a general discussion about taxes and annuities. You should consult a professional tax advisor about your individual tax situation.

Under current federal law, annuities receive special tax treatment. Income tax on annuities is deferred, which means you aren't taxed on the interest your money earns while it stays in the annuity. The interest isn't tax free, however; you will pay taxes when

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you withdraw money. You also may have to pay a 10% tax penalty if you withdraw money before age 59 1/2. Most states' tax laws on annuities follow the federal law.

You also can use annuities to fund traditional and Roth IRAs. If you buy an annuity to fund an IRA, you'll receive a disclosure statement describing the tax treatment. You're unlikely to gain any additional tax advantage by funding an IRA or a qualified retirement plan with an annuity, as an IRA and a qualified retirement plan both are tax deferred regardless of how they're funded.

What Is a "Free Look" Provision?

Many states have laws which give you a set number of days to look at the annuity contract after you buy it. If you decide during that time that you don't want the annuity, you can contact the insurance company, return the contract and get all of your money back. This is often referred to as a *free look* or *right to return* period. The free look period should be prominently stated in your contract and disclosure. Be sure to read your contract carefully during the free look period.

FIXED DEFERRED ANNUITIES

With this basic information about annuities in mind, this section describes the type of annuity you're considering, the *fixed deferred* annuity. First, here's a reminder about what a fixed annuity is. During the *accumulation period* of a *fixed deferred* annuity, your money earns interest at rates set by the insurance company or in a way spelled out in the annuity contract. The company guarantees the contract will earn no less than a minimum rate of interest. During the *payment period*, the amount of each income payment to you is set when the payments start and won't change. While fixed immediate annuities may be available, this Guide describes fixed deferred annuities.

How Are Interest Rates Set?

During the *accumulation period*, your money earns interest. Several different interest rates apply to most fixed deferred annuities. **The insurance company sets the interest rates, which can change.**

Minimum Guaranteed Rate

Look for the *minimum guaranteed interest rate.* This is the **lowest** rate your annuity can earn. This rate is stated in the contract.

Current Interest Rate

Interest on your annuity is credited based on the *current interest rate*. If at any time the minimum guaranteed interest rate is higher than the current interest rate, then the company uses the guaranteed rate.

- The current interest rate when you first buy your annuity is called the *initial interest rate*. Ask how long the company promises to pay this initial interest rate; in many annuities, the initial interest rate only applies to the first year you own the annuity. When the rate changes, **it may be lower**.

- Once the initial interest rate period ends, the company credits interest to your annuity based on the *renewal interest rate.* The disclosure tells how the company will set the renewal rate and how often it can change. **The renewal interest rate may be lower than the initial interest rate.**

Bonus Interest Rate

As an incentive to buy an annuity and to keep it, some companies promise a *bonus interest rate*. A bonus interest rate is higher than the current interest rate, **but the company will only use the bonus interest rate if you meet certain conditions**. For example, if you take a lump sum at maturity or take your money out early, you may lose the bonus interest rate.

Multiple Interest Rates

Multiple interest rates apply to flexible premium annuities. These contracts may apply different interest rates to each premium you pay.

What Charges May Be Subtracted from My Annuity?

Annuities have charges related to the cost of selling and management. These charges may be subtracted directly from the contract value or they may be reflected in lower interest rates. See the disclosure and ask your agent or the company to describe the charges that apply to your annuity. Some examples of charges, fees and taxes are:

- A *contract fee* is a flat dollar amount charged either once or annually.
- A *transaction fee* is a charge for each premium payment or other transaction.
- A *percentage of premium charge* is a charge deducted from each premium paid. The percentage may vary over time.
- Some states charge a *premium tax* on annuities. The insurance company pays this tax to the state. The company may subtract the amount of the tax when you pay your premium, when you withdraw your contract value, when you start to receive income payments or when it pays a death benefit to your beneficiary.

Surrender Charges

You may take out all or part of the money in your annuity at any time during the accumulation period but you'll likely pay a *surrender charge*. The contract and the disclosure tell you how much you can take out without paying a charge and if the charge no longer applies after you've had the annuity a while. For more information about surrender charges, review the *How Can I Access My Money?* section of this publication.

HOW DO I KNOW IF A FIXED DEFERRED ANNUITY IS RIGHT FOR ME?

The questions listed below may help you decide. You should think about what your goals are for the money you put into the annuity. You also need to think about how much risk you're willing to take.

These are the questions you should ask yourself.

How comfortable am I with risk?

How long can I leave my money in the annuity?

Does the annuity let me get money when I need it?

How much retirement income will I need in addition to what I will get elsewhere?

After I buy the annuity, how much money do I need to have available to cover major expenses and emergencies? How much would I have for these expected expenses?

Will I need income payments only for myself or for myself and someone else?

How soon will I need income payments? How much retirement income will I need in addition to what I'll get elsewhere?

If the annuity only earns the minimum guaranteed interest rate, will that be enough income to meet my needs?

Am I comfortable with the length of time that I'll pay surrender charges if I withdraw money from the annuity?

These are questions you should ask the agent or the insurance company.

Is this a single premium or flexible premium contract?

What is the guaranteed minimum interest rate?

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What is the initial interest rate and how long is it guaranteed?

Does the initial rate include a bonus rate and how much is the bonus?

If there's a bonus, when is it credited and on what amount?

Do I lose any bonus if I take a lump sum rather than annuitize my accumulation value? Are there other ways I could lose the bonus?

What renewal rate is the company crediting on annuity contracts sold last year?

How much are the withdrawal charges, surrender charges and other penalties? How long do they apply?

When is the earliest I can get money out of the annuity and how much can I get?

How much can I withdraw without paying surrender charges or losing interest?

Is there a Market Value Adjustment (MVA) feature in my annuity?

What other charges may be deducted from my premium or contract value?

If I take a lump sum and surrender the annuity, will the accumulated value or the way interest is credited change before I do this?

What happens to the money in my annuity if I die?

How long is the free look or right to return period?

FINAL POINTS TO CONSIDER

Before you decide to buy an annuity, you should review the contract. Terms and conditions of each annuity contract will vary.

Ask yourself if, depending on your needs or age, an annuity and *this type* of annuity are right for you. Taking money out of an annuity may mean you'll pay taxes and/or penalties. If you're exchanging annuities, the new annuity may have new expenses you must pay directly or indirectly. Also, you may pay surrender charges on the old annuity. If you're selling another asset, are there penalties associated with the sale? Will you have to pay taxes on the sale?

Annuities are intended to be a long-term product. Generally, you should keep it long enough to avoid penalties.

If you're buying an annuity to fund an IRA or other tax-deferred retirement program, ask what the advantages are of this approach.

When you receive your annuity contract, **READ IT CAREFULLY!!** Also, read the disclosure the company provides. Ask the agent and company for an explanation of anything you don't understand. Do this **before** any free look period ends.

If you can't get the answers you need from the agent or company, contact your state insurance department.

ANNUITY TERMS

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Accumulation Value: The sum of your premiums plus any interest credited less any charges deducted.

Annuitize: Converting the lump sum of the accumulated value of your annuity to a series of payments.

Annuity: A contract with an insurance company that pays income to you, usually over time.

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Bailout Option: A feature in some annuities where there's no charge if you surrender your contract when the company's current interest rate falls below a certain level.

Beneficiary: A person who receives part or all of the money in the annuity if the annuitant dies. May also be an organization such as a charity.

Benefit Rate: The rate used to determine the size of the income payments you'll receive when the accumulation period ends. Varies by age, gender, and the payment option chosen.

Bonus Interest Rate: An interest rate that's higher than the current interest rate and is credited to your accumulation value as an incentive for you to buy an annuity and to keep it. The company may only pay the bonus interest rate if you meet certain conditions, such as annuitizing the accumulated value or not taking money out.

Contract Fee: A flat dollar amount that's charged either once at purchase or annually during the annuity.

Current Interest Rate: An interest rate set by the company during the accumulation period; can never be less than the guaranteed interest rate.

Death Benefit: The annuity benefits paid to the beneficiary upon the death of the contract owner or annuitant.

Deferred Annuity: An annuity where your money earns interest for a period of time before it's converted into one or more payments back to you.

Disclosure: A document the insurance company is required to give you when it delivers the annuity contract; summarizes the annuity contract, specifies how interest is earned and how all charges are calculated and summarizes what happens if you take money out before it's scheduled to be paid and how much money you'll lose if you do this.

Fixed Annuity: An annuity where your money earns interest at rates set by the insurance company or in a way spelled out in the annuity contract. The company guarantees that it will pay no less than a minimum rate of interest.

Fixed Indexed Annuity: An annuity in which the return on your money depends on the market index you choose. The company guarantees the value of your annuity won't decrease as long as you don't withdraw the money.

Flexible Premium Contract: A type of multiple premium annuity where, within set limits, you pay as much premium as you want, whenever you want.

Free Look or *Right to Return Period*: A set number of days to look at the annuity contract after you buy it and return the contract to get all of your money back. The number of days is set by state law.

Immediate Annuity: An annuity where income payments start no later than one year after you pay the premium.

Initial Interest Rate: The current interest rate when you buy your annuity.

Limited Withdrawal: A feature that lets you make one or more withdrawals up to a set amount without a charge.

Market Value Adjustment (MVA): A feature in some annuities that adjusts the market value if you withdraw more than the penalty-free amount; the adjustment increases your annuity's market value if interest rates are lower at time of withdrawal than when the contract was issued and decreases the market value if interest rates are higher.

Maturity Date: The date at the end of your accumulation period in a deferred annuity where you must decide to reinvest, withdraw or annuitize the proceeds. Many guarantees in the contract are tied to this date. If you remove your money before this date you may lose money or receive less money than if you had left your money in.

Minimum Guaranteed Interest Rate: The lowest interest rate your annuity will earn.

Multiple Interest Rates: Different interest rates apply to each premium you pay; applies only to a flexible premium annuity.

Multiple Premium Annuity: A deferred annuity where a series of premium payments are made over a period of time.

Partial Surrender Charge: A charge paid if you take out part of the annuity value. (See Withdrawal Charge)

Payment Period: The time when the company pays income to you or to someone you choose.

Percentage Of Premium Charge: A charge deducted from each premium you pay; may be lower after the contract has been in force for a certain number of years or after all total premiums paid have reached a certain amount.

Premium Tax: A tax on annuities that some states charge.

Renewal Interest Rate: The interest rate the company uses to credit interest to your annuity after the initial interest rate period ends.

Required Minimum Distribution (RMD): IRAs and qualified plans have certain "required" distributions. For IRAs, you must begin to withdraw funds by April 1st of the year following the calendar year you reach age 701/2. For qualified plans, withdrawals must begin by April 1st of the year following the later of (a) the year you reach age 70 1/2 or (b) the year you retire.

Rider: A benefit added to an annuity contract; changes the annuity's terms or conditions.

Rolling Surrender or Withdrawal Charge: A charge in a multiple premium annuity that may apply to each premium paid rather than to the entire accumulated value.

Scheduled Premium Annuity: A type of multiple premium annuity where the contract spells out your payments and how often you'll make them.

Single Premium Annuity: An annuity bought with only one payment to the insurance company.

Suitability Review: A review by your agent to recommend the amount of risk you should take if you buy an annuity and if the product you're buying is appropriate.

Surrender: To take all of the money from an annuity and terminate the contract.

Surrender Charge: A charge paid if you take out part or all of the annuity value.

Transaction Fee: A charge to you for each premium payment or other transaction you make.

Variable Deferred Annuity: An annuity where the insurance company puts your money into separate accounts. You decide how the company will invest the money in the accounts, depending on how much risk you want to take.

Window: A short period of time to decide if you want to renew or surrender the annuity. If you surrender during the window, you won't have to pay surrender charges. If you renew, the surrender or withdrawal charges may start over.

Withdrawal Charge: A charge paid if you take out some of the annuity value. (See Surrender Charge).

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Revisions to Appendix A in Model 245
Comments should be sent by email to Jennifer Cook at jcook@naic.org by Nov. 23, 2009.

ANNUITY DISCLOSURE MODEL REGULATION

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APPENDIX A—BUYER'S GUIDE TO VARIABLE DEFERRED ANNUITIES

Drafting Note: The language of the Variable Deferred Annuity Buyer's Guide is limited to that contained in the following pages, or to language approved by the commissioner. Companies may purchase personalized brochures from the NAIC or may request permission to reproduce the Buyer's Guide in their own type style and format.

[The face page of the Variable Deferred Annuity Buyer's Guide shall read as follows:]

Prepared by the National Association of Insurance Commissioners

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various insurance departments to coordinate insurance laws for the benefit of all consumers.

This guide does not endorse any company or policy.

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It's important that you understand the differences among various annuities so you can choose the kind that best fits your needs. Annuities can be deferred or immediate but this Guide focuses on *variable deferred* annuity contracts. There is, however, a brief description of two other types of deferred annuities, fixed and fixed indexed, as well as immediate annuities.

This Guide isn't meant to offer legal, financial or tax advice. You may want to consult independent advisors.

This Guide includes questions you should ask the company or your agent (a producer, broker, advisor or any other person or entity selling you the annuity). Make sure you're satisfied with the answers before you buy. If you don't understand the answers, ask again, ask the company or ask your state insurance department.

A list of common terms used with annuities and what each means starts on page ____. You may refer to that list as you read this Guide, the disclosure and your contract.

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This Guide refers to the disclosure you'll receive with your annuity contract. The disclosure summarizes the terms of your contract and defines some of the words used in the contract. It will explain how your annuity increases in value and what charges are taken from your contract. Your agent should go through the disclosure with you so you understand it.

This Guide provides information that applies to all annuities on pages ___ to ____. Information about variable annuities begins on page ____.

INFORMATION RELEVANT TO ALL ANNUITIES

What Is an Annuity?

An annuity is a contract with an insurance company. You pay for the annuity (in a single payment or multiple payments) and the insurer promises to pay out money from the annuity to you in a series of payments. Only an annuity can pay an income that can be guaranteed to last as long as you live. In some annuities, you don't receive income payments right away.

An annuity *is not* a savings account. If you buy an annuity, it should be to reach *long-term* financial goals.

All annuities have a *surrender charge* (also known as a withdrawal charge) which discourages you from taking money from your annuity or ending (surrendering) the contract before a certain point in time. The number of years you'll pay a surrender charge when you take money from your annuity and the amount of each year's surrender charge vary from one annuity to the next. The charge is usually a percentage of the premiums you've paid or of the value of the account when you make the withdrawal. The charge can be much more than the interest earned on the annuity in the first few years so it's possible to lose not only the interest, but also some of your principal (the amount of the premium you've paid) if you make a withdrawal or surrender the annuity. You can find this specific information in the annuity contract and it's summarized in the disclosure.

What Are the Different Types of Annuities?

This Guide explains major differences among annuities to help you understand how each might meet your needs.

This Buyer's Guide focuses on variable deferred annuities. If you're interested in a different type of annuity, ask your agent about that buyer's guide.

Annuities differ in several ways:

- How many premiums you pay
- When the company makes income payments to you
- How the money in the annuity earns interest

How Many Premiums You Pay: Single Premium or Multiple Premium Annuities

You pay the insurance company only one payment for a *single premium* annuity. You make a series of payments for a *multiple premium* annuity; for one type of multiple premium annuity, a *flexible premium* annuity, you pay whenever you want, within set limits.

When the Company Makes Income Payments to You: Immediate or Deferred Annuities

In an *immediate annuity*, income payments start no later than one year after you pay the premium. You usually pay for an immediate annuity with one payment.

The income payments from a *deferred annuity* often start many years later. Deferred annuities have an *accumulation period* and a *payment period*. During the *accumulation period*, the money you put into the annuity, less any charges, earns interest. The earnings grow tax deferred as long as you leave them in the annuity. After the *accumulation period* ends, the *payment period* (or the *annuitization period*) begins; in the *payment period*; the company pays income to you or to someone you choose.

How the Money in an Annuity Earns Interest: Fixed, Variable, and Fixed Indexed Annuities

<u>*Fixed*</u>

During the *accumulation period* of a *fixed deferred annuity*, your money earns interest at rates set by the insurance company or in a way spelled out in the annuity contract. The company guarantees the contract will earn no less than a minimum rate of interest. During the *payment period*, the amount of each income payment to you is set when the payments start and won't change. If you want to consider a fixed deferred annuity, please ask for that guide.

Variable

During the *accumulation period* of a *variable deferred annuity*, the insurance company puts your premiums into separate accounts. You choose the accounts, depending on how much risk you want to take. You may choose accounts with no guaranteed returns that are invested in bonds, money market funds or stocks or other equities. You also may have the option to put part of your premiums into a fixed account, with a minimum guaranteed interest rate. During the *payment period* of a *variable annuity*, the amount of each income payment to you may be fixed (set at the beginning) or variable (changing with the value of the separate accounts). This Guide describes variable deferred annuities.

Indexed

During the *accumulation period of* a *fixed indexed deferred* annuity, the return on your money depends on a market index. The index is a number that goes up and down as the market the index represents moves up and down. The company credits earnings to your annuity based on changes in the market index you select but guarantees the value of your annuity won't decrease as long as you don't withdraw the money. You also may have the option to put part of your premiums into a fixed account, with a minimum guaranteed interest rate. Generally, during the *payment period* of an *indexed annuity,* the amount of each income payment to you is fixed. If you want to consider a fixed indexed deferred annuity, please ask for that guide.

How Do I Decide Which Annuity Is Best for Me?

Your agent's recommendation of an annuity should be based on his/her knowledge of your current financial situation, tax status, investment objectives and needs. It's important that you discuss with your agent your total financial and life situation so you can decide whether an annuity is a good choice for you. You should ask the agent for a disclosure that's specific to the product you're considering.

The agent will suggest annuities that are suitable for your situation. If you aren't comfortable with the agent's suggestions, explain your concerns. It's important that any annuity you choose be consistent with the amount of risk you'll willing to accept.

Annuity contracts may be broadly categorized by the amount of risk involved. The types of annuities and the level of overall risk for each are:

- **Fixed Annuity** — **Least Risk**
- **Fixed Indexed Annuity** — **Moderate Risk**
- **Variable Annuity** — **Most Risk**

As you think about the risk involved with each annuity type, ask yourself:

- As I interested in a variable annuity with the potential for higher earnings that aren't guaranteed and willing to risk losing the premiums I've paid?
- Is the guaranteed interest rate of a fixed annuity more important to me, with little or no risk of losing my premiums, in exchange for less potential to earn interests?
- Or, am I somewhere between these two extremes and willing to take more risk in exchange for the opportunity to earn a higher return with an indexed annuity.

You may choose to add features known as *riders* to your annuity. Some riders offset some of the risks of owning certain annuities. There usually is an additional cost for riders. Also, some annuities have built-in features that offset some of the risks of an annuity.

How Can I Access My Money?

Each annuity offers more than one way to access your money: 1) by annuitizing the contract to receive income payments over time, 2) by taking a lump sum payment and *surrendering* your annuity, 3) by taking withdrawals and 4) as a death benefit paid to your *beneficiaries* if you die during the accumulation period. If you take money by making a withdrawal or surrendering your annuity, you'll likely pay fees and may not get back all of the premiums you've paid. The contract and the disclosure tell you how much you can take out without paying a charge and when the charges no longer apply.

One of the most important benefits of deferred annuities is your ability to use the value built up during the accumulation period to receive multiple income payments. After you *annuitize,* you receive income payments for life. Payments are usually made monthly but you may choose to receive them less often. The size of income payments is based on the *accumulation value* in your annuity and the *benefit rate* when income payments start. The benefit rate usually depends on your age and sex as well as the annuity payment option you choose. Payment options usually include payments that continue as long as you live, as long as you and your spouse live or for a set number of years.

There's a table of guaranteed benefit rates in each annuity contract. Some companies have current benefit rates which are greater than the guaranteed benefit rates. A company can change the current benefit rates *at any time*, but the current benefit rates can never be less than the guaranteed benefit rates. When income payments start, the insurance company uses the benefit rate in effect at that time to figure the amount of your income payment.

Another option may be to take a *lump sum payment* from your annuity and surrender or terminate it. If a lump sum payment is a choice, ask when it would be available and how much the payment would be. If it's an option, think about whether a lump sum payment may be a better choice for you than payments over time. In some annuities, there's no charge if you surrender your contract when the company's current interest rate falls below a certain level. This may be called a *bailout option.*

You can make *withdrawals* from your annuity before income payments begin, but you may pay a fee (often a surrender charge). The contract and the disclosure tell you how much you can take out without paying a charge and when the charges no longer apply. Most annuities let you withdraw a percentage of your annuity's value annually (typically 10%) without paying a fee. You may lose any interest on the amount withdrawn, and you may lose part of your principal. After you've owned an annuity for a certain length of time (typically 7 to 14 years), the surrender charge period may end and you'll be able to take money out without paying a surrender charge. Many annuities let you withdraw part of the accumulation value without paying a surrender charge if certain events, such as nursing home confinement or terminal illness, occur.

Annuities have stated maturity dates. When an annuity reaches its maturity date, the contract may automatically expire or renew. You're usually given a short period of time, called a *window*, to decide if you want to renew or surrender the annuity. If you surrender during the window, you won't have to pay surrender charges. If you renew, the surrender or withdrawal charges may start over.

Some annuities have a Market Value Adjustment (MVA) feature. An MVA could increase or reduce your annuity's value if you withdraw more than the penalty-free amount. In general, if interest rates are lower at the time of withdrawal than at the time the contract was issued, your annuity's value will be increased. If interest rates are higher at the time of withdrawal than at the time of issue, your annuity's value will be reduced. Every MVA calculation is different, however, so check your contract and disclosure for details.

In some flexible premium annuities, a new surrender charge may apply to each premium paid. This may be called a rolling surrender charge.

Finally, if you die during the accumulation period, your *beneficiaries* will receive some or all of the money in your annuity. In some annuities, there's a charge that reduces what your beneficiaries receive. Check your contract and disclosure.

Will I Pay Income Tax on My Annuity?

Below is a general discussion about taxes and annuities. You should consult a professional tax advisor about your individual tax situation.

Under current federal law, annuities receive special tax treatment. Income tax on annuities is deferred, which means you aren't taxed on the interest your money earns while it stays in the annuity. The interest isn't tax free, however; you will pay taxes when you withdraw money. You also may have to pay a 10% tax penalty if you withdraw money before age 59 1/2. Most states' tax laws on annuities follow the federal law.

You also can use annuities to fund traditional and Roth IRAs. If you buy an annuity to fund an IRA, you'll receive a disclosure statement describing the tax treatment. You're unlikely to gain any additional tax advantage by funding an IRA or a qualified retirement plan with an annuity, as an IRA and a qualified retirement plan both are tax deferred regardless of how they're funded.

What Is a "Free Look" Provision?

Many states have laws which give you a set number of days to look at the annuity contract after you buy it. If you decide during that time that you don't want the annuity, you can contact the insurance company, return the contract and get all of your money back. This is often referred to as a *free look* or *right to return* period. The free look period should be prominently stated in your contract and disclosure. Be sure to read your contract carefully during the free look period.

VARIABLE DEFERRED ANNUITIES

With this basic information about annuities in mind, this section describes the type of annuity you're considering, a variable deferred annuity. First, here's a reminder about what a variable annuity is. During the accumulation period of a variable deferred annuity, the insurance company puts your premiums into separate subaccounts. You choose the subaccounts, depending on how much risk you want to take. Usually you have several options, including subaccounts invested in stocks, money market funds, bonds as well as a fixed interest account. There's no guarantee that you'll earn any return on your investment and there's a risk that you'll lose money. Because you're taking this risk, variable annuities are securities registered with the Securities and Exchange Commission (SEC). The person selling a variable annuity must be a licensed life insurance agent**,** be registered as a broker/dealer and be a Financial Industry Regulatory Authority (FINRA) member. FINRA, the SEC, State Insurance Departments and state securities regulators all regulate variable annuity sales.

The next sections review the potential for income, the likely expenses and some features of variable deferred annuities.

How Does a Variable Annuity Earn a Return?

When you buy a variable annuity, you'll be asked to choose where your premiums will be invested. Your choices will include subaccounts invested in stocks, bonds, mutual funds, and money market funds. The return on your annuity will depend on the performance of the investments in your subaccounts. There's no guarantee that you'll earn any return on the investments in your subaccounts, and you could lose your money. Caps or spreads also may limit the amount of interest you earn from the investments in your subaccounts. For example, a cap or spread could mean that if an investment in your subaccount earns 10%, your subaccount value will grow by less than 10%. You usually can choose to put some of your premiums into a fixed account that pays a guaranteed minimum amount or rate of interest. If you'd be more comfortable with an annuity that guarantees a minimum return on **all** of the funds in your annuity, ask about a fixed deferred annuity. Fixed and indexed deferred annuities have less risk than variable annuities and protect your principal.

Bonuses

Some variable annuities pay bonuses. The most common type of bonus is a *premium bonus.* This type of bonus immediately increases the value of the annuity and usually is credited as a percentage of the premiums paid into the contract. In some annuities, there's a separate charge for a premium bonus. In other annuities, the Mortality and Expense charge is higher to cover the cost of the bonus.

Although bonuses can help to boost your annuity's value, it's important to understand how they work. In general, annuities with bonuses have higher and longer surrender charges or a higher Mortality and Expense charge.

What Charges May Be Subtracted From My Annuity?

Insurers charge for the cost of selling and managing annuities. They may subtract these charges directly from your annuity's value or they may reduce the return on the money in your annuity. These charges can vary greatly among insurance companies. The

prospectus describes the charges. Your agent or the insurance company may give you other disclosures that also should explain these charges. Ask your agent or the company to tell you which charges apply to your annuity and how much they'll be.

Some variable annuities are "front loaded" -- you're charged most of the costs in the beginning. Other variable annuities are "back loaded" -- you're charged most of the costs sometime later. Other insurers spread the charges out over the life of the annuity.

There are several types of annuity charges, fees and taxes. Each reduces the value of your annuity. See the disclosure and ask your agent or the company to describe the charges that apply to your annuity. Some examples of charges, fees and taxes are:

- A *contract fee* is a flat dollar amount charged either once or annually.
- A *transaction fee* is a charge for each premium payment or other transaction.
- A *percentage of premium charge* is a charge deducted from your annuity's value for each premium paid. The percentage may vary over time.
- Some states charge a *premium tax* on annuities. The insurance company pays this tax to the state. The company may subtract the amount of the tax when you pay your premium, when you withdraw your contract value, when you start to receive income payments or when it pays a death benefit to your beneficiary.
- Some insurers may charge *administrative fees* to cover record keeping and other administrative expenses. This fee may be a flat account maintenance fee (for example, $30 a year) or a percent of your account value (for example, 0.15% a year).
- A *Mortality and Risk Charge* is a certain percent of your account value, typically between 1.0% and 2.5% a year. This charge pays the insurance company for the insurance risks it takes under the annuity contract. Profit from the mortality and expense risk charge is sometimes used to pay the insurer's costs to sell the variable annuity.

Surrender Charges

A surrender charge is usually a percentage of the premiums you've paid or of the value of the account when you make the withdrawal. You may pay this charge to take all or part of your money out at any time during your annuity's accumulation period. The contract and the disclosure tell you how much you can take out without paying a charge and if the charge no longer applies after you've had the annuity a while.

Your annuity may have a *limited withdrawal* feature. This feature lets you make one or more withdrawals without a charge, up to a total percentage of your annuity's accumulation value. If you make a larger withdrawal, you pay a withdrawal charge called a *partial surrender charge*. You may lose any interest above the minimum guaranteed rate on the amount withdrawn, and you may lose part of your principal.

For more information about surrender charges, review the *How Can I Access My Money?* section of this publication.

Underlying Fund Expenses

All mutual funds charge a management fee; some charge other fees. If you subaccounts are invested in mutual funds, these fees will reduce your annuity's value.

Fees and Charges for Other Features

Some variable annuities offer special features, such as an increased death benefit, and charge you more if you choose them. There may be other charges -- for example, to transfer part of your account from one investment option to another. Ask the agent or insurance company to tell you about **all** of the annuity's charges and fees. .

Is a Variable Annuity a Mutual Fund?

A variable annuity is **not** a mutual fund. Both are types of investments but there are important differences.

- An annuity guarantees income payments for life. While you or an advisor may be able to set up sales of your mutual fund shares over time to provide a steady income, a mutual fund can't guarantee that payments will last as long as you live. Only an annuity can do that.

- Annuities are designed to prepare for retirement. It can be expensive to take money from your annuity. If you need money from your annuity before age 59 ½, you'll likely pay a tax penalty. Most variable annuities also charge a fee to take money from the annuity in the early years. This fee (often called a surrender charge) may go down over time and may not apply at all after you've owned the annuity for a while. You may or may not pay a fee when you sell shares in a mutual fund. You can get money from your mutual funds at any age without a tax penalty, **unless** the mutual fund is in another type of retirement plan such as an IRA or a 401(k).

- A variable annuity may have a death benefit that guarantees that your beneficiary will get at least a certain amount if you die before the insurer begins to make payouts to you. This guarantee would protect your beneficiaries if the investments in your subaccounts haven't done well. There's no such guarantee in mutual fund.

- Variable annuities are tax deferred. You don't pay income taxes on earnings until you receive money from the annuity. You pay income taxes on the earnings from mutual funds every year, unless the mutual fund is in a tax-advantaged plan such as an IRA or a 401(k) plan.

- When you take money from a variable annuity, you pay tax on the part that's considered an investment gain. You pay at your ordinary income tax rate, which may be much higher than the long-term capital gains tax rate. Earnings on mutual funds are taxed at the lower capital gains tax rate.

- If there's still money in your variable annuity when you die, your beneficiaries will owe all of the income taxes that you've deferred. However, if you have money in mutual funds when you die, your beneficiaries won't owe income taxes on the gains from your mutual funds.

- Variable annuity fees usually are higher than mutual fund fees.

- Variable annuities can provide optional benefits through riders that a mutual fund can't offer.

What Optional Benefits Can I Choose?

Insurance companies offer many optional benefits that you can add to your variable annuity by buying riders. Some commonly offered riders are described below. Each rider will increase the cost of your annuity. Ask your agent or the insurance company for the information you need to decide if a rider is worth the cost.

A *Guaranteed Minimum Death Benefit rider* guarantees the minimum amount of the death benefit the insurer will pay your beneficiary if you die before the insurer starts to make monthly payments to you. The insurer will make this payment regardless of the return on the investments in your subaccounts. For example, suppose you've paid $50,000 in premiums for a variable annuity and buy a rider that guarantees a death benefit that will be at least as much as the premiums you've paid. If the investments in your subaccounts have done so poorly that the contract is only worth $10,000 after five years, the rider guarantees a death benefit of at least $50,000. Some Guaranteed Minimum Death Benefit riders may also "step up" this guaranteed death benefit amount or add interest to it from time to time.

Some annuity benefits are called as *living benefits*. These benefits all provide some guarantee for the annuity owner – a guaranteed income from the annuity, guaranteed withdrawal amounts, and/or guaranteed protection of the premiums you've paid. There's an additional cost for each rider – and the cost can be significant.

A *Guaranteed Minimum Income Benefit* rider guarantees a minimum return on the investments in your subaccounts. Based on this return, you're guaranteed a minimum income. You usually must buy this rider when you buy your annuity and must annuitize to use the rider. For example, this rider might guarantee that your monthly payment will never be less than 75% of your first payment. If the first payment to you was $1,200, this rider guarantees that your monthly payment will never be less than $900, regardless of how the investments in your subaccounts do. You couldn't use this rider if you took the money

from your annuity in a lump sum payment. And there may be a waiting period before you can use this rider to receive payments.

A *Guaranteed Minimum Accumulation Benefit* rider guarantees that your annuity will be worth a minimum amount by a set date, even if the investments in your subaccounts do poorly. For example, this rider might guarantee that your annuity will earn at least 8% a year by the end of ten years. If at the end of ten years your annuity has only earned 4% a year, your insurer will add the difference.

A *Guaranteed Minimum Withdrawal Benefit* rider guarantees a return of all of the premiums you've paid, regardless of how the investments in your subaccounts do. You must make annual withdrawals, with each limited to a certain percentage of the premiums you've paid. This rider does **not** return the premiums you've paid as a lump sum payment. How does it work? For example, suppose you pay $100,000 in premiums for a variable annuity and buy a rider that guarantees a 6% withdrawal rate. The rider guarantees you can withdraw $6,000 (or 6% of the $100,000 you've paid in premiums) annually without penalty even if the investments in your subaccounts have done so poorly that your annuity is only worth $70,000. The total amount of withdrawals is limited to the premiums you've paid or $100,000 in this example.

A *Guaranteed Lifetime Withdrawal Benefit* rider protects you against losses in the investments in your subaccounts. It guarantees that you can withdraw a percentage of your original principal each year without penalty *for life,* regardless of how the investments in your subaccounts do. For example, suppose you pay $100,000 in premiums for a variable annuity and buy a rider that guarantees a 6% withdrawal rate. The rider guarantees you can withdraw $6,000 (or 6% of your original $100,000 investment) annually without penalty even if your annuity's account value goes to zero. The percentage you can withdraw is usually based on your age and your annuity's benefit base value.

HOW DO I KNOW IF A VARIABLE ANNUITY IS RIGHT FOR ME?

The questions listed below may help you decide. You should think about what your goals are for the money you put into the annuity. You also need to think about how much risk you're willing to take.

These are the questions you should ask yourself.

How comfortable am I with risk?

How long can I leave my money in the annuity?

Does the annuity let me get money when I need it?

How much retirement income will I need in addition to what I will get elsewhere? How soon will I need income payments?

After I buy the annuity, how much money do I need to have available to cover major expenses and emergencies? How much will I have for these expected expenses?

Will I need income payments only for myself or for myself and someone else?

If the annuity loses money, will I still have enough income to meet my needs?

Am I comfortable with the length of time that I'll pay surrender charges if I withdraw money from the annuity?

These are questions you should ask the agent or the insurance company.

Is this a single premium or multiple premium contract?

What are my investment options in the variable annuity?

Am I restricted in my option choices?

How much are the withdrawal charges, surrender charges and other penalties? How long do they apply?

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When is the earliest I can get money out of the annuity and how much can I get?

How much can I withdraw without paying surrender charges or losing interest?

Do I lose any bonus if I take a lump sum rather than annuitize my account value? Are there other ways I could lose the bonus?

Is there a Market Value Adjustment (MVA) feature in my annuity?

What other charges may be deducted from my premium or contract value?

How much will the total charges and fees be each year?

If I take a lump sum or surrender the annuity, will the accumulated value or the way interest is credited change before I do this?

What happens to the money in my annuity if I die?

How long is the free look or right to return period?

FINAL POINTS TO CONSIDER

Before you decide to buy an annuity, you should review the contract. Terms and conditions of each annuity contract will vary.

Ask yourself if, depending on your needs or age, an annuity and *this type* of annuity are right for you. Taking money out of an annuity may mean you'll pay taxes and/or penalties. If you're exchanging annuities, the new annuity may have new expenses you must pay directly or indirectly. Also, you may pay surrender charges on the old annuity. If you're selling another asset, are there penalties associated with the sale? Will you have to pay taxes on the sale?

An annuity is intended to be a long-term product. Generally, you should keep it long enough to avoid penalties.

If you're buying an annuity to fund an IRA or other tax-deferred retirement program, ask what the advantages are to this approach.

When you receive your annuity contract, **READ IT CAREFULLY!!** Also, read the disclosure the company provides. Ask the agent and company for an explanation of anything you don't understand. Do this **before** any free look period ends.

If you can't get the answers you need from the agent or company, contact your state insurance department.

ANNUITY TERMS

Accumulation Period: The time when the money you put into the annuity, less any applicable charges, earns interest.

Accumulation Value: The sum of your premiums plus any interest credited less any charges deducted.

Annuitize: Converting from the lump sum of the accumulated value of your annuity to a series of payments.

Annuity: A contract with an insurance company that pays income to you, usually over time.

Bailout Option: A feature in some annuities where there's no charge if you surrender your contract when the company's current interest rate falls below a certain level.

Beneficiary: A person who receives part or all of the money in the annuity if the annuitant dies. May also be an organization such as a charity.

Benefit Base Value: A value on an annuity that features a Guaranteed Lifetime Withdrawal Benefit (GLWB); only used to calculate your lifetime income payments. The Benefit Base Value can't be taken if you cash surrender the annuity.

Benefit Rate: The rate used to determine the size of the income payments you'll receive when the accumulation period ends. Varies by age, gender, and the payment option chosen.

Bonus Interest Rate: An interest rate that's higher than the current interest rate and is credited to your accumulation value as an incentive for you to buy an annuity and to keep it. The company may only pay the bonus interest rate if you meet certain conditions, such as annuitizing the accumulated value or not taking money out.

Contract Fee: A flat dollar amount that's charged either once at purchase or annually during the annuity.

Current Interest Rate: An interest rate set by the company during the accumulation period; can never be less than the guaranteed interest rate.

Death Benefit: The annuity benefits paid to the beneficiary upon the death of the contract owner or annuitant.

Deferred Annuity: An annuity where your money earns interest for a period of time before it's converted into one or more payments back to you.

Disclosure: A document the insurance company is required to give you when it delivers the annuity contract; summarizes the annuity contract, specifies how interest is earned and how all charges are calculated and summarizes what happens if you take money out before it's scheduled to be paid and how much money you'll lose if you do this.

Fixed Annuity: An annuity where your money earns interest at rates set by the insurance company or in a way spelled out in the annuity contract. The company guarantees that it will pay no less than a minimum rate of interest.

Fixed Indexed Annuity: An annuity in which the return on your money depends on the market index you choose. The company guarantees the value of your annuity won't decrease as long as you don't withdraw the money.

Flexible Premium Contract: A type of multiple premium annuity where, within set limits, you pay as much premium as you want, whenever you want.

Free Look or *Right to Return Period*: A set number of days to look at the annuity contract after you buy it and return the contract to get all of your money back. The number of days is set by state law.

Guaranteed Lifetime Withdrawal Benefit: A fixed annuity contract feature that guarantees, at an additional cost, that an annuity owner can take annual withdrawals for life at a stated percentage, based on his/her age, even if the annuity's account value goes to zero.

Immediate Annuity: An annuity where income payments start no later than one year after you pay the premium.

Limited Withdrawal: A feature that lets you make one or more withdrawals up to a set amount without a charge.

Market Value Adjustment (MVA): A feature in some annuities that adjusts the market value if you withdraw more than the penalty-free amount; the adjustment increases your annuity's market value if interest rates are lower at time of withdrawal than when the contract was issued and decreases the market value if interest rates are higher.

Maturity Date: The date at the end of your accumulation period in a deferred annuity where you must decide to reinvest, withdraw or annuitize the proceeds. Many guarantees in the contract are tied to this date. If you remove your money before this date you may lose money or receive less money than if you had left your money in.

Multiple Premium Annuity: A deferred annuity where a series of premium payments are made over a period of time.

Partial Surrender Charge: A charge paid if you take out part of the annuity value. (See Withdrawal Charge)

Payment Period: The time when the company pays income to you or to someone you choose.

Percentage Of Premium Charge: A charge deducted from each premium you pay; may be lower after the contract has been in force for a certain number of years or after all total premiums paid have reached a certain amount.

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Premium Tax: A tax on annuities that some states charge.

Required Minimum Distribution (RMD): IRAs and qualified plans have certain "required" distributions. For IRAs, you must begin to withdraw funds by April 1st of the year following the calendar year you reach age 701/2. For qualified plans, withdrawals must begin by April 1st of the year following the later of (a) the year you reach age 70 1/2 or (b) the year you retire.

Rider: A benefit added to an annuity contract; changes the annuity's terms or conditions.

Rolling Surrender or Withdrawal Charge: A charge in a multiple premium annuity that may apply to each premium paid rather than to the entire accumulated value.

Scheduled Premium Annuity: A type of multiple premium annuity where the contract spells out your payments and how often you'll make them.

Single Premium Annuity: An annuity bought with only one payment to the insurance company.

Suitability Review: A review by your agent to recommend the amount of risk you should take if you buy an annuity and if the product you're buying is appropriate.

Surrender: To take all of the money from an annuity and terminate the contract.

Surrender Charge: A charge paid if you take out part or all of the annuity value.

Transaction Fee: A charge to you for each premium payment or other transaction you make.

Variable Deferred Annuity: An annuity where the insurance company puts your money into separate accounts. You decide how the company will invest the money in the accounts, depending on how much risk you want to take.

Window: A short period of time to decide if you want to renew or surrender the annuity. If you surrender during the window, you won't have to pay surrender charges. If you renew, the surrender or withdrawal charges may start over.

Withdrawal Charge: A charge paid if you take out some of the annuity value.

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Draft: 9/29/09

Suitability of Annuity Sales (A) Working Group
Washington, DC
September 21, 2009

The Suitability of Annuity Sales (A) Working Group of the Life Insurance and Annuities (A) Committee met in Washington, DC, Sept. 21, 2009. The following Working Group members participated: Kim Shaul, Chair (WI); Linda Brunette (AK); Steve Ostlund (AL); Joe Musgrove (AR); Jodi Lerner and Perry Kupferman (CA); Peg Brown (CO); Mark Franklin (CT); Mary Beth Senkewicz (FL); Jim Mumford and Rosanne Mead (IA); Bill McAndrew (IL); Paul Hanson (MN); Angela Nelson and Jim Mealer (MO); Gail Keren (NY); Lynette Baker (OH); Gayle Woods (OR); John Morris (TN); and Herb Olson (VT). Also participating were: Keith E. Nyhan (NH); Anne Marie Narcini (NJ); and Fred Nepple (WI).

1. Opening Remarks

Ms. Shaul provided an update on the Working Group's activities since the Summer National Meeting. She said the Working Group voted at the Summer National Meeting to release for comment an exposure draft of the Suitability in Annuity Transactions Model Regulation (#275). The exposure draft was released July 2, with a comment deadline of Aug. 7 (Attachment Six-A). Ms. Shaul said some comments were received by the deadline, but others continued to arrive through Aug. 20. She referenced the summary of comments received on the July 2 draft, as prepared by NAIC staff. Ms. Shaul said a subgroup of the Working Group, composed of Mr. Mumford, Ms. Mead and Mr. Nepple, prepared its own proposal for revising the model. The subgroup's proposal was released Sept. 4, with a comment deadline of Sept. 17 (Attachment Six-B). Ms. Shaul said the Working Group would discuss the subgroup's proposal during this meeting.

Ms. Shaul said the subgroup's proposal is a simplification of the July 2 draft and is modeled on the Financial Industry Regulatory Authority's (FINRA) Rule 2821. She outlined the proposal's key features: 1) imposes responsibility for the suitability of each recommended annuity sale on the insurer, as well as the producer; 2) provides for the reduction or elimination of penalties for a violation if the violation is not part of a pattern of behavior or the insurer takes prompt corrective action; 3) provides that an insurer is not required to review every sale, but must have in place a system to select transactions for review; and 4) provides that an insurer may contract with anyone to perform a required supervision function, but the insurer remains responsible for the proper performance of that function.

Ms. Shaul explained that the proposal reflects the Working Group's consensus on which elements must be included in an insurer's supervision system. The proposal seeks to impose supervision requirements for insurers similar to the supervision requirements under FINRA rules. Specifically, the subgroup's draft requires that insurers: 1) maintain reasonable procedures to require producers to take appropriate training in the features of its annuity products; 2) periodically examine insurance agencies; 3) verify consumer suitability information; and 4) test and review their supervision system each year to determine whether it is effective.

Mr. Musgrove motioned, and Mr. Franklin seconded, to replace the Working Group's July 2 exposure draft with the subgroup's Sept. 4 draft proposal and have the Working Group work with this draft as it moves forward with revising the model. Mr. Hanson asked what impact, if any, adopting this motion would have on the discussion of additional issues. Ms. Shaul said that adopting the motion only meant that the July 2 exposure draft would no longer be discussed; i.e., the Working Group would only discuss the comments received on the subgroup's Sept. 4 draft proposal. The motion passed unanimously.

2. Discussion of Comments Received on Subgroup Revisions to Model #275

Ms. Shaul requested comments from the Working Group on the subgroup's Sept. 4 proposal. Mr. Musgrove suggested that the language in Section 6C related to penalties be revised to pattern the language used in the Unfair Trade Practices Act (#880). Section 6C prohibits an insurer from issuing an annuity recommended to a consumer unless the annuity is suitable based on the consumer's suitability information. Mr. Nepple suggested that the Working Group not make a decision on this recommendation, but add it to the list of recommendations for additional discussion at a later date. Ms. Lerner suggested that the insurer be required have written documentation regarding suitability. She said this would be particularly important when the consumer refuses to provide financial information. Ms. Shaul said comments received from interested parties on the July 2 draft suggested that it was too prescriptive and suggested that insurers needed flexibility. As such, the subgroup's proposal provides flexibility for each insurer to establish a supervision system that works best for its. Ms. Shaul also noted that the subgroup's proposal rests ultimate responsibility for ensuring suitable sales on the insurer. Ms. Lerner said that, because it is based on FINRA Rule 2821, Section 6A(1) of the subgroup's proposal does not adequately reflect fixed annuities. She

suggested that this provision be revised to reflect the situation involving the payout of a death benefit while the annuity is in the surrender phase. Ms. Lerner reiterated her concern that no written documentation is required. Mr. Nepple said the draft requires insurers to have an adequate supervision system, and he would presume that, in order to be considered adequate, it must be written.

Mr. Hanson asked whether the definition of "qualified staff" in Section 5E would be revised. Mr. Nepple said the subgroup is considering revisions to that definition. Mr. Olson expressed support for the subgroup's proposal. He noted, however, that some provisions in the draft needed some clarification to make sure the language reflects the Working Group's core principles. He said he would be submitting comments to address his concerns. Mr. Mealer questioned whether the draft appropriately addressed direct-response solicitations. Mr. Nepple said he was not sure it was a significant concern, because of the provisions in Section 6C. Mr. Mealer reiterated his concern about direct-response solicitations where no information is provided by the consumer, but the product is sold to the consumer. Mr. Nepple said Section 6 is based on FINRA Rule 2821; i.e. if the product is recommended, it must be suitable. He said FINRA Rule 2821 includes an additional provision that was not included in the draft. It requires the security representative to verify that the consumer knows the product was not recommended. Ms. Shaul said the subgroup would review this issue to ascertain whether the draft needs to be revised to address his concern.

Birny Birnbaum (Center for Economic Justice—CEJ) expressed support for the subgroup's proposal, particularly Section 6C. He also expressed support for the Working Group continuing to revise the model, instead of pursuing the development of interpretative guidelines or a model bulletin. With respect to Section 6C, Mr. Birnbaum said this provision was analogous to the credit card industry; i.e., when credit card companies became responsible for unauthorized sales, they developed procedures to address this liability and insurers will do the same. Mr. Birnbaum expressed concern with Section 6D(1)(a), which provides that neither an insurer nor a producer has any obligation to a consumer related to any recommendation if the consumer refuses to provide relevant information, but there is a reasonable basis to believe the recommendation is suitable. Mr. Birnbaum said this provision is inappropriate because it gives immunity to the producer or insurer for recommending and selling an unsuitable product. He also suggested that the provision was illogical, because how could a product be determined suitable if the consumer provides no information to evaluate suitability. Mr. Olson expressed support for the core principle involved in Section 6D(1)(a), which permits a consumer to purchase an annuity product if the consumer decides not to provide any relevant suitability information. However, he expressed support for Mr. Birnbaum's concern and suggested that Section 6D(1)(a) be clarified.

Riva Kinstlick (Prudential) reiterated her previous comments suggesting that the model regulation does not to be revised and, instead, it would be more appropriate to develop interpretative guidelines. She suggested that better enforcement would resolve regulators' concerns. Ms. Kinstlick acknowledged that the subgroup's proposal was better from an industry perspective than the July 2 exposure draft and the previous discussion drafts. She noted, however, that the subgroup's proposal has some inherent problems because it tries to parallel FINRA Rule 2821. She said FINRA Rule 2821 applies to distributors, not manufacturers; as such, some of the provisions in the subgroup's proposal would cause problems for insurers, the annuity product manufacturers.

Ron Panneton (National Association of Insurance and Financial Advisors—NAIFA) expressed concern that Section 7, Insurer Producer Training, included no grace period or period of time for producers to come into compliance. Mr. Nepple pointed out the delayed effective date included in the draft proposal, but agreed to consider the issue. Eric DuPont (MetLife) expressed support for Ms. Kinstlick's and Mr. Panneton's comments. He suggested that the Working Group consider developing a model bulletin. He also noted that Arkansas provided a one-year grace period for producers to comply with its training requirements. Kim O'Brien (National Association for Fixed Annuities—NAFA) expressed support for the previous interested parties' comments. She noted additional concerns regarding the use of language throughout the draft proposal that seemed to be aimed at investment products, not insurance products. Lee Covington (Insured Retirement Institute—IRI) said IRI viewed the subgroup's draft as a good alternative to the Working Group's exposure draft and previous discussion drafts noting that the subgroup addressed some of the concerns raised by interested parties with respect to those previous drafts. He suggested that the subgroup's draft be clarified to reflect the Working Group's intent that insurers are not required to review each transaction as to suitability. Mr. Covington expressed support for Ms. Kinstlick's comments concerning the application of FINRA rules to manufacturers. He also suggested that the Working Group develop a model bulletin as the more expedient means to address the issues. Kelly Ireland (American Council of Life Insurers—ACLI) expressed support for the previous comments. She also reiterated ACLI's support for the current model regulation and the development of a model bulletin. She suggested that the model bulletin could be used in tandem with any revisions to the model regulation.

Mr. Mumford said that interested parties should focus on revising the model regulation. He said that revising the model regulation did not preclude developing a model bulletin, but that the revisions to the model regulation should be completed

first. He noted that a model bulletin could be broader in scope and include disclosure and replacement requirements. Mr. Franklin agreed. Ms. Ireland said if the Working Group first develops a model bulletin, which is based on the model regulation, then it could be used clarify the issues and regulators' concerns with the model regulation. She noted that the model regulation has been adopted in some form in about 40 states; as such, ACLI does not want to change the current framework. Ms. Senkewicz agreed with Mr. Mumford's comments, noting that bulletins have no force of law. She expressed support for the Working Group continuing to focus on revising the model regulation. Mr. Musgrove echoed Ms. Senkewicz's comments concerning the enforceability of a bulletin. Bonita Kallestad (Western Minnesota Legal Services/Mid-Minnesota Legal Assistance) expressed support for Mr. Birnbaum's comments. Donald Walters (Insurance Marketplace Standards Association—IMSA) said the proposed model bulletin was what the Working Group requested. He said it could be useful to the Working Group in developing the next draft of revisions to the model regulation. Mr. Walters expressed disagreement with some of the regulators' comments that bulletins have no force of law. His experience has been that if an insurance department issues a bulletin, insurers follow its directives. Mr. Mumford said the subgroup reviewed the draft model bulletin when developing its proposal.

Ms. Shaul said the Working Group would give interested parties until Oct. 15 to submit comments on the subgroup's draft. Mr. Mumford suggested that interested parties focus their comments on the major issues raised during this meeting and other issues they might have with the subgroup's draft. Ms. Shaul said that some of those issues concerned: 1) clarifying the Working Group's intent regarding the review of every transaction for suitability; 2) including a grace period for producers to comply with the training requirements; and 3) reconciling FINRA Rule 2821 requirements and other supervision requirements with what should be required for insurance products. Ms. Ireland repeated her suggestion that the Working Group consider developing a model bulletin first, because it could be sent immediately, while the Working Group works concurrently to revise the model regulation. Mr. Hanson said the Working Group could pursue a two-track approach; i.e., one subgroup could revise the model regulation and the other could develop a model bulletin. Mr. Nepple said it was the consensus of the Working Group that the model regulation be revised first, but this did not mean that a model bulletin could not be developed later. Mr. Musgrove motioned, and Mr. Ostlund seconded, that the Working Group focus on revising the model regulation. The motion carried.

Ms. Shaul asked whether the Working Group objected to her requesting a one-year extension from the Life Insurance and Annuities (A) Committee to revise the model regulation. She anticipated, however, that the Working Group would finish its work by year-end. There was no objection.

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

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Draft: 7/2/09
Revisions to Model 275

Underlining and overstrikes show the changes from the existing model. Comments are being requested on this draft. Comments should be sent by Aug. 7, 2009 to Jolie Matthews at jmatthew@naic.org.

SUITABILITY IN ANNUITY TRANSACTIONS MODEL REGULATION

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Section 1. Purpose

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

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

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

Section 2. Scope

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

Section 3. Authority

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

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

Section 4. Exemptions

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

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

B. Contracts used to fund:

(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(2) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;

(3) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(6) Formal prepaid funeral contracts.

Section 5. Definitions

A. "Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

B. "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

C. "Includes," "include" or "including" mean including, but not limited to.

D. (1) "Insurance agency" means a person or entity, other than an officer or employee of an insurer, which receives compensation, directly or indirectly, for managing the sales of an insurer's annuities by insurance producers.

(2) "Insurance agency" includes field marketing organizations and independent marketing organizations.

E. "Insurance producer" means an individual required to be licensed under the laws of this State to sell, solicit or negotiate insurance, including annuities.

~~B~~F. "Insurer" means a company required to be licensed under the laws of this ~~state~~State to provide insurance products, including annuities.

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

G. "NAIC Life Insurance Committee" means the committee or body of the National Association of Insurance Commissioners designated to develop and publish guidance related to this regulation.

H. "Qualified reviewer" means a firm or person who conducts an audit or inspection required under this regulation.

~~D~~I. "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

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J. "Responsible insurance agency" means an insurance agency that an insurer contractually requires to supervise insurance producers under section 10A of this regulation or, for the purpose of section 13D of this regulation, the insurer if the insurer agrees in its contract with the insurance agency to perform the functions required under section 13D of this regulation.

K. "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(1) Age;

(2) Annual income;

(3) Annual expenses;

(4) Financial situation and needs, including reasonably anticipated future changes in living circumstances;

(5) Investment experience;

(6) Investment objectives;

(7) Intended use of the annuity;

(8) Investment time horizon;

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

(10) Liquidity needs;

(11) Liquid assets;

(12) Liquid net worth;

(13) Risk tolerance;

(14) Source of funding, including:

(a) Cost and benefits of any replaced financial product, including death benefits, long term care and similar policy benefits; and

(b) Surrender charges, conditional deferred sales charges or other penalties or cost imposed;

(15) Tax status; and

(16) Any other information the insurer requires the insurance producer to consider prior to making a recommendation.

L. "Suitability requirement" means [insert reference to this regulation and to State law or regulations that govern advertising, misrepresentation or disclosures related to sales of annuities] and, with respect to products subject to regulation by FINRA, FINRA regulations governing the suitability of, or misrepresentation or disclosures in connection with, the sale of those products, including FINRA rules 2110, 2310, and 2821 or substantially similar FINRA rules.

M. "Supervision system" means a supervision system that complies with sections 7, 8 and 9 of this regulation.

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Section 6. Duties of Insurers and of Insurance Producers to Recommend Suitable Products

A. SUITABLE RECOMMENDATION REQUIRED. A recommendation In recommending to a consumer theto purchase of an annuity, or theto exchange of an annuity that results in another insurance transaction or series of insurance transactions, theby a insurance producer, or the insurer where no producer is involved, shall havebe reasonable grounds for believing that the recommendation is suitable for the consumer based on a reasonable assessment of the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information.

B. RECOMMENDATION MUST BE BASED ON CLIENT'S SUITABILITY INFORMATION. Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the suitability information concerning:(1) The consumer's financial status;

(2) The consumer's tax status;

(3) The consumer's investment objectives; and

(4) Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

C. INSURER DUTY TO MAKE SUITABLE SALES.

(1) An insurer shall not issue an annuity recommended to a consumer unless the annuity is suitable based on the suitability information provided by the consumer at the time of sale.

(2) Nothing in this regulation prohibits an insurer from issuing an annuity that is not recommended.

(3) Any penalty for violation of this subsection is subject to section 16 of this regulation.

NOTE: INTERESTED PARTIES ARE ASKED TO COMMENT ON WHETHER A PROVISION SHOULD BE INCLUDED THAT RESTRICTS OR PROHIBITS PRODUCER COMPENSATION FOR THE SALE OF AN ANNUITY THAT IS NOT RECOMMENDED AND WHEN THE PRODUCER DOES NOT OBTAIN THE CONSUMER'S SUITABILITY INFORMATION.

CD. INACCURATE OR INCOMPLETE SUITABILITY INFORMATION.

(1) Except as provided under Paragraph (2) of this subsection, neither Neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under Ssubsection A related to any recommendation if a consumer:

(a) Refuses to provide relevant information requested by the insurer or insurance producer;

(b)(a) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

(c)(b) Fails to provide complete or accurate information, and the failure is unknown to the insurer or insurance producer.

(2) An insurer shall not issue a recommended annuity, and an insurance producer shall not recommend an annuity if the consumer fails to provide complete suitability information unless:

(a) The consumer provides information relating to each element of suitability information that is sufficient to allow the insurer or insurance producer to reasonably determine the annuity is suitable; and

(b) ~~An~~The insurer or insurance producer's recommendation ~~subject to Paragraph (1) shall be~~is reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

~~D. (1) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this regulation is established and maintained by complying with Paragraphs (3) to (5) of this subsection, or shall establish and maintain such a system, including, but not limited to:~~

~~(a) Maintaining written procedures; and~~

~~(b) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.~~

~~(2) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this regulation, or shall establish and maintain such a system, including, but not limited to:~~

~~Maintaining written procedures; and~~

~~Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this regulation.~~

~~(3) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Paragraph (1) with respect to insurance producers under contract with or employed by the third party.~~

~~(4) An insurer shall make reasonable inquiry to assure that the third party contracting under Paragraph (3) of this subsection is performing the functions required under Paragraph (1) of this subsection and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:~~

~~The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and~~

~~The insurer, based on reasonable selection criteria, periodically selects third parties contracting under Paragraph (3) of this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.~~

~~(5) An insurer that contracts with a third party pursuant to Paragraph (3) of this subsection and that complies with the requirements to supervise in Paragraph (4) of this subsection shall have fulfilled its responsibilities under Paragraph (1) of this subsection.~~

E. RECOMMENDATIONS TO BE INCLUDED IN SUPERVISON SYSTEM. ~~(6)~~ An insurer~~, general agent~~ or ~~independent~~insurance agency is not required by ~~Paragraph (1) or (2) of this subsection~~section 7, 8 or 9 of this regulation to~~:~~

~~Review, or provide for review of, all insurance producer solicited transactions; or~~
~~(b)Include~~ include in its supervision system~~of supervision an insurance producer's~~ recommendations to consumers of products other than the annuities offered by the insurer~~,~~ ~~general agent~~ or ~~independent~~insurance agency.

~~(7) A general agent or independent agency contracting with an insurer pursuant to Paragraph (3) of this subsection shall promptly, when requested by the insurer pursuant to Paragraph (4) of this subsection, give a certification as described in Paragraph (4) of this subsection or give a clear statement that it is unable to meet the certification criteria.~~

~~(8) No person may provide a certification under Paragraph (4)(a) of this subsection unless:~~

~~(a) The person is a senior manager with responsibility for the delegated functions; and~~

~~(b) The person has a reasonable basis for making the certification.~~

~~E~~F. COORDINATION WITH FINRA RULES. Compliance with the ~~National Association of Securities Dealers~~FINRA Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of ~~variable~~ annuities that are securities. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce the provisions of this regulation.

Drafting Note: This subsection is intended to grant a safe harbor under this section when the ~~NASD has reviewed a transaction and found that it~~suitability of recommendation of an annuity is regulated by, and complies with, the ~~NASD~~FINRA Conduct Rules pertaining to suitability.

Section 7. Insurer Supervision System

A. SUPERVISION SYSTEMS AND PROCEDURES. An insurer that sells annuities shall establish and maintain systems and procedures that are reasonably designed to prevent, detect and remedy violations of the suitability requirement.

B. REVIEW OF COMPLAINTS AND ENFORCEMENT ACTIONS. An insurer shall include the following in its supervision system:

(1) Systems and procedures for complete and documented investigation and disposition of any State insurance department, State security regulator or FINRA enforcement action against an insurance producer or insurance agency involving the sale of the insurer's annuity, including, [after June 30, 2011 or six (6) months after the effective date of this regulation, whichever is later] when reasonably appropriate, investigation of the insurance producer or insurance agency sales practices to identify and provide appropriate corrective action for any additional consumers harmed by misconduct; and

(2) Systems and procedures for investigation of consumer complaints, including documented consumer and insurance producer interviews to the extent reasonably appropriate to investigate consumer complaints.

C. INSURER SUPERVISION SYSTEM MONITORING OF INSURANCE AGENCIES, FINRA MEMBER BROKER-DEALERS AND INSURANCE PRODUCERS. An insurer shall include in its supervision system procedures to require insurance agencies, FINRA member broker-dealers and insurance producers to comply with the supervision system, including after [June 30, 2011 or six (6) months after the effective date of this regulation, whichever is later] all of the following:

(1) The insurer:

(a) Contractually requires the insurance agency to comply with, and implement, the elements of the supervisory system that are applicable to insurance agency; and

(b) Imposes, as are reasonably appropriate, contractual penalties, supervision, suspension or termination of the insurance agency, and its insurance producers, for failure to comply with, or implement, the supervisory system; and

(2) The insurer continuously monitors its insurance producers, insurance agencies and FINRA member-broker dealers through procedures, systems and reports reasonably designed to identify

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violations of the suitability requirement and failure to comply with the insurer's supervision system;

(3) (a) The insurer maintains procedures to verify that its insurance producers complete the initial training and ongoing training required by section 13A(1) and (2) of this regulation; and

(b) The procedures may include obtaining and recording certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers;

(4) For its products, the insurer monitors for insurance producer compliance with the responsible insurance agency firm training program or FINRA broker-dealer firm element training;

(5) The insurer requires practices, training, procedures or controls as reasonably appropriate to address compliance risk associated with product design, marketing practices and producer sales patterns; and

(6) The insurer conducts targeted audits and investigations of the insurer's insurance agencies, FINRA member broker-dealers and insurance producers to the extent prudent based on the results of its monitoring.

D. INSURER PLANNING PROCESS. After [June 30, 2011 or six (6) months after the effective date of this regulation, whichever is later], the insurer shall develop and maintain its supervision system through a continuous process of collection of relevant data and information, analysis of the data and information, and evaluation of the effectiveness of implemented supervision systems and procedures. Nothing in this paragraph restricts integration of the process with business planning processes.

E. INSURER SUPERVISION ORGANZATION AND ORGANZATIONAL REPORTING. After [June 30, 2011 or six (6) months after the effective date of this regulation, whichever is later], an insurer shall maintain a supervision organization, and organizational reporting, that includes:

(1) A supervision organization for suitability review and insurance producer and insurance agency system monitoring that is not subordinate to managers who are responsible for, sales or marketing functions, other than the chief executive officer;

(2) Supervision staff qualified to address each supervision function required under this section and sections 8 and 9 of this regulation;

(3) An annual report to senior management, including to the senior officer responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any; and

(4) (a) A report, at least every five (5) years, conducted and certified by a qualified reviewer, to senior management, including to the senior officer responsible for audit functions, which details a review that includes those procedures and tests that are generally accepted, and reasonably necessary, to provide reasonable assurance that the insurer has established, and is maintaining, an effective supervision system, the exceptions found, and recommended corrective actions, if any; and

(b) The qualified reviewer certification shall be in the form adopted and published by the NAIC Life Insurance Committee unless the insurer requests approval for, and the commissioner approves, a different form.

F. INSURER CONTRACTING FOR SUPERVISION FUNCTIONS.

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(1) An insurer may contract with a vendor to perform a supervision function required under this section or section 8 or 9 of this regulation.

(2) An insurer may only contract with a qualified professional provider of the function who is not subject to the direction, control or influence by a person or entity that performs, and is not affiliated with a person or entity that performs sales or marketing functions for the insurer, except an insurer may contract with the a responsible insurance agency to perform the functions provided in subsection B, or to perform the qualified staff suitability review under section 8A of this regulation if the responsible insurance agency personnel performing the function are not subject to control or direction by sales managers or insurance producers.

(3) Nothing in this regulation restricts an insurer from contracting under sections 9 and 11 of this regulation for a FINRA member broker-dealer to perform suitability review and supervision of security representative annuity transactions consistent with FINRA rules.

(4) An insurer remains responsible and liable for compliance with this regulation, regardless of whether the insurer contracts with another person or entity to perform its supervision functions.

Section 8. Insurer Supervision System for Non-FINRA Member Broker-Dealer Distribution

An insurer's supervision system for supervision of annuity sales under section 7 of this regulation, other than annuity sales subject to section 9 of this regulation, shall include on and after [January 1, 2012 or six (6) months after the effective date of this regulation, whichever is later], all of the following:

A. SUITABILITY REVIEW. Insurer qualified supervision staff review and approval or disapproval of each recommended annuity sale. An insurer may issue a recommended annuity only if the supervision staff determines the recommended annuity transaction is suitable based on the factors delineated in section 6 of this regulation. An insurer that uses an automated system remains responsible for compliance with this subsection, including for any deficiency in the automated system's criteria which results in the system not being reasonably designed to comply with this subsection. Nothing in this subsection prohibits the use of automated systems or a mix of automated and manual systems responsible for compliance with the subsection.

Drafting Note: Subsection A is based on the FINRA Rule 2821(1)(c) requirement for licensed principal suitability review of each annuity transaction. In addition, it is based on provisions in FINRA Regulatory Notice 07-53 (notice of adoption of FINRA Rule 2821) authorizing use of automated systems to facilitate principal review.

NOTE: COMMENTS ARE REQUESTED ON WHETHER THE MODEL SHOULD INCLUDE STANDARDS FOR SUITABILITY BASED ON SOURCE OF FUNDS. INTERESTED PARTIES ARE SPECIFICALLY BEING ASKED TO COMMENT ON WHETHER THE MODEL SHOULD INCLUDE SPECIFIC STANDARDS FOR FUNDING BY REVERSE MORTGAGES AND FOR COMPARISON OF FEATURES OF FINANCIAL PRODUCTS THAT ARE THE SOURCE OF FUNDS WITH THE FEATURES OF THE PURCHASED ANNUITY. IF YOU SUPPORT ADDRESSING THIS TOPIC IN THE MODEL, PLEASE PROVIDE SPECIFIC PROPOSED LANGUAGE. IF YOU DO NOT SUPPORT ADDRESSING THIS TOPIC IN THE MODEL, PLEASE PROVIDE A SPECIFIC RECOMMENDATION OF HOW THESE TOPICS MIGHT OTHERWISE BE ADDRESSED.

B. INSURER COMPLIANCE VERIFICATION PROCEDURES.

(1) Forms and processes reasonably designed to assure all information necessary to analyze and determine suitability of an annuity transaction for an individual consumer is obtained and documented by the insurance producer at the point of sale and reported to the insurer, including suitability information, except as permitted under section 6 of this regulation;

(2) Procedures reasonably designed to ensure that suitability information is accurately reported by insurance producers and that insurance producers make appropriate disclosures, including all of the following:

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(a) (i) Mailing by the insurer to each customer a statement clearly describing the customer's suitability information and transaction monitoring information submitted with the customer's application, a request and form to respond identifying any information that is incorrect and postage paid response envelope;

(ii) The insurer shall mail the statement and material directly to the customer not later than fourteen (14) days after the effective date of each annuity sale; and

(iii) An insurer shall not use the lack of response to the statement in any proceeding as evidence of the accuracy of the suitability information;

(b) Supervision system staff conducted consumer interviews by sampling, based on a risk assessment, to the extent sufficient to provide a reasonable degree of assurance of the following:

(i) Insurance producers collect and accurately report information in connection with annuity sales transactions, including suitability information; and

(ii) Insurance producers provide customers an accurate and adequate explanation of the material features of the product; and

(c) Supervision system staff reasonable attempts, prior to issuing the annuity, to interview the purchaser to verify any representation that the purchasers refuses to provide suitability information necessary to make a suitability determination or that the annuity transaction was not recommended;

(3) Recording of supervision system consumer interviews; and

(4) Retention of recordings and records of the communications required under this subsection and responses, or record of a failure to respond, for not less than six (6) years.

C. RESPONSIBLE INSURANCE AGENCY INSPECTION REPORTS. Procedures to require each of the insurer's responsible insurance agencies to submit to the insurer, at least every three (3) years, a certified report of the inspection required under section 10A(4) of this regulation.

D. INSURER SUPERVISION SYSTEM INSURANCE AGENCY RESPONSIBILITIES. Documented communication to insurance producers and responsible insurance agencies describing the elements of the insurer's supervision system standards and procedures that are the responsibility of the insurance producer and insurance agency.

Section 9. Insurer Supervision System for Security Broker-Dealer Supervised Distribution

A. FINRA MEMBER BROKER-DEALER SUPERVISION. Except as provided by subsection C, an insurer's systems and procedures under section 7 of this regulation to supervise annuity sales by a FINRA member broker-dealer registered security representatives shall include:

(1) On and after [January 1, 2012 or six (6) months after the effective date of this regulation, whichever is later] all of the following:

(a) The insurer conducts a reasonable review to determine, and concludes, that the FINRA member security broker-dealer has established, has the capacity to maintain, and will implement, application of a system of supervision as to the sale of annuities, including non-security annuity products if non-security products are offered, that conforms to all appropriate provisions of the supervision requirements of FINRA, that are applicable to sales of securities, including FINRA Rule 3010, and FINRA requirements for principal review, product training, training verification and inspection; and

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(b) The insurer contractually requires the FINRA member security broker-dealer to establish and maintain the system of supervision described under subparagraph (a) of this paragraph and includes and imposes contractual remedies, as reasonably appropriate, including termination of the contract, for failure to maintain, or comply with, such a system of supervision.

(2) (a) Application of the systems and procedures required under section 7 of this regulation to monitor, supervise and enforce the FINRA member broker-dealer's obligation under this subsection and section 11 of this regulation, including the broker-dealer's responsibility to provide and verify training. The insurer is not required to verify insurance producer training compliance under section 13 of this regulation to the extent the FINRA member broker-dealer undertakes and performs that function under paragraph (1).

(b) An insurer shall provide to each contracting FINRA member broker-dealer information and reports maintained under section 7 of this regulation that are reasonably appropriate to assist the broker-dealer to effectively carry out its supervision responsibilities under the contract.

B. FINRA MEMBER SUPERVISION LIMITED TO SECURITY REPRESENTATIVES. This section applies only to sales of annuities, and supervision of sales of annuities, solicited by a registered security representative of a FINRA member broker-dealer that contractually agrees to subject the sale to supervision under subsection A.

C. RESPONSIBLE INSURANCE AGENCY EXCEPTION. An insurer may supervise annuity sales by FINRA member broker-dealer registered security representatives under section 8 and 10 of this regulation rather than as provided under this section and section 11 of this regulation.

Section 10. Supervision by Responsible Insurance Agency

A. RESPONSIBLE INSURANCE AGENCY. Except as provided under subsections B and C, an insurer on and after [January 1, 2012 or six (6) months after the effective date of this regulation, whichever is later] shall not contract with an insurance agency, and an insurance agency shall not enter into a contract or continue a contract, to sell, or solicit the sale of, the insurer's annuities, unless the insurer determines all of the following:

(1) The insurance agency is a licensed insurance agency;

Drafting Note: States that do not license, and do not permit licensing of, insurance agencies should substitute for this provision a requirement that the person who controls the responsible insurance agency or who is the manager of the responsible insurance agency must be a licensed insurance producer and is subject to discipline if the responsible insurance agency fails to perform the required regulatory and contractual duties under this subsection.

(2) The insurance agency has reasonable capacity to comply with this regulation, cause its insurance producers to comply with this regulation, including section 13 of this regulation, and to establish, implement and maintain those elements of the insurer's supervision system that are applicable to the insurance agency and its insurance agency and insurance producers;

(3) (a) A senior manager of the insurance agency certifies to the insurer at least annually that the senior manager has a reasonable basis to represent, and does represent, that each element of the insurer's supervisory system applicable to the responsible insurance agency and its insurance agency and insurance producers was properly performed in the previous annual period except as specifically disclosed in the certification; and

(b) The certification is in the form adopted and published by the NAIC Life Insurance Committee unless the insurer requests approval for, and the commissioner approves, a different form; and

(4) (a) The responsible insurance agency at least every three (3) years causes a qualified reviewer to prepare a report which is submitted to each insurer represented by the responsible insurance agency which details the results of the qualified reviewer's review that includes those procedures and tests that are generally accepted, and reasonably necessary, to provide reasonable assurance that the responsible insurance agency, including its supervised insurance producers, are in compliance with each insurer's supervision system and the suitability requirement;

(b) The report shall describe any identified material failure to comply with the insurer's supervision system or the suitability requirement, and make recommendations for corrective actions, if any; and

(c) The qualified reviewer certification shall be in the form adopted and published by the NAIC Life Insurance Committee unless the insurer requests approval for, and the commissioner approves, a different form.

B. EXEMPTION FOR SUB-INSURANCE AGENCIES. Subsection A does not apply to an insurance agency if its insurance producers are supervised by a responsible insurance agency.

C. FINRA MEMBER REGISTERED BROKER-DEALER EXCEPTION. An insurer may supervise annuity sales by FINRA member broker-dealer registered security representatives under sections 9 and 11 of this regulation rather than as provided under section 8 and this section of this regulation.

Section 11. FINRA Member Broker-Dealer Distribution and Supervision

A. FINRA MEMBER BROKER-DEALER SECURITY REPRESENTATIVE DISTRIBUTION. Except as provided by subsection B and section 9C of this regulation, on and after [January 1, 2012 or six months after the effective date of this regulation, whichever is later], an insurer may contract with an insurance agency that is also a FINRA member broker-dealer, or enter into or continue a joint marketing agreement with an insurance agency and a FINRA member broker-dealer for the FINRA member broker-dealer's security representatives to sell, or solicit the sale of, the insurer's annuities only if the insurer determines compliance with all of the following:

(1) The insurance agency is a licensed insurance agency;

Drafting Note: States that do not license, and do not permit licensing of, insurance agencies should substitute for this provision a requirement that the person who controls the responsible insurance agency or who is the manager of the responsible insurance agency must be a licensed insurance producer and is subject to discipline if the responsible insurance agency fails to perform the required regulatory and contractual duties under this subsection.

(2) The FINRA member broker-dealer has reasonable capacity to cause its security registered representatives and insurance producers to comply with this regulation, and to apply a system of supervision as to sales of annuities that conforms to all appropriate provisions of the supervision requirements of FINRA that are applicable to sale of securities, including FINRA rule 3010, and FINRA requirements for principal suitability review, firm element training, product training, training verification and inspection that are applicable to the sale of securities;

(3) The FINRA member broker-dealer enters into a contract required under section 9A of this regulation with respect to all sales subject to supervision under section 9 of this regulation; and

(4) (a) A senior manager of the FINRA member broker-dealer certifies to the insurer at least annually that the senior manager has a reasonable basis to represent, and represents, that the FINRA member broker-dealer properly performed its supervision function in the previous annual period, including with respect to its sub-agents and insurance producers, except as specifically disclosed in the certification; and

(b) The certification is in the form the NAIC Life Insurance Committee adopts and publishes unless the insurer requests approval for, and the commissioner approves, a different form.

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B. EXEMPTION FOR SUB-INSURANCE AGENCIES. Subsection A does not apply to an insurance agency if its insurance producers are security representatives who are supervised by a FINRA member broker-dealer under subsection A.

Section 12. Insurance Agency and Insurance Producer Duties

A. INSURANCE AGENCY DUTIES. An insurance agency shall not, and an insurance agency may not permit an insurance producer, to:

(1) Fail to comply with a material element of an insurer's supervision system or a FINRA member broker-dealer supervision system;

(2) Make a material misrepresentation in a certification required under this regulation; or

(3) Dissuade, or attempt to dissuade, a consumer from:

(a) Providing complete suitability information;

(b) Truthfully responding to an insurer's request for confirmation of suitability information;

(c) Filing a complaint;

(d) Cooperating with the investigation of a complaint; or

(e) Attending or giving testimony at any department proceeding.

B. INSURANCE PRODUCER DUTIES.

(1) An insurance producer may solicit the sale of, an annuity in this State only if the insurance producer is:

(a) Contractually subject to supervision by a responsible insurance agency; or

(b) A licensed security representative contractually subject to supervision by a FINRA member broker-dealer contracting under sections 9 and 11A of this regulation.

(2) An insurance producer shall not:

(a) Fail to comply with a material element of an insurer's supervision system or a FINRA member broker-dealer supervision system;

(b) Make a material misrepresentation in a certification required under this regulation; or

(c) Dissuade, or attempt to dissuade, a consumer from:

(i) Providing complete suitability information;

(ii) Truthfully responding to an insurer's request for confirmation of suitability information;

(iii) Filing a complaint;

(iv) Cooperating with the investigation of a complaint; or

(v) Attending or giving testimony at any department proceeding.

Section 13. Responsible Insurance Agency and Insurance Producer Training Duties

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A. PRODUCER INITIAL TRAINING, ONGOING TRAINING AND PRODUCT TRAINING. On and after [January 1, 2012 or six (6) months after the effective date of this regulation, whichever is later], an insurance producer may sell, solicit or negotiate an annuity only if:

(1) INITIAL TRAINING COURSE.

(a) The insurance producer, prior to selling, soliciting or negotiating the annuity, successfully completes a one-time initial training course approved by the commissioner for the applicable annuity category and proved by a department-approved education provider.

(b) The categories for required initial training courses shall be the two categories of fixed annuities and indexed annuities, unless the commissioner determines that other categories of competency training are warranted.

(c) Unless the commissioner determines that a substantial public interest requires otherwise, the commissioner shall approve an initial training course, including the annuity category covered, according to the standards recommended by the NAIC Life Committee.

(d) An insurance producer who is licensed as a security representative to sell a category of annuities is not required to complete an initial training course for that category.

NOTE: COMMENTS ARE BEING REQUESTED ON WHETHER THE INITIAL TRAINING REQUIREMENT SHOULD INCLUDE A "GRANDFATHER" EXCEPTION. INTERESTED PARTIES THAT SUPPORT SUCH AN EXCEPTION SHOULD INCLUDE SPECIFIC LANGUAGE PROVIDING FOR SUCH AN EXCEPTION, INCLUDING STANDARDS FOR THE PROPOSED EXCEPTION.

(2) ONGOING TRAINING. The insurance producer receives training in the areas of annuity suitability, replacement, disclosure and ethics of not less than four (4) hours every 24 months. The training must be approved by the commissioner and provided by a department-approved education provider. The commissioner shall consider the recommendation of the NAIC Life Committee in approving training courses as meeting the requirements of this paragraph.

NOTE: INTERESTED PARTIES WHO ARE CONCERNED THAT PARAGRAPHS (1) AND (2) MAY NOT BE CONSISTENT WITH SECTION 321 OF THE FEDERAL GRAMM-LEACH-BLILEY ACT ARE ASKED TO SUBMIT COMMENTS ON THESE PROVISIONS THAT INCLUDE A DETAILED EXPLANATION FOR THE CONCERN. INTERESTED PARTIES WHO OBJECT TO THESE PROVISIONS ARE INVITED TO PROPOSE SPECIFIC ALTERNATIVES.

(3) PRODUCT TRAINING.

(a) The insurance producer complies with the firm training plan required under subsection D or the security broker-dealer firm element training program, if under section 11A of this regulation, the firm element training program is applied to insurance producer-sold annuity products.

(b) An insurance producer may sell, solicit or negotiate an annuity for a period of three (3) months prior to successfully completing the product training required under a firm training plan, if any. During this period the insurance producer's recommendation must be overseen by an insurance producer who has successfully completed the product training.

B. RECIPROCAL RECOGNITION OF STATE-APPROVED TRAINING. The satisfaction of the training requirements of another State that are substantially similar to subsection A(1) or (2) shall be deemed to satisfy the training requirements of subsection A(1) or (2) in this State.

C. CONTINUING EDUCATION CREDIT PERMITTED NOT REQUIRED. An insurance producer may, but is not required to, include credit for commissioner-approved continuing education courses that meet the

training requirements of subsection A among continuing education credits submitted for the purpose of complying with the continuing education requirements under [insert reference to applicable State law or regulation governing continuing education].

Drafting Note: State insurance departments are encouraged to accept, but not require, credit for courses approved under this section as credit toward insurance producer continuing education requirements.

D. FIRM TRAINING PROGRAM.

(1) Except as provided under paragraph (5), on and after [January 1, 2012 or six (6) months after the effective date of this regulation whichever is later], a responsible insurance agency or insurer shall maintain a continuing and current training program for its insurance producers, and supervisors of its insurance producers, to reasonably ensure each insurance producer has adequate knowledge to competently recommend the annuity products offered by the insurance producer. At a minimum, the responsible insurance agency or insurer shall annually evaluate and prioritize training needs and develop and implement a written firm training plan.

(2) The firm training plan shall include:

(a) Consideration of elements recommended by published NAIC Life Committee guidance; and

(b) Required insurance producer product training to the extent reasonably necessary to ensure each insurance producer has adequate knowledge of the material features of annuity products the insurance producer offers.

(3) Nothing in this subsection requires training of an insurance producer if the responsible insurance agency or insurer reasonably expects the insurance producer has adequate knowledge of the material features of an annuity product based on prior training, including initial and ongoing training required under subsection A.

(4) The responsible insurance agency or insurer shall monitor and enforce insurance producer compliance with the firm training plan.

(5) This subsection does not apply to a FINRA member broker-dealer, or an insurance agency and a FINRA member broker-dealer, subject to section 11A of this regulation.

E. INSURER PRODUCT TRAINING. An insurer shall make available product training for firm training programs and FINRA member broker-dealer firm element training programs.

Section 14. Standards for Qualified Reviewers

A. QUALIFICATIONS. An insurer or insurance agency shall not obtain or accept an audit or inspection by a qualified reviewer required under this regulation unless the insurer or insurance agency, after reasonable inquiry, determines the firm or person meets all of the following standards:

(1) The management and staff of the firm are, or the person is, trustworthy, competent, trained, educated and experienced in the management and performance of the required functions;

(2) The firm or person maintains and implements procedures to properly document and record a required audit or inspection;

(3) The firm or person, and the individual who conducts a required audit or inspection, are independent from the insurer, insurance agency, and insurance agency insurance producers and not subject to direction, control or influence by, the insurer’s insurance agency, insurance producers, or insurer’s management that is responsible for sales or marketing functions; and

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(4) (i) The firm or person is accredited by an accrediting organization the NAIC Life Insurance Committee approves, unless the insurer requests approval of, and the commissioner approves, a firm or person to perform the function.

(ii) This paragraph applies only after the effective date of the NAIC Life Insurance Committee approval of an accrediting organization.

B. DISQUALIFICATION. The commissioner may disqualify a firm or person from acting as a qualified reviewer.

Section 15. NAIC Life Insurance Committee Guidance

NAIC Life Insurance Committee adopted and published guidance is admissible in evidence and shall be considered, in any department proceeding alleging a violation of this regulation, including guidance regarding any of the following:

A. Practices, training, procedures and controls to address compliance risk associated with product design, marketing practices and producer sales patterns;

B. Suitability information;

C. Forms or formats for collection of information, including suitability information;

D. Measures related to verification of suitability information;

E. Measures relating to verification of effectiveness of disclosures;

F. Audit guidance with respect to required audits and inspections; or

G. Training.

Section ~~7~~16. Mitigation of Responsibility

A. The commissioner may order:

(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;

Drafting Note: ~~S~~Section ~~7A(1)~~16A(1) is not intended to apply to violations by an insurance producer who, under a state's laws, is not an insurer's agent. A ~~state~~State may wish to review this issue and, if necessary, clarify that the paragraph does not apply to brokers who are agents of the consumer, not the insurer.

(2) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation; and

(3) A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation.

Drafting Note: A consumer may have a right to seek relief through ~~NASD~~FINRA arbitration for sale of a variable annuity in violation of the ~~NASD~~FINRA Conduct Rules pertaining to suitability. State insurance departments may wish to consider this right when determining whether to bring an action requiring corrective action under Subsection A.

B. Any applicable penalty under [insert statutory citation] for a violation of ~~S~~section 6A~~, B, or C(2)~~, B or C of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the consumer was taken promptly after a violation was discovered.

Drafting Note: A state that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, "shall" should be substituted for "may" in the same sentence.

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Section ~~8~~17. [Optional] Recordkeeping

A. Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for [insert number] years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

Drafting Note: States should review their current record retention laws and specify a time period that is consistent with those laws. For some states this time period may be five (5) years.

B. Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Drafting Note: This section may be unnecessary in ~~states~~States that have a comprehensive recordkeeping law or regulation.

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Draft: 9/4/09
Subgroup Revisions to Model 275

Underlining and overstrikes show the changes from the existing model. Comments are being requested on this draft. Comments should be sent by Sept. 17, 2009 to Jolie Matthews at jmatthew@naic.org.

**SUITABILITY IN ANNUITY TRANSACTIONS
MODEL REGULATION**

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Section 1. Purpose

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

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

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

Section 2. Scope

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

Section 3. Authority

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

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

Section 4. Exemptions

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

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

B. Contracts used to fund:

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(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(2) A plan described by Ssections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;

(3) A government or church plan defined in Ssection 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Ssection 457 of the IRC;

(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(5) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(6) Formal prepaid funeral contracts.

Section 5. Definitions

A. "Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

B. "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

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

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

E. "Qualified staff" means individuals who are:

(1) Qualified to perform a function required under this regulation; and

(2) Independent from insurance producers whose recommendations are the subject of the function and independent from the sales managers of the insurance producers.

NOTE: THIS DEFINITION IS BASED ON FINRA RULE 3012.

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

G. "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(1) Age;

(2) Annual income;

(3) Financial situation and needs, including the source of funding of the annuity;

(4) Investment experience;

(5) Investment objectives;

(6) Intended use of the annuity;

(7) Investment time horizon;

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

(9) Liquidity needs;

(10) Liquid net worth;

(11) Risk tolerance; and

(12) Tax status.

NOTE: THIS DEFINITION PARALLELS FINRA RULE 2821(b)(2), OTHER THAN THE ADDITION OF SPECIFIC REFERENCE TO SOURCE OF FUNDS AS INCLUDED WITHIN "FINANCIAL SITUATION AND NEEDS" IN PARAGRAPH (3).

H. "Suitability requirement" means [insert reference to this regulation and to State law or regulations that govern advertising, misrepresentation or disclosures related to sales of annuities] and, with respect to products subject to regulation by FINRA, FINRA rules governing the suitability of, or misrepresentation or disclosures in connection with, the sale of those products, including FINRA rules 2310 and 2821 or substantially similar FINRA rules.

Section 6. Duties of Insurers and of Insurance Producers

A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

(1) The consumer has been informed, in general terms, of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells or redeems the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, insurance and investment components and market risk;

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

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

(4) In the case of an exchange of an annuity, the exchange is suitable including taking into consideration whether:

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

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

(c) The consumer has had another annuity exchange within the preceding 36 months.

NOTE: THIS PROVISION HAS BEEN REVISED TO PARALLEL FINRA RULE 2821(b).

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

~~(1) The consumer's financial status;~~

~~(2) The consumer's tax status;~~

~~(3) The consumer's investment objectives; and~~

~~(4) Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer~~.

C. Except as permitted under subsection D, an insurer shall not issue an annuity recommended to a consumer unless the annuity is suitable based on the consumer's suitability information. The penalty for a violation of this subsection shall be reduced or eliminated if the violation is not part of a pattern or practice.

~~C~~D. (1) Except as provided under ~~P~~paragraph (2) of this subsection, neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under ~~S~~subsection A or C related to any recommendation if a consumer:

(a) Refuses to provide relevant information requested by the insurer or insurance producer, but there is a reasonable basis to believe the recommendation is suitable;

NOTE: SUBPARAGRAPH (A) PARALLELS FINRA 2821(b), WHICH REQUIRES THAT FOR ANY RECOMMENDED SALE THERE MUST BE A REASONABLE BASIS TO BELIEVE THE RECOMMENDATION IS SUITABLE.

(b) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

(c) Fails to provide complete or accurate information.

(2) An insurer or insurance producer's recommendation subject to ~~P~~paragraph (1) shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

~~D~~E. (1) An insurer ~~either~~ shall ~~assure that~~establish a supervision system ~~to supervise recommendations~~ that is reasonably designed to achieve the insurer's and its insurance agency and insurance producers compliance with~~ this regulation is established and maintained by complying with Paragraphs (3) to (5) of this subsection, or shall establish and maintain such a system~~ the suitability requirement, including, but not limited to, the following:

NOTE: THIS PROVISION PARALLELS FINRA RULE 2821(d), WHICH ALSO INCORPORATES FINRA RULE 3110. THOSE RULES REQUIRE A BROKER-DEALER TO ESTABLISH AND MAINTAIN A SYSTEM TO SUPERVISE THE ACTIVITIES OF EACH REPRESENTATIVE.

~~(a) Maintaining written procedures; and~~

~~(b) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.~~

(a) The insurer shall maintain reasonable procedures to require its insurance producers to comply with the training requirements of section 7 of this regulation;

NOTE: THIS PROVISION IS SIMILAR TO FINRA RULE 1120, WHICH REQUIRES BROKER-DEALERS TO MAINTAN PROCEDURES TO REQUIRE SECURITY REPRESENTATIVES TO COMPLETE REGULATORY AND FIRM ELEMENT TRAINING, AND FINRA RULE 2821(e), WHICH REQUIRES BROKER-DEALERS TO ENSURE RESPRESENTATIVES COMPLETE PRODUCT TRAINING.

(b) The insurer shall maintain reasonable procedures to verify consumer suitability information that supports a recommendation;

NOTE: THIS PROVISION PARALLELS FINRA RULE 2821(d), WHICH INCORPORATES THE FINRA RULE 3012 REQUIREMENT THAT A BROKER-DEALER CONFIRM CONSUMER INFORMATION, AND ALSO THE SEC REQUIREMENT THAT A BROKER-DEALER VERIFY CONSUMER ACCOUNT INFORMATION, INCLUDING SUITABILITY INFORMATION, WITH THE CONSUMER WITHIN 30 DAYS AFTER THE ACCOUNT IS OPENED (AND AT LEAST EVERY THREE YEARS THEREAFTER).

(c) The insurer shall issue a recommended annuity only if qualified staff review the recommendation and approved it as suitable based on the factors delineated in this section except an insurer may limit qualified staff review and approval to selected transactions by applying a system of selection criteria that is reasonably designed to prevent unsuitable recommendations;

NOTE: THIS PROVISION PARALLELS THE FINRA RULE 2821(c) REQUIREMENT FOR LICENSED PRINCIPAL SUITABILITY REVIEW OF EACH ANNUITY TRANSACTION AND FINRA REGULATORY NOTICE 07-53 (NOTE OF ADOPTION OF FINRA RULE 2821) AUTHORIZING THE USE OF AUTOMATED SYSTEMS TO FACILITATE PRINCIPAL REVIEW.

(d) The insurer shall maintain reasonable procedures to monitor whether insurance producers have rates of effecting exchanges that raise for review whether the exchanges evidence conduct inconsistent with the suitability requirement;

NOTE: THIS PROVISION PARALLELS THE FINRAL RULE 2821(d) REQUIREMENT THAT BROKER-DEALERS MONITOR EXCHANGES.

(e) The insurer shall maintain reasonable procedures for qualified staff to examine, and report on, its insurance agencies at reasonable periodic intervals. The examination shall be designed to assist in detecting and preventing violations of this regulation. Nothing in this paragraph prohibits an insurer from accepting an examination conducted, and report certified, by an independent qualified firm; and

NOTE: THIS PROVISION PARALLELS THE REQUIREMENT OF AN ANNUAL REVIEW AND INSPECTION, INCORPORATED INTO FINRA RULE 2821, UNDER FINRA RULES 3010 AND 3012.

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

NOTE: THIS PROVISION PARALLELS THE REQUIREMENT UNDER FINRA RULE 3012, INCORPORATED INTO FINRA RULE 2821, THAT BROKER-DEALERS ANNUALLY PRODUCE A REPORT OF A REVIEW AND TESTING OF ITS SUPERVISION SYSTEM.

(2) (a) A FINRA member broker-dealer supervision system that complies with FINRA suitability rules shall satisfy the insurer's supervision requirements under this subsection E.

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Drafting Note: This paragraph is intended to grant a safe harbor to an insurer for the supervision system requirement under this subsection for annuity sales that are subject to the FINRA member broker-dealer required supervision system. The safe harbor applies to FINRA broker-dealer sales of fixed annuities as well as variable annuities.

(b) An insurer shall:

(i) Monitor the FINRA member broker-dealer, using information collected in the normal course of the insurer's business; and

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

~~(2)~~(3) A general agent ~~and~~or independent agency ~~either shall adopt~~shall establish a supervision system ~~established by an insurer to supervise recommendations of its insurance producers~~ that is reasonably designed to achieve insurance producer compliance with the suitability requirement, including, but not limited to, reasonable procedures to require insurance producers to comply with section 7 of this regulation.~~ this regulation, or shall establish and maintain such a system, including, but not limited to:~~

~~(a)Maintaining written procedures; and~~

~~(b)Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this regulation.~~

~~(3)~~(4) Nothing in this subsection restricts ~~An~~an insurer ~~may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Paragraph (1) with respect to insurance producers under contract with or employed by the third party~~ from contracting for performance of a function required under this subsection. An insurer remains responsible and liable for compliance with this subsection regardless of whether the insurer contracts for performance of a function.

~~(4) An insurer shall make reasonable inquiry to assure that the third party contracting under Paragraph (3) of this subsection is performing the functions required under Paragraph (1) of this subsection and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:~~

~~(a)The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and~~

~~(b)The insurer, based on reasonable selection criteria, periodically selects third parties contracting under Paragraph (3) of this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.~~

~~(5) An insurer that contracts with a third party pursuant to Paragraph (3) of this subsection and that complies with the requirements to supervise in Paragraph (4) of this subsection shall have fulfilled its responsibilities under Paragraph (1) of this subsection.~~

~~(6)~~(5) An insurer, general agent or independent agency is not required to ~~by Paragraph (1) or (2) of this subsection to:~~

~~(a)Review, or provide for review of, all insurance producer solicited transactions; or~~

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~~(b)Include~~include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.

~~(7) A general agent or independent agency contracting with an insurer pursuant to Paragraph (3) of this subsection shall promptly, when requested by the insurer pursuant to Paragraph (4) of this subsection, give a certification as described in Paragraph (4) of this subsection or give a clear statement that it is unable to meet the certification criteria.~~

~~(8) No person may provide a certification under Paragraph (4)(a) of this subsection unless:~~

~~(a) The person is a senior manager with responsibility for the delegated functions; and~~

~~(b) The person has a reasonable basis for making the certification.~~

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

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

(2) Filing a complaint; or

(3) Cooperating with the investigation of a complaint.

~~E~~G. A security representative recommendation of an annuity that is a security that ~~Compliance~~complies with the ~~National Association of Securities Dealers Conduct~~FINRA ~~R~~rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of ~~variable~~ annuities. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce the provisions of this regulation.

Drafting Note: This subsection is intended to grant a safe harbor when ~~the NASD has reviewed a transaction and found that it~~a security representative recommendation of an annuity that is a security complies with the ~~NASD Conduct Rules~~FINRA rules pertaining to suitability. This safe harbor applies regardless of whether the annuity/security is required to be registered a security.

Section 7. Insurance Producer Training

A. An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has completed training on the material features of the annuity to the extent reasonably necessary to ensure the insurance producer has adequate knowledge of the product to recommend the annuity.

B. (1) An insurance producer, prior to soliciting the sale of an annuity, shall complete a one-time eight (8) credit training course approved by the department and provided by a department-approved education provider. The department shall consider any recommendations by the National Association of Insurance Commissioners for content of the required training course and shall use the following course outline:

(a) Historical development of annuity contracts;

(b) Types of annuities and various classifications of annuities;

(c) Identification of the parties to an annuity;

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

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

(f) Qualified plans and annuities;

(g) The primary uses of annuities;

(h) The senior market;

(i) Appropriate sales practices;

(j) Reserving issues with annuity contracts;

(k) Consumer attitudes towards retirement; and

(l) Guaranty Fund role in relationship to annuities.

NOTE: THIS PROVISION, INCLUDNG THE OUTLINE, IS BASED ON THE CALIFORNIA REQUIREMENT. SEE:
http://www.insurance.ca.gov/0200-industry/0050-renew-license/0200-requirements/life-agent/questions-answers.cfm

(2) The satisfaction of the training requirements of another State that are substantially similar to paragraph (1) shall be deemed to satisfy the training requirements of paragraph (1) in this State.

(3) An insurance producer may, but is not required to, include credit for courses that meet the training requirements of paragraph (1) among continuing education credits submitted for the purpose of complying with the continuing education requirements under [insert reference to applicable State law or regulation governing continuing education].

(4) An insurer may satisfy its responsibility to require an insurance producer to comply with paragraph (1) by obtaining certificates of completion of the training course or obtaining reports provided by commissioner-sponsored database systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Section 78. Mitigation of Responsibility

A. The commissioner may order:

(1) An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;

Drafting Note: Section 7A(1) is not intended to apply to violations by an insurance producer who, under a state's laws, is not an insurer's agent. A state may wish to review this issue and, if necessary, clarify that the paragraph does not apply to brokers who are agents of the consumer, not the insurer.

(2) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation; and

(3) A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this regulation.

Drafting Note: A consumer may have a right to seek relief through NASD arbitration for sale of a variable annuity in violation of the NASD Conduct Rules pertaining to suitability. State insurance departments may wish to consider this right when determining whether to bring an action requiring corrective action under Subsection A.

B. Any applicable penalty under [insert statutory citation] for a violation of Ssection 6A, B, C or C(2)D of this regulation may be reduced or eliminated [, according to a schedule adopted by the commissioner,] if corrective action for the consumer was taken promptly after a violation was discovered.

Drafting Note: A sState that has authority to adopt a schedule of penalties may wish to include the words in brackets. In that case, "shall" should be substituted for "may" in the same sentence.

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Section ~~8~~9. [Optional] Recordkeeping

A. Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for [insert number] years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

Drafting Note: States should review their current record retention laws and specify a time period that is consistent with those laws. For some ~~s~~States this time period may be five (5) years.

B. Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

Drafting Note: This section may be unnecessary in ~~s~~States that have a comprehensive recordkeeping law or regulation.

Section 10. Effective Date

The amendments to this regulation shall take effect six (6) months after the date the regulation is adopted or on January 1, 2012, whichever is later.

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