

LIFE INSURANCE AND ANNUITIES (A) COMMITTEE

Life Insurance and Annuities (A) Committee Nov. 18, 2024, Minutes

Life Insurance and Annuities (A) Committee Oct. 21, 2024, Minutes (Attachment One)

Life Actuarial (A) Task Force 2025 Proposed Charges (Attachment One-A)

Life Insurance and Annuities (A) Committee 2025 Proposed Charges (Attachment One-B)

Annuity Suitability (A) Working Group Nov. 17, 2024, Minutes (Attachment Two)

Chair Draft Safe Harbor Guidance Sept. 23, 2024 (Attachment Two-A)

Draft Pending Adoption Chair (OH); Doug Ommen, C Yanacheak (IA); Carter Lawrence, Co-Vice Chair, represented by Toby C Richardson (AZ); Karima M. Woods represented by Philip Barlow (DC); C Adrienne A. Harris represented by Mark McLeod (NY); Glen Mulready Elizabeth Kelleher Dwyer (RI); Scott A. White represented by Craig C participating were: Nour Benchaaboun (MD); Fred Andersen (MN); Eri and Rachel Hemphill (TX).

1. Adopted its Oct. 21 Minutes

Director French said the Committee met Oct. 21 and took the following action: 1) adopted its Summer National Meeting minutes; 2) adopted the 2025 Generally Recognized Expense Table (GRET); and 3) adopted its 2025 proposed charges and those of the Life Actuarial (A) Task Force.

Director Richardson made a motion, seconded by Commissioner Arnold, to adopt the Committee's Oct. 21 minutes (Attachment One). The motion passed unanimously.

2. Heard a Federal Update

Taylor Walker (NAIC) gave an update on the U.S. Department of Labor's (DOL's) proposed Retirement Security Rule, also known as the fiduciary rule, and amendments to the prohibited transaction exemptions (PTEs), which exempt fiduciaries from what would otherwise be prohibited conflicts. Walker reminded the Committee that the final version of the fiduciary rule was published in the Federal Register on April 25, 2024.

Walker explained that the fiduciary rule: 1) expands the definition of an investment advice fiduciary. Fiduciary status applies to nearly all financial professionals who provide retirement guidance, including life insurers who sell annuity products; 2) the fiduciary definition eliminates the requirement that advice be given on a "regular basis"; and 3) the fiduciary rule adds additional restrictions and requirements to the PTEs.

Walker explained that most of the fiduciary rule was set to take effect on Sep. 23, 2024. But in July 2024, two federal district courts in Texas, in two separate cases, stayed the rule. This means that the industry does not have to comply with the fiduciary rule until the lawsuits are resolved. The first suit was filed by the Federation of Americans for Consumer Choice (FACC), along with several independent insurance agents. The second was brought by nine insurance trade associations, including the American Council of Life Insurers (ACLI), the National Association of Insurance and Financial Advisors (NAIFA), the Insured Retirement Institute (IRI), and the t.iA (n7)-1.3 (sc)-13..3

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Reinsurance Asset Adequacy Testing. The discussion and exposure included: 1) initially focusing on affiliated treaties, 2) adopting a disclosure-based approach for 2025, with individual regulators retaining the ability to follow up on any concerns that may be identified based on this reporting, and 3) allowing for aggregation within a counterparty (as opposed to at a treaty level), with more granular testing where the company or regulators have documented concern that aggregation benefits may not ultimately be realized across different lines of business or product types under moderately adverse conditions.

Hemphill said the Task Force continues to make progress toward implementing a replacement generator of economic scenarios (GOES), including discussion of equity calibration and interest rate flooring options. She reported that the Task Force had a robust and productive dialogue with regulators and interested parties, with increasing common ground. She said some regulators requested that ACLI present additional interest rate flooring options, to which the ACLI agreed. The Generator of Economic Scenarios (GOES) (A) Subgroup will continue to meet over the coming months. The Subgroup is working toward meeting later this year to consider whether an

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access life insurance. To learn more, the Life Workstream circulated a draft survey for public comment asking about insurers' use of criminal history in life insurance underwriting. Comments were requested by Sept. 5.

Based on the comments received, a revised chair draft survey was distributed and discussed during a public meeting on Oct. 17, 2024.

Commissioner Fowler said once the survey questions are finalized, the process for issuing the survey will also be finalized. The plan is to use the same process that was used to do the big data/artificial intelligence (AI) survey of life companies. Like the AI survey, states will choose to participate, with a focus on getting participation from

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Rafeld outlined some key fraud trends that life and annuity writers are confronting. One of the most pervasive issues reported by carriers is the intentional misrepresentation of information on applications. Both consumers and agents motivated by a commission payout are misstating health conditions, financial status, lifestyle factors, and dates of birth to avoid policy denials or to secure lower premiums or higher coverage limits. Material

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Rafeld said synthetic identities and stolen consumer information are also fueling new Stranger-Originated Life Insurance (STOLI) schemes. Using stolen consumer data, fraudsters are arranging for imposters to apply for coverage and pose as the insured when, in

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Commissioner Ommen said he wanted to raise a financial exploitation issue that has come up on the security side

Commissioner Lawrence made a motion, seconded by Commissioner White, to adopt the Committee's Aug. 15 minutes (see NAIC Proceedings Summer 2024, Life Insurance and Annuities (A) Committee). The motion passed with Carmello abstaining.

2. Adopted the 2025 GRET

Hemphill explained that the Society of Actuaries (SOA) provided the Life Actuarial (A) Task Force with the annual update to the Generally Recognized Expense Table (GRET). She said no concerns were raised with the SOA updates, and the Task Force unanimously adopted the updated 2025 GRET Sept. 5.

Commissioner Richardson made a motion, seconded by Andersen, to adopt the 2025 GRET (see NAIC Proceedings – Fall 2024 Attachment (v)) [The motion passed with Carmello, 10-10 (e)2.97 (e)-4 (d)-0. [(e)cu-0.8n)-0.3 (l)v0.3

Life Actuarial (A) Task Force 2025 Proposed Charges

Hemphill summarized the changes to the Life Actuarial (A) Task Force's 2025 proposed charges. She said the Task Force has an added charge for 2025 to "Coordinate with the Reinsurance (E) Task Force on actuarial items related to reinsurance." She said that the Task Force has been actively coordinating with the Reinsurance (E) Task Force on reinsurance-related workstreams, but given its importance, it is being added explicitly to its charges. Hemphill said it is proposed that the Indexed Universal Life (IUL) Illustration (A) Subgroup be changed to the Life and Annuity Illustration (A) Subgroup. The focus of the Subgroup was expanded from only IUL illustrations to both life and annuity illustrations, and a corresponding charge was added for the Subgroup to "consider any guidance, actions, or recommendations that may be necessary to regulate annuity illustration practices." Hemphill said minor revisions were made to the Variable Annuities Capital and Reserve (E/A) Subgroup's charges to reflect the transition from initial monitoring to ongoing maintenance of the variable annuity (VA) reserve framework. Hemphill said no concerns were raised with the update and the Task Force adopted its 2025 proposed charges Oct.

- Provide recommendations for guidance and requirements for accelerated underwriting (AU) and other emerging underwriting practices as needed
- iii. Work with the SOA on the annual development of the Generally Recognized Expense Table (GRET) factors.
 - iv. Provide recommendations and changes to other reserve and nonforfeiture requirements to address issues as appropriate and provide actuarial assistance and commentary to other NAIC committees relative to their work on actuarial matters.
 - v. Work with the selected vendor to develop and implement the generator of economic scenarios (GOES) for use in regulatory reserve and capital calculations
 - vi. Monitor international developments

B. Review material GOES updates, either driven by periodic model maintenance or changes to the economic environment, and provide recommendations.

LIFE ACTUARIAL (A) TASK FORCE (ued)

B. Regularly review key economic conditions and metrics to evaluate the need for or significant GOES updates and maintain a public timeline for GOES updates.

C. ~~LIFE ACTUARIAL (A) TASK FORCE (ued)~~

D. ~~C.~~

E. Support the implementation of the GOES for use in statutory reserve and capital calculations.

F. Develop and maintain acceptance criteria that reflect history as well as plausibly more extreme scenarios.

4. The ~~Indexed Universal Life and Annuity (IUL)~~ Illustration (A) Subgroup will:

A. Consider changes to Actuarial Guideline XLIX—The Application of the Life Illustrations Model Regulation to Policies with Indexed Interest to Policies Sold of F.: (nj ID 5re1c 0 Tw 01c 0(t)5.9 (t)-5 (o)-98001 T (n5)

Draft: 10/11/24

Adopted by the Executive (EX) Committee and Plenary, TBD
Adopted by the Life Insurance and Annuities (A) Committee, Oct. 21, 2024

2025 Proposed Charges

LIFE INSURANCE AND ANNUITIES (A) COMMITTEE

The mission of the Life Insurance and Annuities (A) Committee is to provide a forum for the discussion and development of proposed changes to the Life Insurance and Annuities (A) Code.

1. The Life Insurance and Annuities (A) Committee will:

the financial professional. . . or the entity supervising the financial professional. . . . Third, for the safe harbor to apply, an insurance company must “[m]onitor the relevant conduct of the financial professional. . . .” Fourth, an insurance company must also “[p]rovide to the entity responsible for supervising the financial professional . . . information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.” Finally, an insurance company must distinguish between its obligations under the safe harbor from the situation where it has contracted with a third party for supervision.

Requirements of the Safe Harbor

One of the most common situations that will generate the use of the safe harbor is the licensed insurance producer who is also registered as a securities agent and is subject to the supervisory control system of a registered securities broker-dealer. Pursuant to the safe harbor, recommendations and sales of annuities made in compliance with business rules, controls and procedures that would satisfy comparable standards are deemed to be compliant with the requirements under the Model Regulation. As an example, a financial professional recommending a variable annuity registered with the United States Securities and Exchange Commission (the “SEC”) under the safe harbor is deemed to comply with the Model Regulation if the securities agent’s broker-dealer has established “business rules, controls and procedures” supervisory control system pursuant to FINRA Rules 110, 3120 and 3130 that (1) govern the appropriate recommendation of a SEC registered variable annuity and (2) that satisfies the SEC’s Regulation Best Interest (“Reg B”).⁷

Making a recommendation in compliance with comparable standards means in compliance with the business rules, controls and procedures that satisfy a comparable standard. To avail itself of the safe harbor, the insurance company should review the broker-dealer’s business rules, processes, and procedures that pertain to

(c) A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or any amendments or successor statutes thereto.

⁴ See Section 6(E)(3)(a).

⁵ “Comparable standards” is defined in the Model Regulation in Section 6(E)(5) to mean:

- (a) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest and any amendments or successor regulations thereto;
- (b) With respect to investment advisers registered under federal [or state] securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 [or applicable state securities law], including but not limited to, the Form ADV and interpretations; and
- (c) With respect to plan fiduciaries or fiduciaries, means the duties, obligations, prohibitions and all other requirements attendant to such status under ERISA or the IRC and any amendments or successor statutes thereto.

⁶ <https://www.finra.org/finramanual/rules/r3110> <https://www.finra.org/finramanual/rules/r3120>;
<https://www.es:296546.2-1.229.6refE.9nual/r05Tc.7156-0JTJ.0.0>

the firm's supervisory control system over the registered variable annuities to ensure that they are adequate and that they provide comparable controls as those required under the Model Regulation.

Another common dual license situation involves a licensed insurance

when selling an annuity. The onboarding, audits, due diligence questionnaires, contractual policies, and other methods an insurer uses to monitor the entity are to ensure that the entity's policies, procedures, and implementation of those policies and procedures are truly "comparable" to what's required under the Model Regulation.

On the other hand, where an insurer has contracted for performance, the provisions of the Model Regulation apply. If the insurer has delegated the entire supervisory process by contract, the entity with which the insurer has contracted for performance would be the one that decides whether the annuity is in the best interest of the consumer on behalf of the insurer. This delegated supervision cannot just be simply transactional and must incorporate all aspects of the supervision that the insurer would have incorporated. The insurer must monitor the entity's conduct, including audits, as appropriate, to ensure that the supervisory system the e1 m4fr (i2 (.).Hf