

## Draft Pending Adoption

Draft: 12/14/23

Life Insurance and Annuities (A) Committee  
Orlando, Florida  
December 3, 2023

The Life Insurance and Annuities (A) Committee met in Orlando, FL, Dec. 3, 2023. The following Committee members participated: Judith L. French, Chair (OH); Carter Lawrence, Vice Chair (TN); Mark Fowler (AL); Barbara D. Richardson (AZ); Karima M. Woods represented by Philip Barlow (DC); Doug Ommen (IA); Vicki Schmidt (KS); James J. Donelon (LA); Eric Dunning (NE); Scott Kipper (NV); Justin Zimmerman (NJ); Adrienne A. Harris represented by Bill Carmello (NY); Glen Mulready (OK); Scott A. White (VA); and Nathan Houdek (WI). Also participating was Rachel Hemphill (TX).

### 1. Adopted its Nov. 21 Meeting Minutes

Director French said the Committee met Nov. 21. During this meeting, the Committee took the following action: 1) adopted its Summer National Meeting minutes; 2) adopted the 2024 Generally Recognized Expense Table (GRET); 3) adopted the Life Actuarial (A) Task Force 2024 proposed charges; and 4) adopted its 2024 proposed charges.

Cabinet Executive Officer Richardson made a motion, seconded by Commissioner Lawrence, to adopt the Committee's Nov. 21 meeting minutes (Attachment One). The motion passed unanimously.

### 2. Adopted the Report of the Life Actuarial (A) Task Force

Hemphill gave the Life Actuarial (A) Task Force report. She said the Task Force met Nov. 29–30. She said there were a few items she wanted to highlight for the Committee. She said the Task Force, after discussion, re-exposed, with minor edits, an amendment proposal form (APF) to require companies to appropriately consider the volatility of equity or equity-like assets when performing asset adequacy testing.

Hemphill said the Task Force continued the work to develop a replacement generator of economic scenarios (GOES). She said the Task Force continued to discuss comments received on the GOES corporate model, acceptance criteria, and stylized facts. She said they received a presentation from NAIC staff on the results of a new calibration of the GOES and an update on the GOES project timeline.

Commissioner Donelon made a motion, seconded by Commissioner White, to adopt the report of the Life Actuarial (A) Task Force. The motion passed unanimously.

### 3. Heard a Federal Update on the Proposed Retirement Security Rule: Definition of an Investment Advice Fiduciary

Taylor Walker (NAIC) explained that on Oct. 31, the U.S. Department of Labor's (DOL) Employee Benefits Security Administration released its long-anticipated proposed retirement security rule, which updates the definition of an investment advice fiduciary under the Employee Retirement Income Security Act (ERISA). The DOL also released proposed amendments to existing prohibited transaction exemptions (PTEs) that permit investment advice fiduciaries from receiving compensation and engaging in certain transactions that would otherwise be prohibited, including PTE 2020-02, PTE 84-24, and PTEs 75-1, 77-4, 80-83, 83-1, and 86-128. She said the package of four proposals was published in the Federal Register on Nov. 3, with a 60-day comment period. She said comments are due by Jan. 2, 2024.

## Draft Pending Adoption

Walker explained that in anticipation of the rule, the White House issued a statement explaining its reasoning for the revised rule. The NAIC issued a press release in response to the White House statement, stating:

We fundamentally disagree with the White House's characterization of state consumer protections for annuity products. The White House press statement that oversight of these products 'varies state by state' and provides 'inadequate protections and misaligned incentives' suggests either ignorance of, or willful disregard for, the hard work of the 40 states and counting that have worked diligently to enhance protections for consumers by adopting the NAIC's *Suitability in Annuity Transactions Model Regulation* (#275).

Walker highlighted some key provisions of the revised rule: 1) one-time investment recommendations, including rollover recommendations, would be subject to a fiduciary standard; 2) nearly all recommendations of annuities to consumers would be seen as providing fiduciary investment advice under ERISA; 3) insurance agents, particularly independent insurance agents, would face increased compliance requirements; and 4) insurers issuing life insurance policies and annuities, particularly fixed indexed annuities, would face additional compliance requirements.

Walker explained that over the years, the DOL has made multiple attempts to expand investment advice fiduciary status. In 2016, under the Obama administration, the DOL adopted a fiduciary rule that was later struck down in federal court in 2018. She said the DOL purports that its new proposed definition of an investment advice fiduciary is more narrowly tailored than the 2016 rule. The proposed rule does not include 2016's Best Interest Contract Exemption (BICE). Instead, PTEs would be subject to a best-interest standard intended to parallel the U.S. Securities and Exchange Commission (SEC) standard.

Walker said that similar to the 2016 rule, in the new proposal, annuities receive outsized attention. She said the Biden administration is concerned that fixed indexed annuities may be inappropriately sold to participants and individual retirement account (IRA) owners. In its press release announcing the proposed rule, the DOL said that its "analysis of just one investment product—fixed index annuities—suggests that conflicted advice could cost savers up to \$5 billion per year for this product alone."

Walker said industry trade groups would like the proposed rule to be withdrawn. She said industry trade groups highlight research showing that a fiduciary rule would be harmful to consumers, particularly middle-income and Black and Hispanic savers, who increasingly rely on annuities and may not be able to afford the ongoing fees associated with fiduciaries. She said that on Nov. 8, 18 industry trade associations joined together in writing a letter to the DOL, requesting an extension of the 60-day comment period currently offered on the proposed rule and amendments to the PTEs. The DOL declined to extend the comment period.

Walker reminded the Committee that the NAIC membership approved revisions to Model #275 in February 2020, clarifying that all recommendations by agents and insurers must be in the best interest of the consumer and that agents and carriers may not place their financial interest ahead of the consumers' interest in making a recommendation. The revised model requires agents and carriers to act with "reasonable diligence, care and skill" in making recommendations. The revisions also include enhancements to the prior model's supervision system to assist in compliance. To date, 40 states have adopted the revisions to Model #275.

Commissioner Ommen said the NAIC should comment on the proposed rule. He said the premise for the proposed retirement security rule is based on incorrect information. He said the DOL's justifications for the rule reflect a fundamental misunderstanding of the revisions to Model #275, making it particularly important for the NAIC to comment.

## Draft Pending Adoption

Director French called on Marc Cadin (Finseca) to deliver brief comments on the proposed retirement security rule. Cadin explained that Finseca was created to reunify the financial advisor profession by merging four different nonprofits together with each representing different markets. He said that the Finseca board, which reflects Finseca's nearly 9,000 members, is the most diverse in the entire industry and has leaders from independent distribution, the top broker general agencies and independent marketing agencies, career agency general agents and managers, and the top advisors from across the industry.

Cadin said that Finseca's north star and unifying principle are based on independent research from Ernst and Young. He said it proves value to all consumers of holistic financial plans that include investments, annuities, and life insurance. He said that, unfortunately, the proposed retirement security rule will dramatically impede the financial security of the American people.

Cadin said the proposed rule is offensively framed and substantively bad, and its roll-out is misleading and insulting. He said that 1) state regulation is not inadequate; 2) commissions are not junk fees; and 3) investments and insurance, including annuities, are not the same. Rather, they serve complementary purposes for consumers. He said, beyond reducing access to advice for millions of Americans and reducing choices in the marketplace available to them, the proposed rule will make it much more difficult to get started in the financial security profession. He said the proposed rule will make it even more difficult to grow and diversify the profession necessary to close the retirement and protection gap.

Cadin said the standard set forth in Model #275 is strong and effective, and while not necessarily beloved by the profession, it is fair, and it advances consumer protection, preserves consumer choice, and encourages holistic financial plans that benefit consumers. He encouraged the NAIC to submit a comment letter in opposition to the proposed retirement security rule.

Roger Moore (National Association of Insurance and Financial Advisors—NAIFA) presented comments on the proposed rule. He said NAIFA, like the NAIC's response to the White House press release on the proposed rule, believes the proposed rule is unnecessarily burdensome, duplicative, and ultimately harmful to American families. He said the stated goals of the proposed rule are already being achieved by the SEC's Regulation Best Interest (Reg BI) and Model #275. Together, these regulations ensure that clients' best interests are served, and they also significantly enhance consumer protections.

Moore explained that NAIFA has long maintained that DOL's fiduciary-only model, both in its current form and in previous iterations, would disproportionately impact lower- and middle-income investors by reducing their access to individualized financial services. He said NAIFA recently began surveying its members across the country to assess the specific ramifications of the proposed rule. He said that almost three-quarters of survey respondents indicated that they do not have minimum asset thresholds for clients under the existing regulatory structure. However, when asked what would happen if the proposed rule is implemented as currently written, only about 30% of respondents said they would not have a minimum asset threshold. Under this scenario, individuals with fewer assets would be most affected. He said NAIFA believes the proposed rule would be detrimental to American families and strongly opposes it.

Jason Berkowitz (Insured Retirement Institute—IRI) shared comments on the proposed retirement security rule. He said the IRI agrees with the NAIC's response to the White House's press release, specifically that the White House's comments reflect either ignorance or willful disregard for the hard work of state insurance regulators across the country. He said the NAIC's open and inclusive process yielded a robust framework that imposes tough but fair and workable responsibilities on the industry to effectively protect consumers. He said the Annuity Suitability (A) Working Group, when drafting revisions to Model #275, listened to all the interested parties and made difficult decisions that reflected the best thinking of the country's top experts on insurance regulation. He said that the industry did not always get what it wanted, but that is part of an effective rulemaking process.

## Draft Pending Adoption

Berkowitz said that the proposed rule did not reflect that same effective rulemaking process, but the IRI will continue to advocate for workable rules that effectively protect consumers across the economic spectrum without making it harder for them to access the products and services they need to achieve their financial goals.

Berkowitz addressed three misconceptions about Model #275 that have been used to justify the DOL's attempt to interject itself into state annuity regulation. First, the assertion that Model #275 is deficient because it expressly does not impose a fiduciary standard, when this was done to avoid inadvertently holding producers to general fiduciary status under state law given the significant risks and burdens that come with such status. Second, the claim that Model #275 imposes no restrictions on compensation-related conflicts of interest is incorrect. While cash and non-cash compensation are excluded from the definition of material conflict, this was intended to make clear that compensation, in and of itself, is not a material conflict. The disclosure obligation requires that meaningful information about compensation is provided to consumers. Sales contests and similar programs tied to sales of particular products in a limited period of time are not allowed. Including compensation in the definition of conflicts would have changed nothing. This is a distinction without a difference. Lastly, some have said Model #275 only imposes a suitability standard because the top-line best interest language is not repeated in each of the four component obligations. However, restating the best interest standard in each component would create a circular definition, where acting in a client's best interest requires compliance with component obligations that require acting in a client's best interest. The NAIC wisely avoided this. Berkowitz encouraged the NAIC to submit comments to the DOL on the proposed rule and to specifically dispel these misconceptions about the model as part of the defense of the state-based system of insurance regulation.

Berkowitz highlighted a related issue involving the North American Securities Administrators Association's (NASAA) recently issued proposal to purportedly incorporate Reg BI into state securities law. He said the proposal goes far beyond Reg BI, providing a choose-your-own-adventure menu of eight substantive provisions based on NASAA's interpretation of SEC staff guidance. He said adopting states would be free to pick and choose from this menu, all but guaranteeing a lack of uniformity. He said that many of the options themselves are problematic. He said one option would establish a rebuttable presumption that non-cash compensation tied to production is an impermissible conflict of interest. This would seemingly prohibit insurers from offering health insurance and retirement benefits to captive insurance agents, which would have a devastating impact on the captive distribution channel. He said this proposal clearly reflects some very fundamental misunderstandings about annuities, how they are sold, and how they are already effectively regulated by the states.

Howard Bard (American Council of Life Insurers—ACLI) presented comments on the proposed retirement security rule. He said in 2024, the largest number of Americans in history will turn age 65. For the first time, the majority of Americans turning 65 do not have pensions. He said these Americans are self-funding their retirement through 401(k)s, other employer plans, and IRAs. He said millions without protected lifetime income stand the chance of running out of money. He said Social Security provides a safety net, but for many, it isn't enough to live a comfortable retirement. He said Americans need guidance on how to make sure they don't outlast their savings.

Bard said most Americans are not in a position financially to engage a fiduciary investment adviser due to the account minimums they impose and the ongoing fees they charge. He said retirees are increasingly relying on annuities for financial certainty and on the guidance and education provided by financial professionals selling annuities. He said one recent study estimated that reinstatement of the DOL's 2016 attempt at expanding fiduciary requirements would reduce the projected accumulated retirement savings of 2.7 million individuals with incomes below \$100,000 by approximately \$140 billion over 10 years. He said the DOL's third attempt at redefining fiduciary in the proposed rule is even more expansive than the last two efforts. He said it makes no distinction between providing investment advice and selling an insurance product and is totally inconsistent with the 2018 Federal Appeals court ruling striking down the DOL's prior rulemaking effort.

## Draft Pending Adoption

Bard said it expands the definition of investment advice fiduciary to all producers selling qualified annuities to ERISA plan and IRA investors. He said nearly all annuity recommendations will likely now meet this new definition. This means significant additional, unwarranted liability for those selling insurance products. He said like the DOL's last failed rulemaking, this new fiduciary-only approach would be harmful to consumers and would create a fiduciary barrier to annuities.

Bard said the DOL's assertion that it is "uniquely qualified" to regulate everyone making a recommendation to a retirement saver completely ignores the strong state and federal oversight regimes that regulate sales conduct. He said strong protections already exist for consumers and that it is state insurance regulators who are uniquely qualified to regulate the sale of annuities—not a federal agency. He said the proposed rule ignores the strong and effective leadership of the NAIC. He said state-based regulators across the country are already protecting consumers against conflicts of interest while protecting consumer access to retirement security options.

Bard said the NAIC's best interest revisions to Model #275 together with the SEC's Reg BI provide a robust regulatory framework and require that those making sale recommendations act in their customer's best interest. He said this renewed push by the DOL to change the rules for retirement savers is a mistake. He said the action to mandate a strict fiduciary-only regulation will cut off retirement options—despite the realities of the retirement savings gap—and build a barrier to financial inclusion. He said the ACLI will be urging the DOL to withdraw this harmful and unnecessary proposal.

Birny Birnbaum (Center for Economic Justice—CEJ) shared comments on the proposed retirement security rule. He said that there are consumer, investor advocates, and some members of the industry fully in support of the proposed rule. He said this includes CEJ, the 250 consumer organization members of the Consumer Federation of America (CFA), and others. He said it is particularly important that there are proposed consumer protections as consumers roll over their lifetime savings into guaranteed income products. Birnbaum said that if CEJ or CFA believed the rule would eliminate consumer access to retirement security products or financial advice, they would not be supporting the proposed rule. He said they don't believe this outcome will occur. He said if CEJ or CFA believed that the NAIC models and guidance provided adequate consumer protection, they would not be supporting the proposed rule. He said that CEJ and CFA don't believe such state-based measures provide adequate consumer protection. He said his presentation on financial literacy and illustrations today provides just one example.

#### 4. Heard a Presentation from the University of Georgia and CEJ on Consumer Financial Literacy and Life Insurance and Annuities Illustrations

Brenda J. Cude (University of Georgia) and Birnbaum gave a presentation on consumer financial literacy and life insurance and annuities illustrations. Birnbaum explained that he and Dr. Cude have extensive experience with life insurance and annuity consumer information, education, and disclosures, having each worked on these issues at the NAIC and elsewhere for over 25 years. He explained that as background for his presentation, he provided regulators with example illustrations for indexed life insurance and annuity products. He also provided in the public materials: 1) a study from the Australian Securities and Insurance Commission (ASIC) and the Dutch Authority for Financial Markets (AFM) regarding consumer protection and complex financial products titled, *Disclosure—Why it shouldn't be the Default*; 2) an article titled, *Life Products Review 375: Engineered Indices and Fixed Indexed Annuities* by Bobby Samuelson; and 3) Concepts for Consumer Testing of Re-engineered Illustrations from the CEJ.

Dr. Cude said that one of the purposes of this presentation is to anchor thinking about life insurance and annuity disclosures to reality. She started by defining "financial literacy." She said a basic definition states that financial literacy is what people think, know, and do about money. She said there are many more sophisticated definitions of financial literacy, but all consider knowledge, attitudes, and behaviors in relation to achieving life goals and

## Draft Pending Adoption

financial well-being. She said there are research studies that demonstrate measures of financial literacy related to retirement planning, investing, credit management, saving, and all kinds of positive behaviors that consumers should engage in. She said financial literacy not only supports these positive financial life goals but also makes people less vulnerable to fraud and deception.

Dr. Cude said the studies that have been done to determine who is financially literate conclude that most people are not. According to one measure, worldwide, only one in three consumers are financially literate. In the U.S, just 55% are financially literate. Dr. Cude explained that while financial literacy involves knowledge, attitudes, and behaviors, most of the measures of financial literacy are knowledge-based. Dr. Cude explained how financial knowledge is assessed. She said usually people are given multiple choice or true/false questions to assess their understanding of basic concepts, such as inflation, compound interest, and risk diversification. She explained that the questions are very basic, but only half of consumers can answer them correctly. She said there are more sophisticated knowledge measures, such as the Personal Finance Index (PFI) that has 28 questions. It covers more content areas and breaks down results by generations. With respect to understanding insurance, there is evidence of a greater understanding by baby boomers (50%) and the Silent Generation (55%) compared to Gen Z (26%) consumers, most likely because baby boomers and the Silent Generation have purchased insurance and learned through that experience. However, when it comes to comprehending risk, there is no difference between the generations: Gen Z—32%, baby boomers—36%, and the Silent Generation—36%. The understanding of risk does not improve with age and remains poor.

Dr. Cude discussed the primary reasons why people are not more financially literate. She said first, people are not effectively taught or taught when the information is relevant. She said another reason is that products are complex, and making decisions about products is complex. She said it is difficult to sort through misleading, deceptive, and irrelevant information. She another major reason is that cognitive biases lead people, even those who are financially literate, to make poor choices.

Dr. Cude said that disclosures cannot replace other market regulation. She said disclosures are only appropriate when the problem is information asymmetry, which is when the company has more information than the consumer. Evidence shows that disclosures may not improve consumer decision-making and can even backfire. She said one study showed that disclosures caused consumers to trust advisors more when there was no reason to do so. Another study showed that a disclosure designed to encourage consumers to pay more than the minimum on their credit cards had the opposite effect. Additionally, disclosures can place an unfair burden on consumers. Real-world testing and monitoring are necessary to ensure the success of disclosures.

Birnbaum said the Australian and Dutch financial services regulators' report, *Disclosure—Why it Shouldn't be the Default*, studied disclosures in their markets and found that:

Financial services disclosure has traditionally been assumed to inform us (as consumers), help us make 'good' financial decisions, and drive competition.

This report focuses on the real-world context in which disclosure operates. It shows that, and explains why, disclosure and warnings can be less effective than expected, or even ineffective, in influencing consumer behaviour. In some instances it shows that disclosure and warnings can backfire, contributing to consumer harm.

Birnbaum emphasized that disclosures can drive competition, which can be seen in life insurance and annuity product design. He said the main disclosure for these products is the illustration and the competition to illustrate the highest accumulation value drives the product design.

## Draft Pending Adoption

Birnbaum said retirement security is a tremendous challenge for consumers. First, many consumers have been unable to save for retirement because of limited incomes or catastrophic events depleting retirement savings. However, their focus is on consumers who have been able to save something for retirement in an IRA or 401(k). He said historically, to obtain retirement security, a worker had to work most of their lives to secure a pension—guaranteed income from their work life to complement social security and private savings. With the shift from defined benefit to defined contribution retirement plans by employers, consumers not only have to work most of their lives but must also become experts in investments to ensure they do not lose their retirement savings and to convert those savings into retirement income. This is challenging for many reasons, including the complexity of balancing current and future needs, assessing unknown future needs, identifying ways to meet goals, finding trusted professionals who can help, sorting through information and identifying what is marketing, and often without the security of an employer pension.

The dominant sales tool for life insurance and annuities products is illustrations, particularly for indexed products. He said the NAIC has two model regulations for these products: The *Life Insurance Illustration Model Regulation* (#582) and the *Annuity Disclosure Model Regulation* (#245). He said the stated purpose of Model #582 is to:

provide rules for life insurance policy illustrations that will protect consumers and foster consumer education. . . . The goals of this regulation are to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable. Insurers will, . . . define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed.

He said the stated purpose of Model #245 is to: “provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. . . . The goal of this regulation is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.”

Dr. Cude discussed financial literacy in relation to consumers using an illustration. She reiterated that consumers need knowledge, attitudes, and behaviors to be able to use a complicated product like an illustration. As far as having knowledge, she said that a large proportion of consumers in the United States are financially illiterate. She also said that many people are not comfortable when confronted with numbers. Illustrations also require document literacy—the ability to read a table and understand a graph. She explained that, as far as attitudes, people need to think it is important to plan for the future and that it is worth giving up time and money now for the future. She said as far as behaviors, people need to find a trusted advisor and consider how an annuity might fit into a long-term plan. She also said the volume of factual information that a person would need to be able to process and understand in order to choose an indexed annuity is truly voluminous and overwhelming.

Birnbaum said the sample illustrations that were provided to regulators failed to meet the stated goals of Model #245 and #582 or successfully address the issues of financial literacy. He outlined four barriers to financial literacy: 1) lack of relevant education and training; 2) complexity of products and decision making; 3) cognitive biases; and 4) misleading or deceptive information. He said Dr. Cude addressed consumer financial education and training. He addressed cognitive bias.

Birnbaum said that cognitive biases describe systematic errors in thinking that affect decisions and judgments. He said some examples include anchoring, attentional, availability, confirmation, and overconfidence biases. He said Howard Kunreuther studied behavioral biases in risk assessment, including myopia, amnesia, optimism, inertia, simplification, and herding. He said some cognitive biases make consumers particularly susceptible to unrealistic or deceptive illustrations.

## Draft Pending Adoption

Birnbaum quoted from the article titled *Life Products Review 375: Engineered Indices and Fixed Indexed Annuities*, by Bobby Samuelson:

FIA illustrations operate under the same basic illustration framework as Indexed UL. Both use a hypothetical historical lookback methodology that applies currently declared “interest crediting adjustments” to historical index return data.

He said the Samuelson article also says “The fundamental problem with this hypothetical lookback methodology is that it can be easily gamed because the data is already known. All you have to do is optimize an index or a crediting strategy to back-fit the data if you want to increase illustrated performance.”

Birnbaum said that if he looked back and selected the investments that performed the best over the past 10 years, he could create a fantastic historical return. He said if the engineered historical return would continue into the future, he would be making false and deceptive claims. Yet, he said that is what illustrations currently do. Birnbaum quoted Samuelson’s article:

Life insurers have become exceedingly adept at maximizing illustrated performance in their FIA products using engineered indices. There are now 165+ engineered indices in the market that permeate virtually every FIA product. . . the chief attraction for engineered indices is that they deliver the holy grail of indexed crediting – cheap options and high backtested performance. Put those things together and you get 100%+ participation rates and colossal illustrated performance. It’s the stuff sales people dream of. The combination of engineered indices, multi-year crediting strategies and fee-for-rate designs have pushed illustrated returns on FIAs into the stratosphere. There are around 550 accounts available in FIA products that illustrate more than 10%.

Birnbaum referenced a chart on page 3 of Samuelson’s article, showing an illustration of annual crediting rates of 14% to 33% for the majority of top fixed index annuity (FIA) writers. He said one of the illustration examples provided to regulators shows a \$100,000 premium grow to an \$877,000 index account value in 10 years, with compounded average annual returns of 24%.

Birnbaum said as high as those average returns are, the more insidious problem is what happens on the worst-10 side of the ledger. Engineered indices are optimized to deliver not just lights-out illustrated performance from the most recent 10-year period but also to maintain high returns in the worst-10 scenario. He said carriers, agents, and distributors play this up as a “can’t lose” sort of situation where the “worst-case” scenario is still double-digit returns. He said this is a fundamentally misleading characterization that, in his experience, seems to sometimes be a key part of the sales process.

Birnbaum referenced sample illustrations provided to regulators that show the “least favorable” or “low” projections. He said the least favorable outcome for the consumer is a 20% average annual return. He asked then, why are insurers selling insurance instead of simply making the investments they are illustrating? He asked why shareholders would put up with an insurer risking a measly 10% return on shareholder equity when an investment that produces a worst-case scenario of 20% average return for the next 50 years is available.

Birnbaum said these illustrations are plain vanilla in the sense they don’t display policy loans or premium financed insurance purchases. He said that one of the illustrations provided to regulators showed a \$100,000 premium grow to \$100 million in year 30 and \$800 million in year 40. He said illustrations based on borrowed money show that consumers can either borrow money to buy the policy or take out policy loans and repayment of the loans



## Draft Pending Adoption

will barely dent the millions in accumulation. He said this sounds like the promises of vanishing premium for universal life—promises which never materialized.

Birnbaum said the path forward is to reengineer illustrations regulations for a consistent approach for indexed annuities and life insurance by: 1) stopping the incentives for illustration/unrealistic accumulation competition; 2) eliminating hypothetical historical results and projections of non-guaranteed outcomes. He said these two actions will also eliminate insurance producers acting as financial planners without the training or qualifications to do so; and 3) improving the content and presentation. Use consumer testing to provide simplified information about product fees and performance, such as how frequently and by how much the insurer changes product features.

Dr. Cude said changes to illustrations should use a consumer decision-making design focus. She said that means including information that consumers want to know when they are buying an annuity. She said the current approach assumes that consumers want to focus on what is known versus what is unknown and probably unknowable. She said all the numbers in the illustration give the impression of more certainty, but that is probably misleading. She said a best practice would use iterative consumer testing in designing the illustration. The design would be a best effort, shown to consumers, and improved by the feedback, and then again shown to consumers and improved until it gets to a point where it is as close to perfect as can be expected.

Barlow said he looked at the illustrations provided and said they seem not plausible for somebody who has any level of financial literacy, and the fact that they are being used is problematic. He said these raise issues that the NAIC should try to address and asked whether Birnbaum or Dr. Cude had any suggestions for what the NAIC could do to address the problem.

Carmello asked Birnbaum if there were examples from other realms of financial product regulation that might be instructive to regulators while the issue is addressed. Birnbaum said the development of the SEC's recent disclosures for registered indexed annuities involved extensive consumer testing. He also said there is no other financial investment services product for which you can take historical returns and project them into the future. He said that is in fact prohibited and are told that past returns are not a guarantee of future returns.

### 5. Discussed Other Matters

Commissioner Ommen reiterated Berkowitz's concerns regarding NASAA's efforts to revise its model rules in light of the SEC's 2019 Reg BI. He expressed concern that the proposed revisions are heading beyond Reg BI and the revised Model #275. Commissioner Ommen encouraged the entire NAIC membership, not just departments that also regulate securities, to engage with the rule.

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

SharePoint/NAIC Support Staff Hub/Committees/A Committee/2023 Fall National Meeting/A\_Cmte minutes

*2024 Spring National Meeting  
Phoenix, Arizona*

**LIFE ACTUARIAL (A) TASK FORCE**

Thursday, March 14, 2024  
8:00 a.m. – 4:30 p.m.

Friday, March 15, 2024  
8:00 – 11:00 a.m.

**Meeting Summary Report**

The Life Actuarial (A) Task Force met March 14–15, 2024. During this meeting, the Task Force:

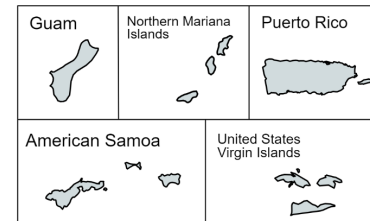
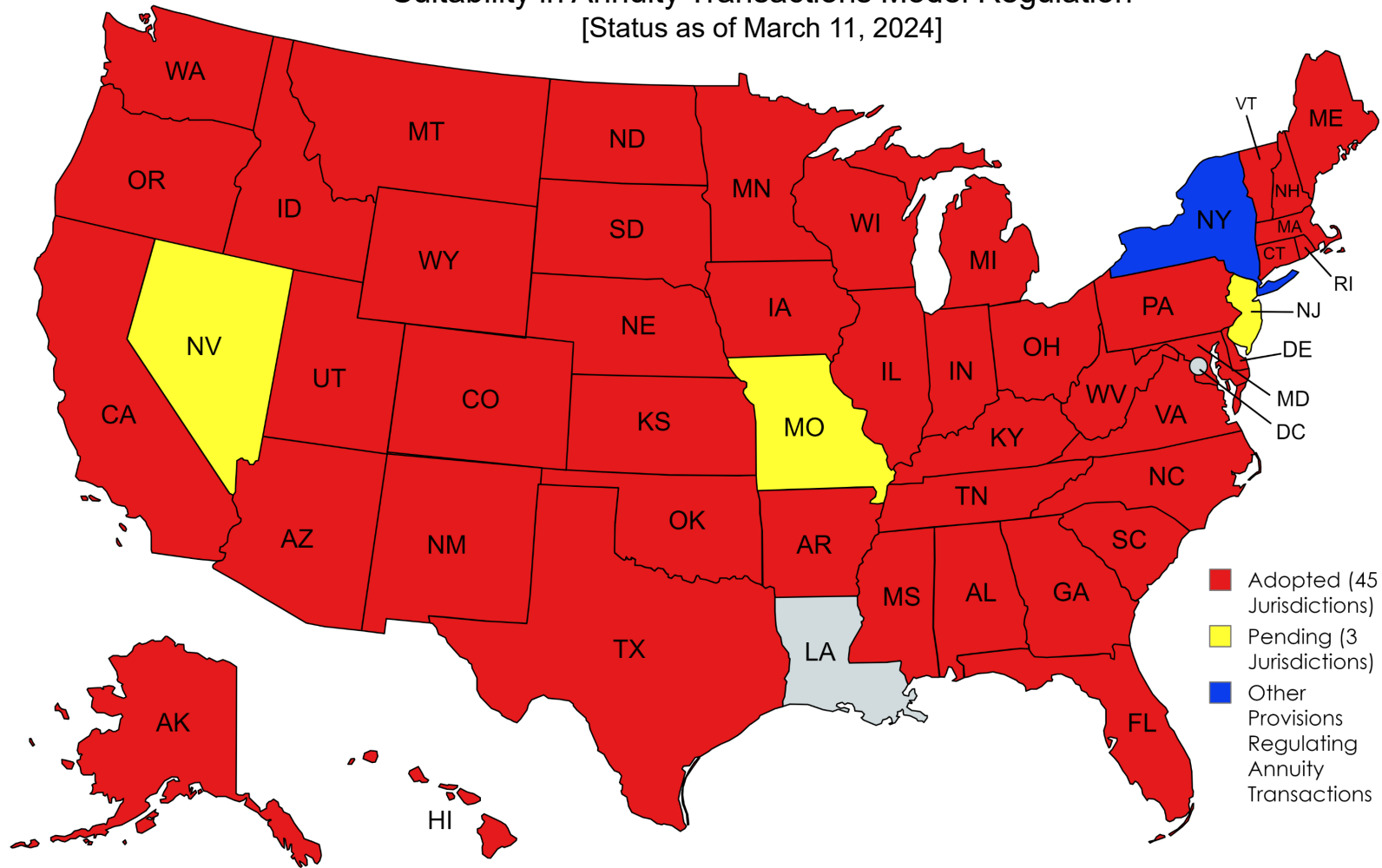
1. Adopted its Feb. 29, Feb. 15, Feb. 8, Feb. 1, and Jan. 25 minutes, which included the following action:
  - A. Adopted amendment proposal form (APF) 2023-12, which adds additional requirements on the reflection of equity return volatility in asset adequacy analysis.
  - B. Adopted APF 2024-02, which clarifies governance reporting requirements for Variable Annuity (VA) business in the Principle-Based Reserving (PBR) Actuarial Report.
  - C. Exposed APF 2024-01, which adds a definition for “qualified actuary” to the *Valuation Manual*.
  - D. Re-exposed APF 2023-13, which updates the *Valuation Manual* to allow for international mortality tables for relevant assumed business.
  - E. Adopted APF 2023-11, which removes references to risk-based capital (RBC) in the *Valuation Manual* that are inconsistent with the purpose, scope, and intended use of RBC.
  - F. Adopted its 2023 Fall National Meeting minutes.
2. Adopted the reports of the Longevity Risk (E/A) Subgroup and the Indexed Universal Life (IUL) Illustration (A) Subgroup.
3. Adopted the report of the Valuation Manual (VM)-22 (A) Subgroup, including its Feb. 28, 2024; Jan. 31, 2024; and Dec. 13, 2023, minutes. The Task Force also heard an update on the planned VM-22, Requirements for Principle-Based Reserves for Non-Variable Annuities, field test.
4. Adopted the report of the Experience Reporting (A) Subgroup and discussed comments received on a potential group annuity mortality experience data collection.
5. Adopted the report of the Variable Annuities Capital and Reserve (E/A) Subgroup and heard a presentation on the VM-21, Requirements for Principle-Based Reserves for Variable Annuities, standard projection amount (SPA) assumptions.
6. Discussed VM-20, Requirements for Principle-Based Reserves for Life Products, historical mortality improvement (HMI) and future mortality improvement (FMI) factors.
7. Adopted the report of the Generator of Economic Scenarios (GOES) (E/A) Subgroup, including its Feb. 21, 2024; Feb. 14, 2024; Feb. 7, 2024; Jan. 31, 2024; Jan. 24, 2024; Jan. 17, 2024; Jan. 10, 2024;



and Dec. 18, 2023, minutes. The Task Force also discussed comments received on the GOES acceptance criteria.

8. Discussed *Actuarial Guideline LIII—Application of the Valuation Manual for Testing the Adequacy of Life Insurer Reserves* (AG 53) reporting.
9. Heard a presentation on asset intensive reinsurance ceded offshore.
10. Discussed a proposal to require asset adequacy analysis for certain reinsurance.
11. Heard an update from the Society of Actuaries (SOA) on research and education.
12. Heard an update from the American Academy of Actuaries (Academy) Council on Professionalism and Education.
13. Re-exposed APF 2024-01 for a 21-day public comment period ending April 8.
14. Heard an update from the Academy Life Practice Council.
15. Re-exposed APF 2023-13 for a 21-day public comment period ending April 8.
16. Reported that the Task Force met March 11 and Feb. 26 in regulator-to-regulator session, pursuant to paragraph 8 (consideration of strategic planning issues) of the NAIC’s Policy Statement on Open Meetings. No action was taken during these sessions.
17. Discussed a reference correction to VM-01, Definitions for Terms in Requirements.
18. Discussed whether and to what extent variation of practice should be allowed according to the *Valuation Manual*.

# Implementation of 2020 Revisions to Model #275 Suitability in Annuity Transactions Model Regulation [Status as of March 11, 2024]



Created with [mapchart.net](https://mapchart.net)

Disclaimer: This map represents state action or pending state action regarding NAIC amendments to the model(s). This map does not reflect a determination as to whether the pending or enacted legislation contains all elements of NAIC amendments to the model(s) or whether a state meets any applicable accreditation standards.