

Date: 7/06/23

Virtual Meeting

MARKET CONDUCT EXAMINATION GUIDELINES (D) WORKING GROUP

Tuesday, July 18, 2023

12:00 – 1:00 p.m. ET / 11:00 a.m. – 12:00 p.m. CT / 10:00 – 11:00 a.m. MT / 9:00 – 10:00 a.m. PT

ROLL CALL

Matthew Tarpley, Chair	Texas	Ralph Boeckman	New Jersey
Erica Weyhenmeyer, Vice Chair	Illinois	Leatrice Geckler	New Mexico
Maria Ailor	Arizona	Sylvia Lawson	New York
Crystal Phelps/Teri Ann Mecca	Arkansas	Teresa Knowles	North Carolina
Nick Gill	Connecticut	Todd Oberholtzer	Ohio
Frank Pyle	Delaware	Landon Hubbart	Oklahoma
Sharon Shipp	District of Columbia	Tashia Sizemore	Oregon
Elizabeth Nunes/ Paula Shamburger	Georgia	Gary Jones/ Paul Townsen	Pennsylvania
Doug Ommen	Iowa	Matt Gendron/ Brett Bache	Rhode Island
Ron Kreiter	Kentucky	Karla Nuissl	Vermont
Mary Lou Moran	Massachusetts	Julie Fairbanks	Virginia
Jeff Hayden	Michigan	Jeanette Plitt	Washington
Paul Hanson	Minnesota	Desiree Mauller	West Virginia
Win Nickens/Jo LeDuc	Missouri	Rebecca Rebholz/ Darcy Paskey	Wisconsin
Peggy Willard-Ross/ Hermoliva Abejar	Nevada		
Maureen Belanger/ Ellen Walsh	New Hampshire		

NAIC Support Staff: Petra Wallace/Lois E. Alexander

AGENDA

1. Consider Adoption of its March 28 Minutes—*Matthew Tarpley (TX)* Attachment 1
2. Consider Adoption of Revisions to Chapter 23—Conducting the Life and Annuity Examination of the *Market Regulation Handbook*—*Matthew Tarpley (TX)* Attachment 2
 - MO July 6 Comments
 - IRI July 6 Comments
3. Consider Adoption of Revisions to Chapter 4—Collaborative Actions of the *Market Regulation Handbook*—*Matthew Tarpley (TX)* Attachment 3
 - MO July 6 Comments



4. Discuss Any Other Matters Brought Before the Working Group—*Matthew Tarpley (TX)*
5. Adjournment

Draft: 4/11/23

Market Conduct Examination Guidelines (D) Working Group
Virtual Meeting
March 28, 2023

The Market Conduct Examination Guidelines (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met March 28, 2023. The following Working Group members participated: Matthew Tarpley, Chair (TX); Erica Weyhenmeyer, Vice Chair, and Patrick Tallman (IL); Chris Erwin and Teri Ann Mecca (AR); Tolanda Coker (AZ); Nick Gill (CT); Pratima Lele and Cheryl Wade (DC); Susan Jennette and Frank Pyle (DE); Simone Edmonson, Paula Shamburger, and Tia Taylor (GA); Paula Wallin (IA); Ron Kreiter (KY); Mary Lou Moran (MA); Airic Boyce and Jeff Hayden (MI); Teresa Kroll, Jo LeDuc, and Win Nickens (MO); Tracy Biehn and Teresa Knowles (NC); Maureen Belanger and Ellen Walsh (NH); Ralph Boeckman and Erin Porter (NJ); Leatrice Geckler and Myra L. Morris (NM); Rodney Beetch (OH); Landon Hubbard and Shelly Scott (OK); Sandra Emanuel, Brian Fordham, and Tashia Sizemore (OR); Paul Towsen (PA); Brett Bache, Segun Daramola, and Brian Werbeloff (RI); Julie Fairbanks and Bryan Wachter (VA); Isabelle Turpin Keiser and Karla Nuisl (VT); Jeanette Plitt (WA); and Barbara Belling, Diane Dambach, Darcy Paskey, Mark Prodoehl, Rebecca Rebholz, and Jody Ullman (WI).

1. Heard Opening Remarks

Tarpley extended a welcome to all returning Working Group members and to new members, Gill and Walsh, representing Connecticut and New Hampshire. Tarpley said the Working Group will meet approximately every four to six weeks, and it does not meet at national meetings or in lieu of national meetings.

2. Discussed its 2023 Working Group Adopted Charges

Tarpley said the Working Group charges are on its web page. He mentioned that there was one change from its 2022 charges. Charge #4 to, “Develop market conduct procedural guidance ...” was changed to, “Discuss the development of market conduct procedural guidance” Tarpley said charges #1–3 to develop examination standards, monitor NAIC models, and develop standardized data requests (SDRs) are related to the carry-over items; i.e., exposure drafts from 2022. Regarding charge #5 to, “Coordinate with the Innovation, Cybersecurity, and Technology (H) Committee ... ,” he and Weyhenmeyer are monitoring the initiatives of the Innovation, Cybersecurity, and Technology (H) Committee to ascertain if guidance in the *Market Regulation Handbook* (Handbook) will be affected. He said he would like to focus on the 2022 carry-over items before working on new material and Working Group charges #4 to, “Discuss the development of uniform market conduct procedural guidance ... ,” charge #6 to, “Discuss the effectiveness of group supervision of market conduct risks ... ,” and charge #7 to, “Discuss the role of market conduct examiners in reviewing insurers’ corporate governance”

Tarpley said he and Weyhenmeyer are monitoring the activity of the Accelerated Underwriting (A) Working Group, which is considering making a referral to the Market Conduct Examination Guidelines (D) Working Group pertaining to the addition of state insurance regulator guidance to the Handbook regarding the use of artificial intelligence (AI) for life insurance underwriting. Birny Birnbaum (Center for Economic Justice—CEJ) said he placed a related link about AI into the chat of the meeting regarding a vendor that purports to use behavioral data in a database of over 250 million individuals for risk assessment for health insurance and homeowners insurance. He said the vendor claims that by using this data, its customers can have a better understanding of the stratification of risk for their book of business, underwriting, pricing, and claims settlement.

Tarpley said he welcomed the Working Group’s input regarding other lines of business and/or subject areas that could potentially be addressed in the Handbook. He said the Market Actions (D) Working Group identified

additional information regarding regulatory settlement agreements that can be added to the corresponding chapter in the Handbook. Tarpley said he will add this as a topic in a future Working Group meeting.

3. Discussed Carry-Over Items from 2022

Tarpley said carry-over items from 2022 include: 1) a travel in-force policy SDR; 2) a travel claims SDR; and 3) revisions to Chapter 23—Conducting the Life and Annuity Examination of the Handbook related to the best interest provisions of the *Suitability in Annuity Transactions Model Regulation* (#275). He said the two travel SDRs were first discussed at the Working Group’s Sept. 8, 2022, meeting, and there was discussion at its Oct. 20, 2022, meeting about the SDRs, as well. He said he is asking the subject matter experts (SMEs) that developed the initial SDR exposure drafts to reconvene to consider the comments received in 2022 from Missouri, Virginia, and the CEJ and revise the SDRs, as they deem appropriate. He said the revised exposure drafts will then proceed to the Working Group for a new exposure period. After the exposure period concludes, if additional comments are received, additional revisions may be made at that time, after which, the Working Group may consider the SDRs for adoption.

Tarpley said since the Working Group received numerous comments on the draft Chapter 23 of the Handbook in 2022, he has asked the SMEs that developed the initial draft Chapter 23 to revise the chapter, as they deem appropriate, considering the comments the Working Group received in 2022. He said the revised exposure draft will then proceed to the Working Group for a new exposure period for the Working Group’s review and further consideration.

Birnbaum said the issue raised in the comments received by the Working Group in 2022 about the Chapter 23 exposure draft was regarding the safe harbor provisions of Model #275, what they signify, and how they should be implemented. He said the Annuity Suitability (A) Working Group was working in 2022 on a frequently asked questions (FAQ) document that was also tied to this same issue; i.e., safe harbor enforcement, supervision, etc. He said the Annuity Suitability (A) Working Group’s work on the FAQ document has ceased due to the comments it has received from interested parties—that Working Group has not met since 2022.

Tarpley discussed the importance of coordination with the Annuity Suitability (A) Working Group regarding this issue. He said he will ask the SMEs to discuss the safe harbor issue, as it affects the draft revisions to Chapter 23, and identify a way of moving forward on the exposure draft, perhaps by carving out content that is applicable to the safe harbor and adding it in later when those issues are resolved.

4. Discussed Other Matters

Tarpley said a notice of the day and time of the next Market Conduct Examination Guidelines (D) Working Group meeting will be sent as soon as it is available.

Having no further business, the Market Conduct Examination Guidelines (D) Working Group adjourned.

Revisions made since the previous draft dated 8/22/22 are shown in blue highlight. The revisions are on pages 30 and 34

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Chapter 23—Conducting the Life and Annuity Examination

IMPORTANT NOTE:

The standards set forth in this chapter are based on established procedures and/or NAIC models, not on the laws and regulations of any specific jurisdiction. This handbook is a guide to assist examiners in the examination process. Since it is based on NAIC models, use of the handbook should be adapted to reflect each state's own laws and regulations with appropriate consideration for any bulletins, audit procedures, examination scope and the priorities of examination. Further important information on this and how to use this handbook is included in the Foreword section of the handbook.

This chapter provides a format for conducting life insurance and annuity company examinations. Procedures for conducting property/casualty insurance company examinations and other types of specialized examinations—such as managed care organizations, third-party administrators and surplus lines brokers—may be found in separate chapters.

The examination of life insurance/annuity operations may involve any review of one or a combination of the following business areas:

- A. Operations/Management
- B. Complaint Handling
- C. Marketing and Sales (Several specialized Supplemental Checklists are available in Sections H–N of this chapter)
- D. Producer Licensing
- E. Policyholder Service
- F. Underwriting and Rating
- G. Claims (~~Several specialized checklists are available in Sections H–J of this chapter~~)
- H. Supplemental Checklist for Marketing and Sales Standard #1
- I. Supplemental Checklist for Marketing and Sales Standard #4
- J. Supplemental Checklist for Marketing and Sales Standard #8
- K. Supplemental Checklist for Marketing and Sales Standard #10
- L. Supplemental Checklist for Marketing and Sales Standard #12
- M. Supplemental Checklist for Marketing and Sales Standard #16
- N. Supplemental Checklist for Marketing and Sales Standard #17

When conducting an examination that reviews these areas, there are essential tests that should be completed. The tests are applied to determine if the company is meeting standards. Some standards may not be applicable to all jurisdictions. The standards may suggest other areas of review that may be appropriate on an individual state basis.

When an examination involves a depository institution or their affiliates, the bank may also be regulated by federal agencies such as the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board, the Office of Thrift Supervision (OTS) or the Federal Deposit Insurance Corporation (FDIC). Many states have executed an agreement to share complaint information with one or more of these federal agencies. If the examination results find adverse trends or a pattern of activities that may be of concern to a federal agency and there is an agreement to share information, it may be appropriate to notify the agency of the examination findings.

IIPRC-Approved Products

When conducting an exam that includes products approved by the Interstate Insurance Product Regulation Commission (Compact) on behalf of a compacting state, it is important to keep in mind that the uniform standards—and not state-specific statutes, rules and regulations—are applicable to the content and approval of the product. The Compact website is www.insurancecompact.org and the uniform standards are located on its rulemaking record. Compacting states have access through the NAIC System for Electronic Rates and Forms

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A. Operations/Management

Use the standards for this business area that are listed in Chapter 20—General Examination Standards and the standards set forth below.

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STANDARDS

OPERATIONS/MANAGEMENT

Standard 1

The regulated entity files all certifications with the insurance department, as required by statutes, rules and regulations.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Insurance department records of certifications made by the regulated entity

Others Reviewed

NAIC Model References

Advertisements of Life Insurance and Annuities Model Regulation (#570)

Life Insurance Illustrations Model Regulation (#582) and Actuarial Guideline XLIX—The Application of the Life Illustrations Model Regulation to Policies with Index-Based Interest (AG 49)

Review Procedures and Criteria

The illustration actuary should file a certification with the insurance department annually for all policies for which illustrations are used (Model #582, Section 11). For indexed universal life (IUL) illustrations, AG 49 expands upon and supersedes the illustration requirements in Model #582.

A responsible officer of the insurer, other than the illustration actuary, should certify annually that the illustration formats meet all applicable requirements and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary. In addition, the officer must certify that the regulated entity has provided its producers with information about the expense allocation method used and disclosed by the regulated entity in its illustrations (Model #582, Section 11).

Note: The annual certifications should be provided each year by a date determined by the insurer.

Each insurer should file with its annual statement a certificate of compliance executed by an authorized officer stating that the advertisements which were disseminated by or on behalf of the insurer during the statement year complied, or were made to comply, in all respects with the rules governing the advertising of life insurance (Model #570, Section 9C).

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B. Complaint Handling

Use the standards for this business area that are listed in Chapter 20—General Examination Standards.

C. Marketing and Sales

1. Purpose

The marketing and sales portion of the examination is designed to evaluate the representations made by the company about its product(s). It is not typically based on sampling techniques, but it can be. The areas to be considered in this kind of review include all written and verbal advertising and sales materials.

2. Techniques

This area of review should include all advertising and sales material and all producer sales training materials to determine compliance with statutes, rules and regulations. Information from other jurisdictions may be reviewed, if appropriate. The examiner may contact policyholders, producers and others to verify the accuracy of information provided or to obtain additional information.

As with all of its advertising, regardless of the medium, every insurance company is required to have procedures in place to establish and at all times maintain a system of control over the content, form and method of dissemination of all of its advertisements. All of these advertisements maintained by or for and authorized by the insurer are the responsibility of the insurer.

The exact same regulations and statutes (such as the *Unfair Trade Practices Act* (#880)) that apply to conventional advertising also apply to Internet advertising. Bearing that in mind, when the examiner is reviewing a company's Internet advertisements, it is important to also review the safeguards implemented by the company.

All advertisements are required to be truthful and not misleading in fact or by implication. The form and content of an advertisement of a policy shall be sufficiently clear so as to avoid deception. The advertisement shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined upon reviewing the overall impression that the advertisement reasonably may be expected to create upon a person of average education or intelligence within the segment of the public to which the advertisement is directed.

There may be special requirements for applicants age 60 or older. The examiner should refer to statutes, rules and regulations to determine what requirements apply.

In addition to reviewing advertising, examiners should be aware that several NAIC models impose additional duties on regulated entities which go beyond the delivery of accurate information to consumers. If an insurance product is involved and a regulated entity, producer or a registered representative makes a recommendation regarding that insurance product, both insurance suitability laws and insurance replacement laws may apply to the transaction. A person who is advising a consumer about an insurance product, even if it is to replace it with a non-insurance product, must hold an insurance license. An insurance producer who does not hold a license as a registered representative should not give advice or recommendations about securities products.

The *Life Insurance and Annuities Replacement Model Regulation* (#613) was thoroughly updated and expanded in 1998. The new model applies to annuities and life insurance products and requires delivery of certain notices if the proposed purchaser has any existing life insurance or annuity products. Under the new model, insurers are required to have systems in place to monitor compliance with replacement

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Historically, replacement ratios were quite low. This was due in part to the fact that the definition of a replacement under the “old” *Life Insurance and Annuities Replacement Model Regulation* (#613) only applied to life insurance products and external replacements. Under the prior model, either the producer or the insurer made a decision as to whether the transaction involved a “replacement.”

The new model covers internal and external replacement and, if any funds for the new product come from an existing product, the transaction is a replacement and must be reported as such. There are several limited exceptions. Another factor in the increase in replacement activity is the tendency of consumers to move funds between investment and insurance products when the stock market fluctuates. In such transactions, an analysis should be performed to determine whether the insurer has systems in place to supervise its producers. Regulators should review transactions involving the sale or replacement of variable products involving the insurer and its products to verify that a system is in place to confirm that its producers are properly licensed. In the context of the examination, an examiner or analyst is only responsible for reviewing the conduct of insurance producers and conduct which requires an insurance producer license.

~~The *Suitability in Annuity Transactions Model Regulation* (#275) was adopted in 2006. Previously, this model was known as the *Senior Protection in Annuity Transactions Model Regulation*. The 2006 amendments to the previous model removed all references to “senior.” The model has been adopted in some states in various forms. Model #275 was revised in 2010 to include new provisions regarding insurer supervision and monitoring of annuity recommendations and continuing education and training requirements for producers. While the previous version of the model imposed a duty on insurers and producers, or the entities they subcontract with, the revised model places the responsibility of supervision and monitoring on the insurer. The language of the revised model provides that an insurer's issuance of an annuity shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued. The model was also updated to include a revised definition of annuity, a definition of “replacement” and provisions expanding the scope of the model to include replacement of annuity products.~~

~~The *Suitability in Annuity Transactions Model Regulation* (#275) was adopted in 2020. But it was initially adopted in 2006, and revised in 2010, and was a successor to the *Senior Protection in Annuity Transactions Model Regulation*. The 2006 amendments to the previous model removed all references to seniors among other improvements. Variations of the 2020 model have been adopted in some jurisdictions. Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) specifically refers to this model regulation as the “*Suitability in Annuity Transactions Model Regulation*.” Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This model also specifically identifies annuities which are exempt. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation. Examiners should reference their own jurisdiction's versions and adjust review standards accordingly.~~

~~The 2020 version of Model #275 requires producers to act in the best interest of consumers when making a sale or recommendation of an annuity and requires insurers to maintain a system of supervision, and the model lays out specific steps that are required to meet that best interest standard. Provisions of the model set forth duties for insurers and producers and indicate insurers are responsible for compliance with the regulation. The model also indicates the commissioner may order corrective action be taken by the insurer, producer, general agency, contracting agency or independent agency. Because of the different~~

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types of requirements, review standards are designed separately for examination of insurers and producers.

Licenses are required to maintain, or be able to make available to the commissioner, records of the information required in Model #275 that are collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures and other information used in making the recommendations that were the basis for insurance transactions for state-specific numbers of 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 a producer. Records required to be maintained by this regulation may be maintained in paper, photographic, micro-process, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

Market regulators should also be aware that sales of products, such as fixed-index annuities (formerly referred to as equity-indexed annuities) and index life insurance products (such as universal index life insurance) continue to increase. These products typically include features that require an understanding of bonuses, guaranteed elements and an array of interest-crediting methods. In some cases, existing NAIC model laws and regulations may not give specific guidance on all aspects of all products. In such instances, examiners may rely on general principles found in Model #880, the *Life Insurance Disclosure Model Regulation* (#580) and the *Annuity Disclosure Model Regulation* (#245).

Model #582 sets out a variety of requirements to prevent insurers from using misleading illustrations in the sale of life insurance. AG 49, originally adopted by the NAIC in 2015, expands upon and supersedes some of the illustration requirements of Model #582. It provides guidance and limitations for indexed universal life (IUL) illustrations. In simple terms, Section 4 and Section 5 of AG 49 set maximum crediting rates for illustrations. Section 6 addresses illustrations of policy loans, and Section 7 requires illustrations beyond those required in Model #582. The implementation of AG 49 was phased as follows:

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

Testing the compliance of illustrations with Model #582 and AG 49 will be complex, and the examiner will likely seek assistance from an actuary familiar with and capable of testing compliance with Model #582 and AG 49. In such cases, the examiner should work with the actuary to determine the appropriate information to request from the insurer necessary to enable the actuary and examiner in testing the compliance of the illustrations.

Evaluation of compliance with annuity suitability may best be accomplished through a process and procedure review coupled with sampling. The process and procedure portion of the review is a good example of a function where states may wish to coordinate their reviews and share responsibilities. A continuum approach, such as use of a desk audit, may also be appropriate. Sampling enables examiners to evaluate whether the established processes have been clearly communicated and implemented rather than to function as a means to “second-guess” each individual suitability determination. Company programs for reviewing suitability may vary widely and should not be considered a “once-size-fits-all” approach. Annuity products can be designed or tailored to serve a wide variety of clientele and customer objectives.

Some insurers may outsource the administration of their suitability review, while maintaining ultimate responsibility for the outcomes. It may be instructive for examiners to become familiar with the structure and practices of commonly used services that perform suitability reviews. Examiners may also want to become familiar with vendor-owned services commonly used by insurers to document their suitability reviews.

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The NAIC *Stranger-Originated Annuity Transactions Sample Bulletin* was adopted by the NAIC in October 2011. The bulletin was developed to address stranger-originated annuity transactions (STOA). Similar to stranger-originated life insurance transactions (STOLI), STOA transactions provide annuity contracts for the benefit of investors.

In STOAs, insurance producers and/or investors offer an individual, who is usually a “stranger” to the producer and/or investor, a nominal fee for the use of the individual’s identity as the annuitant in an investment-oriented annuity.

Typically, individuals targeted to serve as annuitants are in extremely poor health and are not expected to live beyond the first year of the policy. In order to find individuals who meet the aforementioned criteria, producers and/or investors have been known to take out advertisements in papers as well as solicit individuals residing in nursing homes or hospice facilities.

Once an individual has agreed to the set of conditions posed, the producer will complete the annuity application, ensuring that particular riders, such as a bonus rider or a guaranteed minimum death benefit, are in place to maximize the rate of return for those financing the transaction. Depending on the number of companies the producer represents and the commission policies in effect, the producer may seek to use multiple policies from various companies.

To avoid added scrutiny of the policy or detection of the scheme, producers and/or investors involved in STOAs will often take precautions to ensure that the dollar amount of the annuity falls below specific underwriting guidelines, while other annuities above these dollar amounts are subject to more stringent underwriting. After the annuity is issued, then the investor will significantly increase their investment in the annuity. A trust or an organization may additionally be named as beneficiary of the annuity in order to hide the true identity of those who will benefit from the annuitant’s death.

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As the financial implications of STOA transactions could be detrimental to both companies and consumers, the adopted bulletin recommends that insurance companies take certain actions to mitigate their exposure to STOA transactions, which are outlined in the NAIC *Stranger-Originated Annuity Transactions Sample Bulletin*.

It is appropriate for the examiner to remind annuity insurers of this bulletin and to ask if the insurer has considered this bulletin when implementing compliance and/or enterprise risk management procedures.

3. Tests and Standards

The marketing and sales review includes, but is not limited to, the following standards addressing various aspects of the marketing and sales function. The sequence of the standards listed here does not indicate priority of the standard.

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STANDARDS

MARKETING AND SALES

Standard 1

All advertising and sales materials are in compliance with applicable statutes, rules and regulations.

Apply to: All life and annuity products

Priority: Essential

Documents to be Reviewed

- _____ Applicable statutes, rules and regulations
- _____ All company advertising and sales materials, including radio and audiovisual items, such as television commercials, telemarketing scripts and pictorial materials
- _____ Policy forms, including any required buyers' guides as they coincide with advertising and sales materials
- _____ Producers' own advertising and sales materials
- _____ All documents related to the development of crediting rates used in illustrations

Others Reviewed

- _____
- _____

NAIC Model References

- Advertisements of Life Insurance and Annuities Model Regulation* (#570), Section 3B
- Risk-Based Capital (RBC) for Insurers Model Act* (#312), Section 8B
- Modified Guaranteed Annuity Model Regulation* (#255), Section 4B
- Life Insurance Disclosure Model Regulation* (#580), Section 8C
- Unfair Trade Practices Act* (#880)
- Annuity Disclosure Model Regulation* (#245), Section 6 plus appendix
- Long-Term Care Insurance Model Act* (#640)
- Life Insurance Illustrations Model Regulation* (#582) and *Actuarial Guideline XLIX—The Application of the Life Illustrations Model Regulation to Policies with Index Based Interest* (AG 49)
- ~~*Disclosure for Small Face Amount Life Insurance Policies Model Act* (#605)~~
- ~~*Suitability in Annuity Transactions Model Regulation* (#275)~~
- ~~*Suitability of Sales of Life Insurance and Annuities White Paper*~~
- Military Sales Practices Model Regulation* (#568)

Review Procedures and Criteria

Evaluate the company's system for controlling advertisements. Every insurer should have and maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. All advertisements—regardless of by whom written, created, designed or presented—are the responsibility of the insurer.

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Ensure the company maintains, at its home or principal office, a complete file containing a specimen copy of every printed, published or prepared advertisement of its individual policies and specimen copies of typical printed, published or prepared advertisements of its blanket, franchise and group policies. There should be a notation indicating the manner and extent of distribution and the form number of every policy advertised. All advertisements should be maintained in the file for a period of either 4 years or until the filing of the next regular report on examination of the company, whichever is the longer period of time.

Review advertising materials in conjunction with the appropriate policy form.

Materials should not:

- Misrepresent policy benefits, advantages or conditions by failing to disclose limitations, exclusions or reductions, or use terms or expressions that are misleading or ambiguous;
- Make unfair or incomplete comparisons with other policies;
- Make false, deceptive or misleading statements or representations with respect to any person, company or organization in the conduct of insurance business;
- Offer unlawful rebates;
- Use terminology that would lead a prospective buyer to believe that he/she is purchasing an investment or savings plan. Problematic terminology may include such terms as: investment, investment plan, founder's plan, charter plan, deposit, expansion plan, profit, profits, profit sharing, interest plan, savings or savings plan;
- Omit material information or use words, phrases, statements, references or illustrations, if such omission or such use has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable, or state or federal tax consequences;
- Use terms such as "non-medical" or "no medical examination required" if the issue is not guaranteed, unless the terms are accompanied by a further disclosure of equal prominence and juxtaposition that issuance of the policy may depend on the answers to the health questions set forth in the application;
- State that a purchaser of a policy will share in or receive a stated percentage or portion of the earnings on the general account assets of the company;
- State or imply that the policy or combination of policies is an introductory, initial or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless that is the fact. Enrollment periods may not be described as terms such as "special" or "limited" when the insurer uses successive enrollment periods as its usual method of marketing its policies;
- State or imply that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised, because of special advantages available in the policy;
- Offer a policy that utilizes a reduced initial premium rate in a manner that overemphasizes the availability and the amount of the reduced initial premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, all references to the reduced initial premium should be followed by an asterisk or other appropriate symbol which refers the reader to that specific portion of the advertisement which contains the full rate schedule for the policy being advertised;
- Imply licensing beyond limits, if an advertisement is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed;
- Exaggerate the fact, suggest or imply that competing insurers or insurance producers may not be licensed, if the advertisement states that an insurer or insurance producer is licensed in the state where the advertisement appears;
- Create the impression that the insurer, its financial condition or status, the payment of its claims or the merits, desirability or advisability of its policy forms or kinds of plans of insurance are recommended or endorsed by any governmental entity. However, where a governmental entity has recommended or

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endorsed a policy form or plan, that fact may be stated, if the entity authorizes its recommendation or endorsement to be used in an advertisement;

- State or imply that prospective insureds are or become members of a special class, group or quasi-group and enjoy special rates, dividends or underwriting privileges, unless that is a fact;
- Contain an assertion, representation or statement with regard to the risk-based capital levels of any insurer or of any component derived in the calculation;
- Use the existence of the insurance guaranty association for the purpose of sales, solicitation or inducement to purchase any form of insurance covered by the association;
- Misrepresent the dividends or share of the surplus to be received on any policy;
- Make a false or misleading statement as to the dividends or share of surplus previously paid on a policy;
- Misrepresent any policy as being shares of stock; and
- Illustrations of benefits payable under any modified guaranteed life insurance²⁸ shall not include projections of past investment experience. Hypothetical assumed interest credits may only be used if it is made clear that such are hypothetical only.

Materials should:

- Clearly disclose name and address of insurer;
- If using a trade name, disclose the name of the insurer, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol or other device or reference, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer, or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a policy;
- Prominently describe the type of policy being advertised;
- Indicate that the product being marketed is insurance;
- Comply with applicable statutes, rules and regulations;
- Cite the source of statistics used;
- Identify the policy form that is being advertised, where appropriate;
- Clearly define the scope and extent of a recommendation by any commercial rating system;
- Only include testimonials, appraisals or analysis if they are genuine, represent the current opinion of the author, are applicable to a policy advertised and accurately reproduced to avoid misleading or deceiving prospective insureds. Any financial interest by the person making the testimonial in the insurer or related entity must be prominently disclosed;
- Only state or imply endorsement by a group of individuals, society, association, etc., if it is a fact, and any proprietary relationship or payment for the testimonial must be disclosed; and
- The sales material for any modified guaranteed life insurance must clearly illustrate there can be both upward and downward adjustments to nonforfeiture benefits, due to the application of the market value adjustment formula.

Determine if the company approves producer sales materials and advertising. Determine if advertisements or lead-generating calls falsely project the image that they were sent by a government agency.

Determine if the advertising and solicitation materials mislead consumers relative to the producer's capacity as a life insurance agent. Improper terms may include financial planner, investment advisor, financial consultant or financial counseling, if they imply the producer is primarily engaged in an advisory business in which compensation is unrelated to sales, if such is not the case.

²⁸ "Modified Guaranteed Life Insurance Policy" means an individual policy of life insurance, the underlying assets of which are held in a separate account, and the values of which are guaranteed if held for specified periods. It contains nonforfeiture values that are based upon a market value adjustment formula if held for shorter periods. The formula may, or may not, reflect the value of assets held in the separate account. The assets underlying the policy must be in a separate account during the period or periods when the policyholder can surrender the policy.

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Determine if the company has procedures in place to monitor the use of senior-specific certifications or professional designations used by producers that solicit for the company.

Determine if the company allows its life and annuity products to be marketed to the military. If so, review the company procedures to ensure that the procedures are in compliance with all applicable laws and regulations regarding sales to military personnel.

Determine if analogies between a life insurance policy's cash values and savings accounts or other investments and between premium payments and contributions to savings accounts or other investments are complete and accurate.

Determine if the advertisement states or implies in any way that interest charged on a policy loan or the reduction of death benefits by the amount of outstanding policy loans is unfair, inequitable or in any manner an incorrect or an improper practice.

If nonforfeiture values are shown in any advertisement, ensure the values are shown, either for the entire amount of the basic life policy death benefit, or for each \$1,000 of initial death benefit.

Review the use of the words/phrases “free,” “no cost,” “without cost,” “no additional cost,” “at no extra cost” or words/phrases of similar import. Such words/phrases should not be used with respect to any benefit or service being made available with a policy, unless true. If there is no charge to the insured, then the identity of the payor must be prominently disclosed. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the premium or use other appropriate language.

Ensure the advertisement does not contain a statement or representation that premiums paid for a life insurance policy can be withdrawn under the terms of the policy. Reference may be made to amounts paid into an advance premium fund, which are intended to pay premiums at a future time, to the effect that they may be withdrawn under the conditions of the prepayment agreement. Reference may also be made to withdrawal rights under any unconditional premium refund offer.

If an advertisement represents a pure endowment benefit as a “profit” or “return” on the premium paid, rather than as a policy benefit for which a specified premium is paid, it is deemed deceptive and misleading and is prohibited.

Determine that company procedures and materials relative to long-term care (LTC) products comply with “right to free look” requirements.

Review the company and producer's websites with the following questions in mind:

- Does the website disclose who is selling/advertising/servicing for the website?
- Does the website disclose what is being sold or advertised?
- If required by statutes, rules or regulations, does the website reveal the physical location of the company/entity?
- Does the website reveal the jurisdictions where the advertised product is (or is not) approved, or use some other mechanism (including, but not limited to, identifying persons by geographic location) to accomplish an appropriate result?

For the review of Internet advertisements:

- Run an inquiry with the company's name;
- Review the company's home page;
- Identify all lines of business referenced on the company's home page;
- Research the ability to request more information about a particular product and verify the information provided is accurate; and

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- Review the company's procedures related to producers' advertising on the Internet and ensure the company requires prior approval of the producer pages, if the company name is used.

A summary of special requirements is available for the following:

- Products sold using enrollment periods;
- Direct response products;
- Graded or modified benefit policies;
- Policies with premium changes;
- Policies with non-guaranteed elements;
- Products sold to students;
- Individual deferred annuity products or deposit funds; and
- Combination life insurance and annuity products.

Review advertising carefully for use of the term "guarantee." Verify that the scope and duration of any guarantee is accurately described. Determine that the regulated entity has accurately portrayed non-guaranteed elements. Verify that complete information is provided regarding the scope and duration of guarantees.

Review advertising carefully for use of the term "bonus." Review the functioning of any such bonus payments and verify that the information provided is accurate in describing the amount and the conditions for payment, retention or recoupment of the bonus.

Review advertising carefully for explanations of surrender periods and charges. Review the functioning of any such surrender charge and, in particular, how the charge is calculated in death claims. Verify that the information provided regarding the amount of the charge and the conditions for assessment are accurate.

Index products

For advertising for interest-sensitive products, review explanations of the crediting methods and terms. Review the functioning of the crediting methods to determine that the explanations are understandable and accurate. Verify that accurate information is provided regarding the options available to the consumer and the methods by which the consumer is to exercise the options.

In addition to reviewing the advertising of indexed products, the examiner should review the illustration for compliance with Model #582 to ensure that, among other things, unreasonable or deceptive crediting rates are not being used in the illustrations and that the illustrations provide the consumer with the information required by Model #582 and, for indexed universal life (IUL) products, AG 49. Determine whether the explanations and information provided regarding the options available to the consumer are consistent with the requirements and limitations of Model #582 in AG 49.

Review the methods used by the regulated entity, annually or otherwise, to convey ongoing information about policy/contract values and options available to the consumer to change interest-crediting methods or exercise other policy/contract features in future terms.

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STANDARDS MARKETING AND SALES

Standard 2

The insurer's rules pertaining to producer requirements in connection with replacements are in compliance with applicable statutes, rules and regulations.

Apply to: All life and annuity products

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Replacement register/Data

_____ Policy/Underwriting files

_____ Loan and surrender files

Others Reviewed

NAIC Model References

Life Insurance and Annuities Replacement Model Regulation (as adopted 1998) (#613)

Suitability in Annuity Transactions Model Regulation (#275)

~~*Suitability of Sales of Life Insurance and Annuities White Paper*~~

Military Sales Practices Model Regulation (#568)

Review Procedures and Criteria

Review loan and surrender files to determine if producers have identified replacement transactions on applications.

Review replacement register and policy/underwriting files to determine if required disclosure forms have been submitted on replacement transactions.

Review policy/underwriting files to confirm receipt of sales material or required statement. Copies of sales material other than regulated entity-approved sales material, if permitted, must also be in the file.

Review replacement disclosure forms for completeness and signatures, as required.

If the applicable state's definition of "recommendation" encompasses replacements, review policy/underwriting files to verify that the producer's treatment of and classification of replacements is in compliance with the applicable state's definition of "recommendation."

Review policy/underwriting files to ensure that the insurance producer, or the insurer where no producer is involved, when recommending to a consumer the purchase of an annuity or the exchange of an annuity that results

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Revisions shown in yellow are the 8/22/22 changes made to the 4/19/22 initial exposure draft in another insurance transaction or series of insurance transactions, has adequate written documentation of 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.

Ensure that producer written documentation regarding suitability contains adequate and complete information to demonstrate that there is a reasonable basis to believe all of the following:

- The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk. (Note: If the applicable state has adopted the *Annuity Disclosure Model Regulation* (#245), examiners should be aware that the criteria of this examination standard are intended to supplement and not replace the disclosure requirements of the *Annuity Disclosure Model Regulation* (#245));
- The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;
- 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 or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and
- In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:
 - 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;
 - The consumer would benefit from product enhancements and improvements; and
 - The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

Review policy/underwriting files to determine that prior to the execution of a replacement of an annuity resulting from a recommendation, an insurance producer has made reasonable efforts to obtain the consumer's suitability information.

Examiners should be familiar with the term "suitability information" as defined in applicable state statutes, rules or regulations. "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including:

- Age;
- Annual income;
- Financial situation and needs, including the financial resources used for the funding of the annuity;
- Financial experience;
- Financial objectives;
- Intended use of the annuity;
- Financial time horizon;
- Existing assets, including investment and life insurance holdings;
- Liquidity needs;
- Liquid net worth;
- Risk tolerance; and
- Tax status.

Examine the insurer's procedures to verify that the insurer has not issued an annuity recommended to a consumer unless there was a reasonable basis to believe the annuity was suitable based on the consumer's suitability information.

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STANDARDS MARKETING AND SALES

Standard 3

The insurer's rules pertaining to replacements are in compliance with applicable statutes, rules and regulations.

Apply to: All life and annuity products

Priority: Essential

Documents to be Reviewed

- _____ Applicable statutes, rules and regulations
- _____ Replacement register/Data
- _____ Policy/Underwriting files
- _____ Agency correspondence file/Agency bulletins
- _____ Agency procedural manual
- _____ Claim files
- _____ Agency sales/lapse records
- _____ Regulated entity systems manual

Others Reviewed

- _____
- _____

NAIC Model References

Life Insurance and Annuities Replacement Model Regulation (as adopted 1998) (#613)

Suitability in Annuity Transactions Model Regulation (#275)

~~*Suitability of Sales of Life Insurance and Annuities White Paper*~~

Military Sales Practices Model Regulation (#568)

Stranger-Originated Annuity Transactions (STOA) NAIC Sample Bulletin

Review Procedures and Criteria

Determine if the regulated entity has advised its producers of its replacement policy.

Determine if the regulated entity has provided timely notice to the existing insurer(s) of the replacement.

Examine for effectiveness the regulated entity's system of identifying undisclosed replacements.

Determine if the regulated entity has the capacity to produce data required by replacement regulation to assess producer replacement activity.

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Determine if the regulated entity has issued letters in a timely manner to policyholders, advising of the effects of loans and other disbursements on policy values.

Review policy/underwriting files to determine that the regulated entity is retaining required records for required time frames.

Examine the regulated entity's procedures for verifying producer compliance with requirements on replacement transactions.

Review claim files to determine if the regulated entity provides required credit for suicide and contestability periods on replacements.

If the applicable state's definition of "recommendation" encompasses replacements, review regulated entity procedures to verify that the regulated entity's treatment of and classification of replacements is in compliance with the state's definition of "recommendation."

Review policy/underwriting files to ensure that the insurance producer, or the insurer where no producer is involved, when 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, has adequate written documentation of 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.

Ensure that regulated entity written documentation regarding suitability contains adequate and complete information to demonstrate that there is a reasonable basis to believe all of the following:

- The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk. (Note: If the applicable state has adopted the *Annuity Disclosure Model Regulation* (#245), examiners should be aware that the criteria of this examination standard are intended to supplement and not replace the disclosure requirements of the *Annuity Disclosure Model Regulation* (#245));
- The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;
- 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 or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information.
- In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:
 - 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;
 - The consumer would benefit from product enhancements and improvements; and
 - The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

Review policy/underwriting files to ensure that prior to the execution of a replacement of an annuity resulting from a recommendation, an insurer, where no producer is involved, has made reasonable efforts to obtain the consumer's suitability information.

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Examiners should be familiar with the term “suitability information” as defined in applicable state statutes, rules or regulations. “Suitability information” means information that is reasonably appropriate to determine the suitability of a recommendation, including:

- Age;
- Annual income;
- Financial situation and needs, including the financial resources used for the funding of the annuity;
- Financial experience;
- Financial objectives;
- Intended use of the annuity;
- Financial time horizon;
- Existing assets, including investment and life insurance holdings;
- Liquidity needs;
- Liquid net worth;
- Risk tolerance; and
- Tax status.

Examine the insurer’s procedures to verify that the insurer has not issued an annuity recommended to a consumer unless there was a reasonable basis to believe the annuity was suitable based on the consumer’s suitability information.

Note: All documents necessary to review the appropriateness of a sale may not be in the insurer’s possession. It may be necessary to give the insurer additional lead time to obtain the documents from a producer, a third party reviewer or other entity.

Examiners may wish to remind insurers that sell annuities of the existence of the *Stranger-Originated Annuity Transactions (STOA) NAIC Sample Bulletin* because sales of stranger-originated annuities may be an indicator of potentially fraudulent transactions.

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STANDARDS MARKETING AND SALES

Standard 4

An illustration used in the sale of a policy contains all required information and is delivered in accordance with statutes, rules and regulations.

Apply to: All life products

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Actuarial records

_____ All documents related to the development of crediting rates used in illustrations

_____ Underwriting file

Others Reviewed

NAIC Model References

Life Insurance Illustrations Model Regulation (#582) and Actuarial Guideline XLIX—The Application of the Life Illustrations Model Regulation to Policies with Index Based Interest (AG 49)

Universal Life Insurance Model Regulation (#585)

Variable Life Insurance Model Regulation (#270)

Life Insurance Disclosure Model Regulation (#580)

Disclosure for Small Face Amount Life Insurance Policies Model Act (#605)

Review Procedures and Criteria

Note: Some policies may be deemed to be sold without an illustration.

If a jurisdiction continues to require surrender cost indices, ensure it is appropriately disclosed in the Statement of Policy Cost and Benefit.

Ensure that the insurer, its producers or authorized representatives do not:

- Represent the policy as anything other than a life insurance policy;
- Use or describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
- State or imply that the payment or amount of non-guaranteed elements is guaranteed;
- Use an illustration that does not comply with statutes;
- Use an illustration that at any policy duration depicts policy performance more favorable to the policyowner than that produced by the illustrated scale of the insurer whose policy is being illustrated;
- Provide an applicant with an incomplete illustration;

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- Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;
- Use the terms “vanish,” “vanishing premium” or similar terms that imply that the policy becomes paid-up, to describe a plan for using non-guaranteed elements to pay a portion of future premiums;
- Except for policies that can never develop nonforfeiture values, use an illustration that is “lapse-supported”; or
- Use an illustration that is not “self-supporting.”

Ensure that the insurer has a documented, reasonable methodology for the manner in which it determines its indexing strategy. Verify that the insurer has a system which monitors the interest rates used by its insurance producers in illustrations for compliance with the insurer’s credited interest rates.

Model #582 sets out a variety of requirements to prevent insurers from using unreasonable or misleading illustrations in the sale of life insurance. AG 49, originally adopted by the NAIC in 2015, expands upon and supersedes some of the illustration requirements of Model #582 for indexed universal life (IUL) illustrations. In simple terms, Section 4 and Section 5 of AG 49 set maximum crediting rates for illustrations. Section 6 addresses illustrations of policy loans, and Section 7 requires illustrations beyond those required in Model #582. The implementation of AG 49 was phased as follows:

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

Testing the compliance of illustrations with Model #582 and AG 49 will be complex, and the examiner will likely seek assistance from an actuary familiar with and capable of testing compliance with Model #582 and AG 49. In such cases, the examiner should work with the actuary to determine the appropriate information to request from the insurer necessary to enable the actuary and examiner in testing the compliance of the illustrations.

The examiner may be able to test implementation compliance issues by confirming that IUL illustration changes were made on or before the effective dates set out above. For example:

- Did the insurer implement on or before Sept. 15, 2015, a compliant crediting rate methodology for new and in force illustrations on policies sold on or after Sept. 15, 2015?
- Did the insurer implement on or before March 1, 2016, a compliant credit rate methodology for all new illustrations produced on or after March 1, 2016, on in force policies?
- Did the insurer implement the policy loan and additional illustration scales requirement of Section 6 and Section 7 of AG 49 on or before March 1, 2016?

The following are more complex requirements of AG 49, which may require the assistance of an actuary or other person with expertise in evaluating illustration crediting methodologies and calculations:

- For new business and in force life insurance illustrations on policies sold on or after Sept. 1, 2015, determine whether the credited rate for the Illustrated Scale has been limited according to the requirements of Section 4;
- For new business and in force life insurance illustrations on policies sold on or after Sept. 1, 2015, determine whether the earned interest rate for the Disciplined Current Scale has been limited according to the requirements of Section 5;
- For new business and in force life insurance illustrations on policies sold on or after March 1, 2016, ensure that if the illustration includes a loan, the illustrated rate credited as compared to the illustrated loan charge has been limited according to the requirements of Section 6;

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- For new business and in force life insurance illustrations on policies sold on or after March 1, 2016, ensure that the basic illustration includes a ledger using the Alternate Scale shown alongside a ledger using the illustrated scale with equal prominence according to the requirements of Section 7.A;
- For new business and in force life insurance illustrations on policies sold on or after March 1, 2016, ensure that the basic illustration includes a table showing the minimum and maximum of the geometric average annual credited rates as referenced in Section 7.B; and
- For new business and in force life insurance illustrations on policies sold on or after March 1, 2016, ensure that the basic illustration includes a table showing actual historical index changes and corresponding hypothetical interest rates using current index parameters for the most recent 20-year period for each Index Account illustrated, as required by Section 7.C.

Ensure that the insurer has established requirements for producers to provide universal life applicants with a “Statement of Policy Information.” The statement should substantially follow the format set forth in the *Universal Life Insurance Model Regulation* (#585). Insurers that use direct response solicitation of universal life insurance products should provide such a statement at the time of policy delivery.

Ensure illustrations are retained in accordance with statutes, rules and regulations. A copy of the basic illustration and a revised basic illustration (if any) signed, as applicable, or a certification that either no illustration was used or that the policy was applied for other than as illustrated, should be retained until 3 years after the policy is no longer in force.

Determine if the illustration is submitted to the regulated entity as required.

- If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of the illustration must be submitted to the insurer at the time of policy application. A copy must also be provided to the applicant.
- If the policy is issued other than as applied for:
 - A revised basic illustration conforming to the policy as issued should be sent with the policy;
 - The revised illustration should be labeled “Revised Illustration”;
 - The illustration should be signed and dated by the applicant or policyowner and producer or other authorized representative of the insurer no later than the time the policy is delivered; and
 - A copy must be provided to the insurer and the policyowner.
- If no illustration is used by an insurance producer or other authorized representative, or if the policy is applied for other than as illustrated:
 - The producer or representative must certify to that effect in writing on a form provided by the insurer;
 - The applicant should acknowledge (on the same form) that no illustration conforming to the policy applied for was provided and also acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than the time of policy delivery; and
 - The form must be submitted to the insurer at the time of application.
- If the basic or revised illustration is sent by mail from the insurer:
 - It should include instructions for the applicant/policyowner to sign the duplicate copy of the numeric summary page and return the signed copy; and
 - An insurer’s obligation will be satisfied if it demonstrates a diligent effort to obtain the signature. Diligent effort includes the mailing of a self-addressed postage-prepaid envelope with instructions for the return of the signed page.

Ensure a signed copy of the basic illustration and revised basic illustration, if any, or a certification that either no illustration was used or that the policy was applied for other than as illustrated is retained until 3 years after the policy is no longer in force. (A copy does not have to be retained if the policy is not issued.)

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A summary of illustration requirements is available with special requirements for:

- Basic illustrations;
- Supplemental illustrations;
- Interest-indexed universal life;
- Universal life; and
- Variable life.

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STANDARDS MARKETING AND SALES

Standard 5

The insurer has suitability standards for its products, when required by applicable statutes, rules and regulations.

Apply to: All life and annuity products

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Producer records

_____ Training materials

_____ Procedure manuals

Others Reviewed

NAIC Model References

Variable Life Insurance Model Regulation (#270), Section 3C

Suitability in Annuity Transactions Model Regulation (#275)

~~*Suitability of Sales of Life Insurance and Annuities White Paper*~~

Stranger-Originated Annuity Transactions (STOA) NAIC Sample Bulletin

Review Procedures and Criteria

Determine if multiple sales of the same product have been made to individuals. Identify and review a random sample of policyholders for which multiple policies exist.

Determine if underwriting guidelines place limitations on multiple sales; i.e., limits on coverage, determination of suitability, detection of predatory sales practices, etc.

Determine whether marketing materials encourage multiple issues of policies; e.g., use of existing policyholder list for additional sales of similar products to those held, birth date solicitations, scare tactics, etc.

Determine if negative enrollment practices are permitted and used.

Determine if the regulated entity has a system to discourage “over-insurance” of policyholders as defined by the regulated entity’s underwriting requirements.

For annuity products, ensure the regulated entity maintains a written statement specifying the standards of suitability used by the insurer. The standards should specify that an insurer’s issuance of an annuity shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

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Review whether the insurer has established a system of STOA-related oversight (underwriting criteria). If not, discuss the existence of the STOA bulletin with the insurer. The examiner should be mindful that the provisions within the bulletin may not be legally required by their jurisdiction.

Inquire if the company has detected any STOA transactions and if so, the examiner may want to determine if there were any suitability issues surrounding the sale of the STOA. If there were suitability issues, the examiner may want to inquire as to what actions were taken by the company to prevent further suitability issues and if the company took any action against the producer.

Note: Sales made in compliance with Financial Industry Regulatory Authority (FINRA) requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation. Examiners should be mindful of the fact that both variable annuity sales and variable life sales are typically sold using FINRA requirements.

Examiners may wish to remind insurers that sell annuities of the existence of the *Stranger-Originated Annuity Transactions NAIC Sample Bulletin* because sales of stranger-originated annuities may result in adverse suitability situations.

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**STANDARDS
MARKETING AND SALES**

Standard 6

Preneed funeral contracts or prearrangement disclosures and advertisements are in compliance with statutes, rules and regulations.

Apply to: All preneed products

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

Others Reviewed

NAIC Model References

Life Insurance Disclosure Model Regulation (#580), Section 7

Advertisements of Life Insurance and Annuities Model Regulation (#570), Section 5Y

Review Procedures and Criteria

Ensure there is evidence that the disclosures have been made in accordance with statutes, rules and regulations.

A summary of special requirements for preneed disclosures is available.

Advertisements for a preneed funeral contract or prearrangement that is funded or is to be funded by a life insurance policy or annuity contract should disclose the following:

- The fact that a life insurance or annuity contract is involved or being used to fund a prearrangement; and
- The nature of the relationship among the soliciting producer or producers, the provider of the funeral or cemetery merchandise or services, the administrator and any other person.

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**STANDARDS
MARKETING AND SALES**

Standard 7

The regulated entity’s policy forms provide required disclosure material regarding accelerated benefit provisions.

Apply to: All individual and group life insurance

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations (Note: Reference applicable Compact uniform standards for products approved by the) Compact

_____ Claim procedure/underwriting manuals

_____ Claim files

Others Reviewed

NAIC Model References

Accelerated Benefits Model Regulation (#620)

Review Procedures and Criteria

The terminology “accelerated benefit” shall be included in the descriptive title.

Disclosure is required that receipt of accelerated benefits may be a taxable event, and assistance should be sought from a personal tax advisor.

Disclosure providing description of accelerated benefit and definitions of the conditions or occurrences triggering payment of the benefits shall be given to the applicant.

Products marketed under this regulation shall not be described as long-term care insurance (LTCI) or as providing LTC benefits.

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STANDARDS MARKETING AND SALES

Standard 8

Policy and contract application forms used by depository institutions provide required disclosure material regarding insurance sales.

Apply to: All individual and group life insurers and depository institutions

All covered persons²⁹ as defined by the Gramm-Leach-Bliley Act. This includes any person who sells, solicits, advertises or offers an insurance product or annuity to a consumer at an office of the depository institution or on behalf of a depository institution.

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations (Note: Reference applicable Compact uniform standards for products approved by the Compact)

_____ Underwriting manuals

_____ Policy and contract application forms

_____ Policy files

Others Reviewed

NAIC Model References

Bulletin pertaining to Voluntary Expedited Filing Procedures for Insurance Applications Developed to allow Depository Institutions to meet their Disclosure Obligations under Section 305 of the Gramm-Leach-Bliley Act

Review Procedures and Criteria

One notice provides the written disclosures that must be given to a consumer in connection with an initial purchase of an insurance or annuity product that is unrelated to an extension of credit.

The other notice provides the written disclosures that must be given to a consumer in connection with the solicitation, offer or sale of an insurance or annuity product that is related to an extension of credit.

For notices unrelated to an extension of credit: (1) the disclosure notice must inform the consumer that neither insurance nor annuities are a deposit, other obligation of, or guaranteed by the bank or any affiliate of the bank; (2) that neither insurance nor annuities are insured by the Federal Deposit Insurance Corporation (FDIC) or any agency of the United States, the bank or any affiliate; and (3) that there is the potential for investment risk, including the possible loss of value. (Note: The last requirement may not be required for all products.)

²⁹ Please refer to the bulletin for a detailed explanation of what constitutes a covered person.

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For notices related to an extension of credit (which includes solicited, offered or sold): (1) the bank or savings association must inform the consumer that it cannot condition the extension of credit upon the consumer also purchasing an insurance product or annuity from the bank or the bank's affiliate; (2) the bank or savings association must inform the consumer that it cannot condition the extension of credit upon the consumer not obtaining an insurance product or annuity from an entity not affiliated with the bank. In addition, (3) the disclosure notice must inform the consumer that neither insurance nor annuities are a deposit, other obligation of, or guaranteed by the bank or any affiliate of the bank; (4) that neither insurance nor annuities are insured by the Federal Deposit Insurance Corporation (FDIC) or any agency of the United States, the bank, or any affiliate; and (5) that there is the potential for investment risk, including the possible loss of value. Note: The last requirement may not be required for all products.

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STANDARDS MARKETING AND SALES

Standard 9

Insurer rules pertaining to producer requirements with regard to suitability in annuity transactions are in compliance with applicable statutes, rules and regulations.

Apply to: All annuity products

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Policy/Other relevant files

_____ New business reports

_____ Policy/Underwriting files

Others Reviewed

NAIC Model References

Suitability in Annuity Transactions Model Regulation (#275)

~~*Suitability of Sales of Life Insurance and Annuities White Paper*~~

Review Procedures and Criteria

As of June 2023, the Annuity Suitability (A) Working Group is still discussing the issue of how the Safe Harbor provisions of the *Suitability in Annuity Transactions Model Regulation (#275)*, Section 6E may apply. This examination standard may be revisited after those discussions are complete.

If the insurer has a business rule that calls for completion of a fact-finder or similar disclosure document, review policy files to determine if forms have been completed regarding suitability.

Review policy files. Copies of sales material other than insurer-approved materials, if permitted, must also be in the file or made available to the regulator upon request.

Examine for effectiveness the insurer's system of verifying that, prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, has made reasonable efforts to obtain the consumer's suitability information.

Examiners should be familiar with the term "suitability information" as defined in applicable state statutes, rules or regulations. "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including:

- Age;
- Annual income;

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- Financial situation and needs, including the financial resources used for the funding of the annuity;
- Financial experience;
- Financial objectives;
- Intended use of the annuity;
- Financial time horizon;
- Existing assets, including investment and life insurance holdings;
- Liquidity needs;
- Liquid net worth;
- Risk tolerance; and
- Tax status.

~~Verify that the insurer has adequate procedures in place for monitoring that sales are made in compliance with Financial Industry Regulatory Authority (FINRA) requirements pertaining to suitability and supervision of annuity transactions. Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce (including investigate) the provisions of this regulation.~~

~~Note: Noncompliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of the applicable state's statutes, rules and regulations.~~

~~Review the insurer's system of monitoring sales made in compliance with FINRA annuity suitability and supervision requirements and applicable state annuity suitability statutes, rules and regulations. An insurer may demonstrate compliance in this area by:~~

- ~~Monitoring the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and~~
- ~~Providing 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.~~

~~Verify that the insurer has adequate procedures in place for monitoring that sales are made in compliance with comparable standards as defined in Section 6(E)(5) of Model #275. The regulation identifies four comparable standards:~~

- ~~The Securities and Exchange Commission (SEC)'s Regulation Best Interest;~~
- ~~The Financial Industry Regulatory Authority (FINRA) requirements pertaining to suitability and supervision of annuity transactions;~~
- ~~SEC standards of conduct (including fiduciary duties) imposed upon federally registered investment advisors or investment advisor representatives; and for plan fiduciaries;~~
- ~~The Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC); and~~
- ~~The model also allows for an optional fifth comparable standard, covering state registered investment advisors subject to the state's securities laws. Whether this fifth option exists in any state would depend how each jurisdiction adopted the regulation.~~

~~Sales made in compliance with comparable standards shall satisfy the requirements under this regulation. This subsection applies to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue. For instance, a broker-dealer could approve a fixed or fixed indexed annuity transaction if it had adopted business rules addressing fixed annuities and applied the same level of scrutiny that the broker-dealer would apply to a variable annuity. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce (including investigate) the provisions of this regulation.~~

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Note: Noncompliance with comparable standards means that the recommendation or sale is subject to compliance with the suitability requirements of the applicable state's statutes, rules and regulations.

Review the insurer's system of monitoring sales made in compliance with comparable standards and applicable state annuity suitability statutes, rules and regulations. An insurer may demonstrate compliance in this area by:

- **Monitoring the relevant conduct of the financial professional seeking to rely on the safe harbor or the entity responsible for supervising the financial professional using information collected in the normal course of an insurer's business; and**
- **Providing to the entity responsible for supervising the financial professional seeking to rely on the safe harbor information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.**

Examine for effectiveness the insurer's system for review or oversight of annuity transactions that either may have violated the insurer's suitability procedures or where no suitability analysis was performed because:

- No recommendation was made;
- A recommendation was made and was later found to have been prepared based on inaccurate material information provided by the consumer;
- A customer refused to provide relevant suitability information and the annuity transaction was not recommended; or;
- A consumer decided to enter into an annuity transaction that was not based on a recommendation of the insurer or the insurance producer.

Review completed annuity transactions and compare the information obtained by the insurance producer to the type of product purchased to verify that when recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another transaction or series of transactions, the insurance producer, or the insurer, where no producer is involved, had reasonable grounds for believing that the product was suitable on the basis of the facts disclosed by the consumer as to his/her investments and other insurance products and as to his/her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

- The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk. (Note: If the applicable state has adopted the *Annuity Disclosure Model Regulation* (#245), examiners should be aware that the criteria of this examination standard are intended to supplement and not replace the disclosure requirements of the *Annuity Disclosure Model Regulation* (#245));
- The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization or death or living benefit;
- 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 or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and
- In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:
 - 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;
 - The consumer would benefit from product enhancements and improvements; and
 - The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

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Review policy/underwriting/other files to verify that an insurance producer has at the time of sale:

- Made a record of any recommendation subject to applicable state annuity suitability statutes, rules and regulations;
- Obtained a customer signed statement documenting a customer's refusal to provide suitability information, if any; and
- Obtained a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

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STANDARDS MARKETING AND SALES

Standard 10

Insurer rules pertaining to suitability in annuity transactions are in compliance with applicable statutes, rules and regulations.

Apply to: All annuity products

Priority: Essential

Documents to be Reviewed

- _____ Applicable statutes, rules and regulations
- _____ Policy/Underwriting files
- _____ Agency correspondence file/Agency bulletins
- _____ Agency procedural manual
- _____ Claim files
- _____ Complaint log
- _____ Agency sales/lapse records
- _____ Regulated entity's systems manual
- _____ Regulated entity's producer training materials

Others Reviewed

- _____
- _____

NAIC Model References

Suitability in Annuity Transactions Model Regulation (#275)

~~*Suitability of Sales of Life Insurance and Annuities White Paper*~~

Review Procedures and Criteria

As of June 2023, the Annuity Suitability (A) Working Group is still discussing the issue of how the Safe Harbor provisions of the *Suitability in Annuity Transactions Model Regulation (#275)*, Section 6E may apply. This examination standard may be revisited after those discussions are complete.

~~Determine if the insurer has advised its producers of applicable state statutes, rules and regulations regarding suitability of annuity products and of the insurer's product specific standards, policy and procedures regarding verification of suitability of annuity products.~~

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Determine if the insurer has established a system of supervision that includes but is not limited to requirements outlined in Supplemental Checklist K and has advised its producers of applicable state statutes, rules and regulations regarding suitability of annuity products and the insurer's product-specific standards, policy and procedures regarding verification of suitability of annuity products.

It is useful to become acquainted with the definitions in the *Suitability in Annuity Transactions Model Regulation* (#275).

Note: Determine if the insurer has the capacity to produce data required by the applicable state suitability statute, rule or regulation. If optional recordkeeping provisions of the *Suitability in Annuity Transactions Model Regulation* (#275) have been adopted, review policy files to determine that the insurer is retaining required records for required time frames.

~~Examine insurer's procedures for verifying producer supervision and compliance with requirements on suitability. Examine for effectiveness the insurer's system of monitoring and reviewing that when 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/her investments and other insurance products and as to his/her financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:~~

- ~~• The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, insurance and investment components and market risk. (Note: If the applicable state has adopted the *Annuity Disclosure Model Regulation* (#245), examiners should be aware that the criteria of this examination standard are intended to supplement and not replace the disclosure requirements of the *Annuity Disclosure Model Regulation* (#245)).~~
- ~~• The consumer would benefit from certain features of the annuity, such as tax deferred growth, annuitization or death or living benefit;~~
- ~~• 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 or replacement, the transaction as a whole is suitable) for the particular consumer based on his or her suitability information; and~~
- ~~• In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

 - ~~• 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;~~
 - ~~• The consumer would benefit from product enhancements and improvements; and~~
 - ~~• The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.~~~~

~~Monitor and determine that an insurance producer or, where no insurance producer is involved, the responsible insurer representative, has at the time of sale:~~

- ~~• Made a record of any recommendation subject to applicable state annuity suitability statutes, rules and regulations;~~
- ~~• Obtained a customer signed statement documenting a customer's refusal to provide suitability information, if any; and~~
- ~~• Obtained a customer signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.~~

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~~Monitor and determine that, prior to the execution of a purchase, exchange or replacement of an annuity resulting from a recommendation, an insurance producer or an insurer where no producer is involved, has made reasonable efforts to obtain the consumer's suitability information.~~

~~Examiners should be familiar with the term "suitability information" as defined in applicable state statutes, rules or regulations. "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including:~~

- ~~• Age;~~
- ~~• Annual income;~~
- ~~• Financial situation and needs, including the financial resources used for the funding of the annuity;~~
- ~~• Financial experience;~~
- ~~• Financial objectives;~~
- ~~• Intended use of the annuity;~~
- ~~• Financial time horizon;~~
- ~~• Existing assets, including investment and life insurance holdings;~~
- ~~• Liquidity needs;~~
- ~~• Liquid net worth;~~
- ~~• Risk tolerance; and~~
- ~~• Tax status.~~

~~Examine the insurer's procedures to verify that the insurer has not issued an annuity recommended to a consumer unless there was a reasonable basis to believe the annuity was suitable based on the consumer's suitability information.~~

~~Examine for effectiveness the insurer's system of recording or monitoring whether an insurance producer or an insurer, proceeded with an annuity transaction that either may have violated the insurer's suitability procedures or where no suitability analysis was performed because:~~

- ~~• No recommendation was made;~~
- ~~• A recommendation was made and was later found to have been prepared based on inaccurate material information provided by the consumer;~~
- ~~• A consumer refused to provide relevant suitability information and the annuity transaction was not recommended;~~
- ~~• A consumer decided to enter into an annuity transaction that was not based on a recommendation of the insurer or the insurance producer.~~

Verify that the insurer has established a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with applicable state suitability statutes, rules and regulations, including, but not limited to the following criteria:

- Examine the regulated entity's suitability policies and procedures to verify that the insurer maintains reasonable procedures to inform its insurance producers of the requirements of applicable state suitability statutes, rules and regulations. Verify that the requirements of applicable state suitability statutes, rules and regulations are incorporated into relevant insurance producer training manuals;
- ~~• Review the regulated entity's producer training materials to verify that the insurer establishes standards for insurance producer product training and maintains reasonable procedures to require its insurance producers to comply with the requirements of Section 7 of the *Suitability in Annuity Transactions Model Regulation* (#275). For more information on the requirements of Section 7 of Model #275, see Marketing and Sales Standard 11 in this chapter;~~
- ~~• Examine the regulated entity's producer training materials to ensure that the insurer provides adequate product specific training and training materials which fully explain all material features of its annuity products to its insurance producers;~~

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- Review the regulated entity's suitability policies and procedures to ensure that the insurer maintains adequate procedures for review of each recommendation, prior to issuance of an annuity, that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. An insurer's review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and the insurer's review process may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria: ~~Additionally, the suitability reviews should consider all internal transactions for a customer even if those transactions occur in multiple states;~~
- Verify suitability review procedures include a review of all internal transactions for the consumer, even if those transactions occur or occurred in multiple states;
- Verify that the insurer maintains reasonable procedures to detect recommendations that are not suitable. Insurer procedures may include, but are not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. If there is no provision in applicable state suitability statutes, rules or regulations to the contrary, an insurer may demonstrate compliance in this area by reviewing all transactions flagged for further internal review while either applying sampling procedures; or by confirming suitability information after issuance or delivery of the annuity; and
- Verify that the insurer annually provides a report to senior management (per Supplemental Checklist K), 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.

An insurer may contract for performance of one or more functions (including maintenance of procedures) under the criteria set forth in Section 6F(1) of the *Suitability in Annuity Transactions Model Regulation* (#275). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section 8 of Model #275 regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph (b) of Section 6F(2) of Model #275.

An insurer's supervision system as described above should include supervision of contractual performance by third parties. This includes, but is not limited to, the following criteria:

- Verify that the insurer is monitoring and, as appropriate, conducting audits to assure that contracted function(s) are properly performed; and
- Review insurer procedures to verify that the insurer is annually obtaining a certification from a senior manager who has responsibility for the contracted function(s) that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

Review agency files and related documentation to verify that insurance producers do not dissuade, or attempt to dissuade, a consumer from:

- Truthfully responding to an insurer's request for confirmation of suitability information;
- Filing a complaint; or
- Cooperating with the investigation of a complaint.

~~Verify that the insurer has adequate procedures in place for monitoring that sales are made in compliance with Financial Industry Regulatory Authority (FINRA) requirements pertaining to suitability and supervision of annuity transactions. Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under this regulation. This subsection applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce (including investigate) the provisions of this regulation.~~

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Note: Noncompliance with FINRA requirements means that the broker-dealer transaction is subject to compliance with the suitability requirements of the applicable state's statutes, rules and regulations.

Review the insurer's system of monitoring sales made in compliance with FINRA annuity suitability and supervision requirements and applicable state annuity suitability statutes, rules and regulations. An insurer may demonstrate compliance in this area by:

- Monitoring the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and
- Providing 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.

Verify that the insurer has adequate procedures in place for monitoring that sales are made in compliance with comparable standards as defined in Section 6(E)(5) of Model #275. The regulation identifies four comparable standards:

- The Securities and Exchange Commission (SEC)'s Regulation Best Interest;
- The Financial Industry Regulatory Authority (FINRA) requirements pertaining to suitability and supervision of annuity transactions;
- SEC standards of conduct (including fiduciary duties) imposed upon federally registered investment advisors or investment advisor representatives; and for plan fiduciaries;
- The Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC); and
- The model also allows for an optional fifth comparable standard, covering state registered investment advisors subject to the state's securities laws. Whether this fifth option exists in any state would depend how each jurisdiction adopted the regulation.

Sales made in compliance with comparable standards shall satisfy the requirements under this regulation. This subsection applies to all recommendations and sales of annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue. For instance, a broker-dealer could approve a fixed or fixed indexed annuity transaction if it had adopted business rules addressing fixed annuities and applied the same level of scrutiny that the broker-dealer would apply to a variable annuity. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce (including investigate) the provisions of this regulation.

Note: Noncompliance with comparable standards means that the recommendation or sale is subject to compliance with the suitability requirements of the applicable state's statutes, rules and regulations.

Review the insurer's system of monitoring sales made in compliance with comparable standards and applicable state annuity suitability statutes, rules and regulations. An insurer may demonstrate compliance in this area by:

- Monitoring the relevant conduct of the financial professional seeking to rely on the safe harbor or the entity responsible for supervising the financial professional using information collected in the normal course of an insurer's business; and
- Providing to the entity responsible for supervising the financial professional seeking to rely on the safe harbor information and reports that are reasonably appropriate to assist such entity to maintain its supervision system.

Review insurer records of corrective action taken in mitigation of apparent violations of suitability standards for sales directly by the insurer and by any insurance producers who are acting as agents for the entity.

Determine whether the insurer has elected to maintain records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions, or if the insurer has elected to require its producers to maintain these records. Verify that such a system is in place and is monitored by the insurer.

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Note: Review the insurer's denials for suitability reasons. Review underwriting data to determine if an annuity was subsequently issued to the client. If an annuity was subsequently issued, the examiner may want to select a sampling sample of those files to ensure the sale was appropriate.

It should be noted that the model's supervision system does not require the insurer to address the following:

- A producer's recommendations to consumers of products *other than* the annuities offered by the insurer;
or
- Include consideration of or comparison to options available to the producer or compensation relating to those options other than annuities or other products offered by the insurer.

~~However, these limitations only apply to the insurer's system of supervision and does not exclude these considerations from an analysis of another licensee.~~

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K. Supplemental Checklist for Marketing and Sales Standard #10

<u>Yes</u>	<u>No</u>	<u>Requirement</u>
<u>Ensure the insurer's system of annuity suitability supervision includes from Model #275:</u>		
		<u>The insurer shall establish and maintain reasonable procedures to inform its producers of the requirements of this regulation and shall incorporate the requirements of this regulation into relevant producer training manuals.</u>
		<u>The insurer shall establish and maintain standards for producer product training and shall establish and maintain reasonable procedures to require its producers to comply with the requirements of Section 7 of this regulation.</u>
		<u>The insurer shall provide product-specific training and training materials that explain all material features of its annuity products to its producers.</u>
		<u>The insurer shall establish and maintain procedures for the review of each recommendation prior to the issuance of an annuity that is designed to ensure there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. Such review procedures may apply a screening system to identify selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. These electronic or other monitoring techniques may be designed to require additional review only of those transactions identified for additional review by the selection criteria.</u>
		<u>The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with Subsections A, B, D, and E. This may include, but is not limited to, confirmation of the consumer's consumer profile information, systematic customer surveys, producer and consumer interviews, confirmation letters, producer statements or attestations and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures, or by confirming the consumer profile information or other required information under this section after issuance or delivery of the annuity.</u> <u>Note: In addition to this language from Model #275, examiners should make sure that the company is reviewing all transactions that have been flagged for further internal review.</u>
		<u>The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether a producer has provided to the consumer the information required to be provided under this section.</u>
		<u>The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.</u>
		<u>The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subparagraph are not intended to <u>This does not</u> prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time.</u>

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		<p><u>Note: The intent of this subparagraph (h) is to prohibit sales contests, sales quotas, bonuses, and non-cash compensation based on the sale of a particular product within a limited period of time, but not to prohibit general incentives regarding the sales of a company’s products with no emphasis on any particular product.</u></p>
		<p><u>The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details the results of 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.</u></p>
		<p><u>Nothing in this subsection restricts an insurer from contracting for delegating performance of a function (including maintenance of procedures) required under this subsection. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section 8 of this regulation regardless of whether the insurer contracts for performance of a function and regardless of the insurer’s compliance with subparagraph (b) of this paragraph.</u></p>
		<p><u>An insurer’s supervision system under this subsection shall include supervision of contractual performance under this subsection. This includes, but is not limited to, the following:</u></p> <ul style="list-style-type: none"> <u>• Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and</u> <u>• Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.</u>

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**STANDARDS
MARKETING AND SALES**

Standard 11

The insurer has procedures in place to educate and monitor compliance with insurer-specific education and training requirements and with applicable statutes, rules and regulations regarding the solicitation, recommendation and sale of annuity products.

Apply to: All annuity products

Priority: Essential

Documents to be Reviewed

- _____ Applicable statutes, rules and regulations
- _____ Regulated entity producer education/training files
- _____ Producer continuing education files
- _____ Producer new business/replacement log
- _____ Regulated entity producer training materials
- _____ Regulated entity standards for product training
- _____ Regulated entity policies and procedures
- _____ Complaint logs, complaint files and producer complaint logs/producer investigation files, if applicable

Others Reviewed

- _____
- _____

NAIC Model References

- Suitability in Annuity Transactions Model Regulation (#275)*
- Unfair Trade Practices Act (#880)*
- Producer Licensing Model Act (#218)*

Review Procedures and Criteria

Review regulated entity policies and procedures to ensure that the regulated entity has adequate procedures in place to provide training, including product-specific training that is appropriate to the specific product being sold. Review the regulated entity’s procedures to inform producers of the regulated entity’s standards for annuity product training and of applicable state statutes, rules or regulations regarding the solicitation, recommendation and sale of the annuity product.

Monitor and determine if the insurer has taken any actions against producers who lack adequate product knowledge and if so, was the action appropriate for the circumstances.

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Compare data in producer continuing education files to applicable data in state insurance department producer continuing education records to monitor and determine that any insurance producer who engages in the sale of annuity products has met the one-time 4 hour credit training course in accordance with applicable state statutes, rules and regulations.

Determine that the regulated entity has adequate procedures in place to verify that a producer has completed necessary training, as required by applicable state statutes, rules and regulations, before allowing the producer to sell an annuity product for that insurer.

Review content of producer training materials for compliance with applicable state statutes, rules and regulations regarding solicitation, recommendation and sales of annuity products. Determine if the insurer product-specific training materials are appropriate and accurately reflect the features of the specific annuity.

Review complaint logs, any applicable complaint files and any producer investigation files for allegations of unsuitable, improper or misleading sales.

Automation Tip:

Examiners should request underwriting, policy and claim data using the NAIC standardized data requests for a period of three to five years. The expanded time frame allows the examiner to trend sales practices for a number of years.

Examiners should then use a program such as ACL to review underwriting data, product data and claims data for possible unsuitable sales.

Examiners can review and trend this data for:

- Sales from producers who were the subject of complaints and/or investigations that alleged unsuitable sales, misrepresentations, or improper sales activities;
- Sales of producers who had a materially large number of replacements or exchanges;
- Sales of producers who sell a materially large number of annuities that pay the highest commissions and have the longest surrender period or have the highest surrender amounts;
- Sales of producers who have had previous sales denied based on suitability reasons;
- Sales of producers who had disciplinary actions – Financial Industry Regulatory Authority (FINRA) and state disciplinary actions;
- Sales from producers who have sold a materially large number of deferred annuities to consumers over age 75;
- Withdrawals from products where the consumer incurred a penalty (a contractual penalty or IRS tax penalty) for taking the withdrawal within two years of purchase of the annuity; and
- Sales from producers who have sold multiple annuities to the same consumer.

Examiners should realize that trending data is not a definitive means to identify unsuitable sales. Further review of the individual transaction will be necessary to determine suitability.

Examiners should cross-reference new business data and data in the replacement logs with the regulated entity's producer education/training files to ensure that prior to a sale of an annuity product the insurance producer has been trained in the regulated entity's standards for the specific annuity product and trained in the applicable state statutes, rules and regulations regarding the solicitation, recommendation and sale of annuity products.

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**STANDARDS
MARKETING AND SALES**

Standard 12

The insurer has product-specific training standards and materials designed to provide producers with adequate knowledge of the annuity products recommended prior to soliciting the sale of annuity products. The insurer also must have reasonable procedures in place to require its producers to comply with applicable producer training requirements.

Apply to: All annuity products

Priority: Essential

Documents to be Reviewed

- _____ Applicable statutes, rules and regulations
- _____ Agency correspondence file/Agency bulletins
- _____ Agency procedural manual
- _____ Agency sales/lapse records
- _____ Systems manuals
- _____ Producer training materials
- _____ Contracts with third-party vendors with compliance responsibilities

Others Reviewed

- _____
- _____

NAIC Model References

- Suitability in Annuity Transactions Model Regulation (#275)*
- Unfair Trade Practices Act (#880)*
- Producer Licensing Model Act (#218)*
- Suitability of Sales of Life Insurance and Annuities White Paper*

Review Procedures and Criteria

Contact other regulators that may have conducted a recent review of the insurer’s training standards.

It is useful to become acquainted with the definitions and appendices set forth in the *Suitability in Annuity Transactions Model Regulation (#275)*.

Determine if the insurer has required appropriate training, as outlined in Supplemental Checklist L of this chapter, for its producers.

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~~It is useful to become acquainted with the definitions and appendices set forth in the *Suitability in Annuity Transactions Model Regulation* (#275).~~

The satisfaction of the training requirements of another state that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements.

An insurer shall verify that a producer has completed the annuity training course required under this subsection before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subsection 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.

Per Supplemental Checklist L of this chapter Review regulated entity's records to confirm that it verifies producers complete a one-time 4 credit hour general annuity training course prior to soliciting the sale of an annuity product.

Determine if the insurer product-specific training materials are appropriate and accurately reflect the specific annuity being recommended. Review regulated entity's records to determine if, when and how product-specific training occurred prior to a producer recommending an annuity.

Note: Testing is not a requirement of the *Suitability in Annuity Transactions Model Regulation* (#275). Assessing compliance with this standard may require the examiner to access compliance with many facets of Model #275. The insurance producer training requirement of the model regulation requires that producers not solicit the sale of an annuity product unless the producer has adequate product knowledge to recommend the annuity. It is the insurer's responsibility to establish standards for product specific training for its producers. Insurers must also establish reasonable procedures to require its producers to have adequate product knowledge prior to the producer recommending an annuity.

If the examiners believe an unsuitable sale may have occurred, the examiner may need to determine the cause of the unsuitable sale.

Examiners will need to assess the product-specific training materials and determine if the materials were appropriate for the specific product. According to *Suitability in Annuity Transactions Model Regulation* (#275), insurance producers may rely on insurer-provided product-specific training materials and standards to comply with Section 7 of Model #275.

Examiners will also need to assess the procedures the insurer established to require its producers have an adequate product knowledge before the producer recommends the annuity. Specifically the examiners will need to determine if the training for the specific product took place before the recommendation of an annuity, how the producer was trained and if the training was reasonably designed to require the producer to have adequate product knowledge prior to the sale.

Based upon the complexity of the product being offered, there is an expectation that the content of training materials and the way the training occurs may differ.

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L. Supplemental Checklist for Marketing and Sales Standard #12

Yes	No	Requirement
Ensure the insurer's and applicable producer's system of annuity suitability supervision and training include from Model #275:		
		<u>A producer who engages in the sale of annuity products shall complete a one-time four (4) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider to comply with Section 7 of this regulation.</u>
		<u>Producers who hold a life insurance line of authority on the effective date of this regulation the <u>Suitability in Annuity Transactions Model Regulation (#275)</u> and who desire to sell annuities shall complete the requirements of this subsection within six (6) months after the effective date of this the <u>regulation</u>. Individuals who obtain a life insurance line of authority on or after the effective date of this the <u>regulation</u> may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.</u>
		<u>The training required under this subsection shall include information on the following topics:</u> <ul style="list-style-type: none"> • <u>The types of annuities and various classifications of annuities;</u> • <u>Identification of the parties to an annuity;</u> • <u>How product-specific annuity contract features affect consumers;</u> • <u>The application of income taxation of qualified and non-qualified annuities;</u> • <u>The primary uses of annuities; and</u> • <u>Appropriate standard of conduct, sales practices, replacement and disclosure requirements.</u>

**STANDARDS
MARKETING AND SALES**

Standard 13

The insurer has procedures in place to provide full disclosure to consumers regarding all sales of products involving fixed-index annuity products, and all sales are in compliance with applicable statutes, rules and regulations.

Apply to: All fixed-index annuity products

Priority: Essential

Documents to be Reviewed

- _____ Applicable statutes, rules and regulations
- _____ Policy/Underwriting file
- _____ Agency correspondence file/Agency bulletins
- _____ Agency procedural manual
- _____ Claim files
- _____ Complaint log
- _____ Agency sales/lapse records
- _____ Systems manuals
- _____ Producer training materials
- _____ Contracts with third-party vendors with compliance responsibilities

Others Reviewed

NAIC Model References

- Unfair Trade Practices Act (#880)*
- Advertisements of Life Insurance and Annuities Model Regulation (#570), Section 3B*
- Annuity Disclosure Model Regulation (#245), Section 6 plus appendix*
- Suitability in Annuity Transactions Model Regulation (#275)*
- ~~*Suitability of Sales of Life Insurance and Annuities White Paper*~~

Review Procedures and Criteria

Review policy files to determine that required records are retained for required time frames.

Examine procedures for verifying producer compliance with established policies and procedures.

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Review complaint log for complaints alleging improper or misleading sales practices.

Review claim files for proper crediting and computation of surrender charges at death.

Review commission structure and note any differences between indexed and non-indexed annuity products. If it appears that the difference may be significant enough to provide incentive to a producer to recommend one product over another regardless of suitability, perform further analysis to test that hypothesis.

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**STANDARDS
MARKETING AND SALES**

Standard 14

The insurer has procedures in place to provide full disclosure to consumers regarding all sales of products involving index life, and all sales are in compliance with applicable statutes, rules and regulations.

Apply to: All index life products

Priority: Essential

Documents to be Reviewed

- _____ Applicable statutes, rules and regulations
- _____ Policy/Underwriting file
- _____ Agency correspondence file/Agency bulletins
- _____ Agency procedural manual
- _____ All documentation demonstrating the development of crediting rates used in illustrations
- _____ Claim files
- _____ Complaint log
- _____ Agency sales/lapse records
- _____ Regulated entity’s systems manual
- _____ Regulated entity’s producer training materials
- _____ Contracts with third-party vendors with compliance responsibilities

Others Reviewed

NAIC Model References

- Advertisements of Life Insurance and Annuities Model Regulation (#570), Section 3B*
- Life Insurance Disclosure Model Regulation (#580), Section 8C*
- Unfair Trade Practices Act (#880)*
- Life Insurance Illustrations Model Regulation (#582) and Actuarial Guideline XLIX—The Application of the Life Illustrations Model Regulation to Policies with Index Based Interest (AG 49)*

Review Procedures and Criteria

Review policy files to determine that the regulated entity is retaining required records for required time frames.

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Examine the regulated entity's procedures for verifying producer compliance with the regulated entity's policy and procedures

Review complaint log for complaints alleging improper or misleading sales practices.

Review documentation to ensure compliance of the insurer's illustration methodologies with Model #582, generally, and with AG 49, specifically for indexed universal life (IUL) products. Review documentation to confirm implementation of AG 49 at required effective dates.

Review claim files for proper interest crediting and computation of death claims.

Review commission structure and note any differences between indexed and non-indexed life insurance products. If it appears that differences noted may be significant enough to provide incentive to a producer to recommend one product over another regardless of suitability, perform further analysis to test that hypothesis.

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STANDARDS

MARKETING AND SALES

Standard 15

The insurer's underwriting requirements and guidelines pertaining to travel are in compliance with applicable statutes, rules and regulations.

Apply to: All life products

Priority: Essential

Documents to be Reviewed

- _____ Applicable statutes, rules and regulations
- _____ Life insurance applications and related disclosure and consent forms
- _____ Related questionnaires for applicants
- _____ Underwriting guidelines and field underwriting guidelines for producers
- _____ Review contracts with reinsurers of life insurance and all applicable guidelines from the reinsurer
- _____ Regulated entity's guidelines regarding lawful travel

Others Reviewed

- _____
- _____

NAIC Model References

Unfair Trade Practices Act (#880)

Review Procedures and Criteria

Ensure the regulated entity does not discriminate against individuals by using an individual's past lawful travel to refuse life insurance, refuse to continue existing life insurance, or limit the amount, extent or kind of life insurance available to an individual.

Ensure the regulated entity does not discriminate against individuals by using an individual's future lawful travel plans to refuse life insurance, refuse to continue existing life insurance, or limit the amount, extent or kind of life insurance available to an individual, unless:

- The risk of loss for individuals who travel to a specified destination at a specific time is reasonably anticipated to be greater than if the individuals did not travel to that destination at the time; and
- The risk classification is based on sound actuarial principles and actual or reasonably anticipated experience.

Examples of the exceptions outlined above are future lawful travel plans to areas where the Centers for Disease Control and Prevention (CDC) have issued a highest level alert, including a recommendation for non-essential travel or to areas where there is an ongoing armed conflict involving the military of a sovereign nation foreign to the country of conflict.

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Review the life insurers' and reinsurers' underwriting guidelines for guidelines pertaining to past and future travel.

Review applications and any related questionnaires for questions related to past and future travel plans.

Review contracts with applicable reinsurers for content regarding past and future lawful travel plans.

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STANDARDS

MARKETING AND SALES

Standard 16

~~The insurer does not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer's consumer profile information.~~

The insurer issues annuities to consumers after determining there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives based on the consumer's profile.

Apply to: All annuity sales and recommendations for products not otherwise excluded by the *Suitability in Annuity Transactions Regulation*

Priority: Essential

Documents to be Reviewed

Applicable statutes, rules and regulations

Policy/Underwriting files including customer profile (if applicable). Note that insurers may (but are not required to) maintain documentation on behalf of their producers. It may be necessary to obtain applicable customer profiles and related materials from the producer(s).

Agency correspondence file/Agency bulletins Business entity producer correspondence file/Business entity producer bulletins

Agency procedural manual Business entity producer procedural manual

Agency sales/lapse records Business entity producer sales/lapse records

Regulated entity's systems manual

Regulated entity's producer training materials

Others Reviewed

NAIC Model References

Suitability in Annuity Transactions Model Regulation (#275)

Review Procedures and Criteria

Determine if the insurer has advised its producers of applicable state statutes, rules and regulations regarding suitability of annuity products and the insurer's product-specific standards, policy and procedures regarding verification of the suitability of annuity products.

Note: Determine if the insurer has the capacity to produce data required by the applicable state suitability statute, rule or regulation. If optional recordkeeping provisions of the *Suitability in Annuity Transactions Model*

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Regulation (#275) have been adopted, review policy files to determine that the insurer is retaining required records for required time frames.

Examine insurer’s procedures for verifying producer supervision and compliance with requirements on suitability. Producer supervision and compliance requirements are set forth in Supplemental Checklist M.

It is useful to become acquainted with the definitions and appendices set forth in the *Suitability in Annuity Transactions Model Regulation (#275)*.

The requirements set forth in Supplemental Checklist M do not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this regulation.

The requirements apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any. The requirements do not mean the annuity with the lowest one time or multiple occurrence compensation structures shall necessarily be recommended.

The requirements do not mean the producer has ongoing monitoring obligations under the care obligation under this paragraph, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.

Nothing in the *Suitability in Annuity Transactions Model Regulation (#275)* should be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit or negotiate insurance in this state, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this regulation; provided the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

Transactions not based on a recommendation (Editor’s Note, the previous language “Transactions not based...” is a section heading in the *Suitability in Annuity Transactions Model Regulation (#275)* Section 6(B) and is underlined in this exam standard)

- Except as provided under paragraph (2), a producer shall have no obligation to a consumer under subsection A(1) related to any annuity transaction if:
 - No recommendation is made;
 - A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer;
 - A consumer refuses to provide relevant consumer profile information and the annuity transaction is not recommended; or
 - A consumer decides to enter into an annuity transaction that is not based on a recommendation of the producer.
- An insurer’s issuance of an annuity subject to paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

Application of the best interest obligation (Editor’s Note, the previous language “Application of the...” is a section heading in the *Suitability in Annuity Transactions Model Regulation (#275)* Section 6(A (5)) and is underlined in this exam standard)

Any requirement applicable to a producer under this subsection shall apply to every producer who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the producer has had any direct contact with the consumer. Activities such as providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a producer do not, in and of themselves, constitute material control or influence.

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Notes:

- The requirements set forth in Supplemental Checklist M apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any. The requirements do not mean the annuity with the lowest one-time or multiple occurrence compensation structures shall necessarily be recommended.
- The requirements set forth in Supplemental Checklist M do not mean the producer has ongoing monitoring obligations under the care obligation under this paragraph, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising or financial planning agreement between the consumer and the producer.
- Nothing in the *Suitability in Annuity Transactions Model Regulation* (#275) should be construed to require a producer to obtain any license other than a producer license with the appropriate line of authority to sell, solicit or negotiate insurance in this state, including but not limited to any securities license, in order to fulfill the duties and obligations contained in this regulation; provided the producer does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

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M. Supplemental Checklist for Marketing and Sales Standard #16

Yes	No	Requirement
Ensure the insurer’s and applicable producer’s system of annuity suitability supervision include (per Model #275):		
		<p><u>Care Obligation. The producer, in making a recommendation shall exercise reasonable diligence, care and skill to:</u></p> <ul style="list-style-type: none"> • <u>Know the consumer’s financial situation, insurance needs and financial objectives;</u> • <u>Understand the available recommendation options after making a reasonable inquiry into options available to the producer;</u> • <u>Have a reasonable basis to believe the recommended option effectively addresses the consumer’s financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and</u> • <u>Communicate the basis or basis-bases of the recommendation.</u>
		<p><u>The producer has made reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.</u></p>
		<p><u>The producer considered the types of products the producer is authorized and licensed to recommend or sell that address the consumer’s financial situation, insurance needs and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers shall be held to standards applicable to producers with similar authority and licensure.</u></p>
		<p><u>The consumer profile information, characteristics of the insurer, and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer’s financial situation, insurance needs and financial objectives, but the level of importance of each factor under the care obligation of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.</u></p>
		<p><u>The producer has a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.</u></p>
		<p><u>In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:</u></p> <ul style="list-style-type: none"> • <u>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;</u> • <u>The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and</u> • <u>The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.</u>
		<p><u>Conflict of interest obligation. A producer shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.</u></p>
		<p><u>Documentation obligation. A producer shall at the time of recommendation or sale;</u></p>

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		<ul style="list-style-type: none">• <u>Make a written record of any recommendation and the basis for the recommendation subject to this regulation;</u>• <u>Obtain a consumer signed statement on a form substantially similar to Appendix B documenting:</u><ul style="list-style-type: none">• <u>A customer’s refusal to provide the consumer profile information, if any; and</u>• <u>A customer’s understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and</u>• <u>Obtain a consumer signed statement on a form substantially similar to Appendix C acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the producer’s recommendation.</u>
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STANDARDS MARKETING AND SALES

Standard 17

The insurer has taken steps to ensure that prior to the recommendation or sale of an annuity, the producer has prominently disclosed to the consumer on a form similar to that set forth in the *Suitability in Annuity Transactions Model Regulation Appendix A*.

Apply to: All annuity sales and recommendations for products not otherwise excluded by the *Suitability in Annuity Transactions Regulation*

Priority: Essential

Documents to be Reviewed

Applicable statutes, rules and regulations

Policy/Underwriting files including customer profile (if applicable). Note that insurers may (but are not required to) maintain documentation on behalf of their producers. It may be necessary to obtain applicable customer profiles and related materials from the producer(s).

Agency correspondence file/Agency bulletins

Agency procedural manual

Agency sales/lapse records

Regulated entity's systems manual

Regulated entity's producer training materials

Others Reviewed

NAIC Model References

Suitability in Annuity Transactions Model Regulation (#275)

Review Procedures and Criteria

Determine if the insurer has advised its producers of applicable state statutes, rules and regulations regarding suitability of annuity products and of the insurer's product-specific standards, policy and procedures regarding annuity product disclosure requirements.

Note: Determine if the insurer has the capacity to produce data required by the applicable state suitability statute, rule or regulation. If optional recordkeeping provisions of the *Suitability in Annuity Transactions Model Regulation (#275)* have been adopted, review policy files to determine that the insurer is retaining required records for required time frames.

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Examine insurer's procedures for verifying producer supervision and compliance with requirements on suitability. Producer supervision and compliance requirements are set forth in Supplemental Checklist N. It is useful to become acquainted with the definitions and appendices set forth in the *Suitability in Annuity Transactions Model Regulation* (#275).

If a state has adopted the *Annuity Disclosure Model Regulation* (#245), the state may have also adopted an additional phrase to explain that the requirements of this section are intended to supplement and not replace the disclosure requirements of the *Annuity Disclosure Model Regulation*. The examiner should refer to the applicable state's specific regulation.

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N. Supplemental Checklist for Marketing and Sales Standard #17

<u>Yes</u>	<u>No</u>	<u>Requirement</u>
<u>Ensure the insurer's and applicable producer's system of annuity suitability supervision include from Model #275:</u>		
		<u>The producer has disclosed to the consumer, on a form substantially similar to Appendix A, a description of the scope and terms of the relationship with the consumer and the role of the producer in the transaction.</u>
		<u>The producer has provided an affirmative statement on whether the producer is licensed and authorized to sell the following products:</u> <ul style="list-style-type: none"> • <u>Fixed annuities;</u> • <u>Fixed indexed annuities;</u> • <u>Variable annuities;</u> • <u>Life insurance;</u> • <u>Mutual funds;</u> • <u>Stocks and bonds; and</u> • <u>Certificates of deposit.</u>
		<u>The producer has provided an affirmative statement describing the insurers the producer is authorized, contracted (or appointed), or otherwise able to sell insurance products for, using the following descriptions:</u> <ul style="list-style-type: none"> • <u>One insurer;</u> • <u>From two or more insurers; or</u> • <u>From two or more insurers although primarily contracted with one insurer.</u>
		<u>The producer has provided a description of the sources and types of cash compensation and non-cash compensation to be received by the producer, including whether the producer is to be compensated for the sale of a recommended annuity by commission as part of the premium or other remuneration received from the insurer, intermediary or other producer or by a fee as a result of a contract for advice or consulting services.</u>
		<u>A notice of the consumer's right to request additional information regarding cash compensation is described in subparagraph (b) of the following checklist provision.</u>
		<u>Upon request of the consumer or the consumer's designated representative, the producer shall disclose:</u> <ul style="list-style-type: none"> • <u>A reasonable estimate of the amount of cash compensation to be received by the producer, which may be stated as a range of amounts or percentages; and</u> • <u>Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages.</u>
		<u>Prior to or at the time of the recommendation or sale of an annuity, the producer shall have a reasonable basis to believe the consumer has been informed of various features of the annuity, such as the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, any annual fees, potential charges for and features of riders or other options of the annuity, limitations on interest returns, potential changes in non-guaranteed elements of the annuity, insurance and investment components and market risk.</u>

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D. Producer Licensing

Use the standards for this business area that are listed in Chapter 20—General Examination Standards.

E. Policyholder Service

Use the standards for this business area that are listed in Chapter 20—General Examination Standards and the standards set forth below.

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**STANDARDS
POLICYHOLDER SERVICE**

Standard 1
Reinstatement is applied consistently and in accordance with policy provisions.

Apply to: All life products

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations (Note: Reference applicable Compact uniform standards for products approved by the Compact)

_____ Notice of reinstatement

Others Reviewed

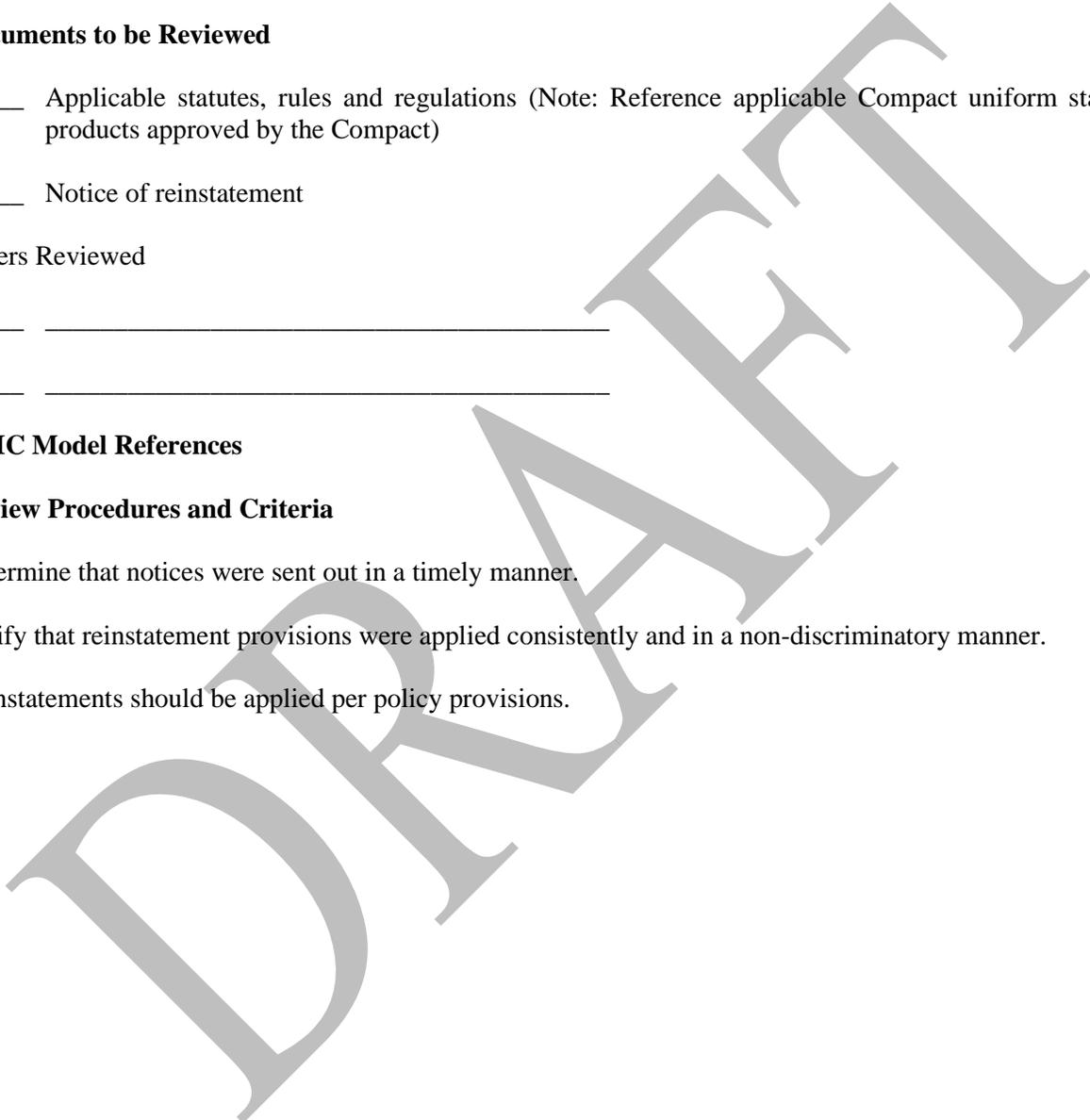
NAIC Model References

Review Procedures and Criteria

Determine that notices were sent out in a timely manner.

Verify that reinstatement provisions were applied consistently and in a non-discriminatory manner.

Reinstatements should be applied per policy provisions.



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STANDARDS POLICYHOLDER SERVICE

Standard 2

Nonforfeiture options are communicated to the policyholder and contractholder and correctly applied in accordance with the policy contract.

Apply to: All life products

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations (Note: Reference applicable Compact uniform standards for products approved by the Compact)

_____ Underwriting file

_____ Policy and contract history file

_____ Regulated entity's procedures manual

Others Reviewed

NAIC Model References

Standard Nonforfeiture Law for Life Insurance (#808)

NAIC Procedure for Permitting Same Minimum Nonforfeiture Standards for Men and Women Insured Under 1980 CSO and 1980 CET Mortality Tables (#811)

Life Insurance Disclosure Model Regulation (#580)

Variable Life Insurance Model Regulation (#270)

Model Policy Loan Interest Rate Bill (#590)

Standard Nonforfeiture Law for Individual Deferred Annuities (#805)

Annuity Nonforfeiture Model Regulation (#806)

Review Procedures and Criteria

Determine if the correct policy option is provided in case of policy lapse.

Review correspondence with policyholders to determine if options were explained adequately.

If there are questions related to the nonforfeiture values, refer to statutes, rules and regulations regarding the calculation of nonforfeiture values for details on calculating the values.

Review the regulated entity's procedures and policies regarding the handling of each type of nonforfeiture transaction (including whether the request may be made verbally).

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Cash Surrender Values

- Review the issue date of the policy to determine whether the policy is mature enough to provide surrender values (usually by the end of the second or third year);
- Calculate the service time to process the surrender by subtracting the date the request was received from the date the surrender check was mailed (should be within 60 days);
- Review the calculation of the net cash value to determine the appropriate surrender value (include any outstanding policy loans, policy loan interest and policy dividends);
- Compare calculated surrender value with illustration surrender value. Confirm that any variance can be explained and is in accordance with policy provisions (i.e., interest rates, surrender charges, policy fees);
- Confirm with the regulated entity that there is an audit procedure in place to verify the calculation of surrender values (they are usually calculated systematically);
- Review cash surrender check for accuracy, including mail date; and
- Review returned mail procedures.

Extended Term Insurance (ETI)

- Determine if the ETI was automatic at lapse or policyowner-requested;
- Review the policy's contract language for content;
- Confirm the regulated entity's calculated policy value by taking the face value of the policy adjusted for any indebtedness, such as policy loans or paid-up additions;
- Check to make sure the regulated entity issued the correct amount of term insurance; and
- Confirm with the regulated entity that there is an audit procedure in place to verify the values and calculations made.

Reduced Paid-Up (RPU)

- Determine how the RPU option came about, whether automatic at lapse or policyowner-requested;
- Review the policy's contract language for content;
- Review the calculation of net cash value (including years the policy was in force) to verify the amount used as the net single premium to purchase the paid-up life insurance. Verify that the paid-up insurance is of the same type of policy as the original policy; and
- Confirm with the regulated entity that there is an audit procedure in place to verify the values and calculations made.

Additional Paid-Up

- Review the policy for content and time schedule for allowed increases in coverage;
- Review the policyowner's request to elect the additional paid-up option benefit; and
- Check that evidence of insurability was required before the rider was added to the in force policy.

Automatic Premium Loan (APL)

- Review the policy's contract language for content;
- Review the application to see if the insured elected another option. If not, verify that the grace period expired prior to the initiation of the APL;
- Check the net cash value calculation to make sure that the proper amount was used to deduct the overdue premium; and
- Confirm with the regulated entity that there is an audit procedure in place to verify the values and calculations made.

Note: The examiner should be alert to occurrences of producers automatically selecting the APL option on the insurance application.

Ensure the regulated entity notifies policyowners of material changes to any non-guaranteed factors in accordance with statutes, rules and regulations.

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For variable life products with flexible premiums, ensure that a report is sent to the policyholder if the amounts available under the policy on any policy processing day to pay the charges authorized by the policy are less than the amount necessary to keep the policy in force until the next following processing day. The report should include the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of the amount.

Ensure that at the time of processing policy loans, the insurer notifies policyholders of the initial rate of interest, maximum interest rates and the frequency at which rates may be adjusted. Such notice is to be provided within a reasonable time after processing premium loans.

Ensure the insurer sends advance notice to policyholders with loans, advising of any increases in loan rates.

For annuity contracts that provide cash surrender benefits, review the benefit provided to ensure it meets the requirements of statutes, rules and regulations. In no event shall any cash value benefit be less than the minimum nonforfeiture amount. The death benefit shall be at least equal to the cash surrender benefit.

For annuity contracts that do not provide cash surrender benefits, review the benefit provided to ensure it meets the requirements of statutes, rules and regulations. In no event shall the present value of a paid-up annuity be less than the minimum nonforfeiture amount.

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STANDARDS

POLICYHOLDER SERVICE

Standard 3

The regulated entity provides each policyowner with an annual report of policy values in accordance with statutes, rules and regulations and, upon request, an in force illustration or contract policy summary.

Apply to: All life and annuity products

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

Others Reviewed

NAIC Model References

Life Insurance Illustrations Model Regulation (#582), Section 10

Life Insurance Disclosure Model Regulation (#580), Section 5C(1)

Variable Annuity Model Regulation (#250), Section 8

Variable Life Insurance Model Regulation (#270), Section 9

Modified Guaranteed Annuity Model Regulation (#255) Section 11

Universal Life Insurance Model Regulation (#585), Section 9

Review Procedures and Criteria

Note: Traditional life (not universal or variable life) products that are not illustrated or that were issued prior to a jurisdiction's adoption of the equivalent of the *Life Insurance Illustrations Model Regulation* (#582) may not be required to provide annual reports.

If required, ensure annual reports are being provided annually.

For universal life, ensure the report includes:

- The beginning and end date of the current report period;
- The policy value at the end of the previous report period and at the end of the current report period;
- The total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders);
- The current death benefit at the end of the current report period on each life covered by the policy;
- The net cash surrender value of the policy as of the end of the current report period; and
- The amount of outstanding loans, if any, as of the end of the current report period.

For fixed premium universal life policies, ensure the report includes:

- If, assuming guaranteed interest, mortality and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect should be included in the report.

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For flexible premium universal life policies, ensure the report includes:

- If, assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period, unless further premium payments are made, a notice to this effect should be included in the report.

For traditional life policies, where applicable, ensure the report includes:

- Current death benefit;
- Annual contract premium;
- Current cash surrender value;
- Current dividend;
- Application of current dividend; and
- Amount of outstanding loan.

Ensure that if there are policies that do not build nonforfeiture values, an annual report is provided for those years when a change has been made to non-guaranteed policy elements by the insurer.

Determine if the annual report includes an in force illustration. If it does not, it should contain the following notice displayed prominently: **“IMPORTANT POLICYOWNER NOTICE:** You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling (insurer's telephone number), writing to (insurer's name) at (insurer's address) or contacting your producer. If you do not receive a current illustration of your policy within 30 days from your request, you should contact your state insurance department.” The insurer may vary the sequential order of the methods for obtaining an in force illustration.

If an adverse change in non-guaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report should contain a notice of that fact and the nature of the change prominently displayed.

For variable annuity products, ensure there is a statement or statements reporting the investments held in a separate account. The statement report period should be not more than 4 months prior to the date of mailing. The statement should also include the number of accumulation units and the dollar value of an individual unit or the value of the contractholder's account.

For variable life products, ensure the annual report includes the following:

- The cash surrender value;
- Death benefit;
- Any partial withdrawal or policy loan;
- Any interest charge; and
- Any optional payments.
- The following disclosures:
 - In accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease;
 - Prominent identification of any value which may be recomputed prior to the next annual report;
 - A statement if the policy guarantees the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in the report;
 - For flexible premium policies, a reconciliation of the change since the previous report in cash value and cash surrender value, if different, because of payments made (less deductions for expense charges), withdrawals, investment experience, insurance charges and any other charges made to the cash value;

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- The projected cash value and cash surrender value, if different, as of one year from the end of the period covered by the report, assuming that planned periodic premiums, if any, are paid as scheduled;
- Guaranteed costs of insurance are deducted;
- The net return is equal to the guaranteed rate or, in the absence of a guaranteed rate, is not greater than zero;
- If the projected value is less than zero, a warning message should be included that the policy may be in danger of terminating without value in the next 12 months, unless additional premium is paid;
- A summary of the financial statement of the separate account based on the last annual statement filed with the insurance department;
- The net investment return of the separate account for the last year, and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of not less than 5 years, when available;
- A list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the insurance department;
- Any charges levied against the separate account during the previous year; and
- A statement of any change since the last report in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account or to the investment advisor of the separate account.

Annual reports for modified guaranteed life insurance policies shall state that the cash value may increase or decrease and shall prominently identify any value that may be recomputed prior to the next statement.

Determine if, upon the request of the policyowner, the insurer furnishes an in force illustration of current and future benefits and values based on the insurer's present illustrated scale. No signature or other acknowledgment of receipt of this illustration is required.

Also, determine, if a policyowner requests one, the insurer provides policy data for the policy. Unless otherwise requested, the data should be provided for 20 consecutive years beginning with the previous policy anniversary and include cash dividends according to the current dividend scale, the amount of outstanding policy loans and the current policy loan interest rate. Values shown should be based on the dividend option in effect at the time of the request. A reasonable fee may be charged for the preparation of the statement.

**STANDARDS
POLICYHOLDER SERVICE**

Standard 4

Upon receipt of a request from a policyholder for accelerated benefit payment, the regulated entity must disclose to the policyholder the effect of the request on the policy’s cash value, accumulation account, death benefit, premium, policy loans and liens. The regulated entity must also advise that the request may adversely affect the recipient’s eligibility for Medicaid or other government benefits or entitlements.

Apply to: All individual and group life products

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Underwriting files

_____ Policy files

Others Reviewed

NAIC Model References

Accelerated Benefits Model Regulation (#620), Sections 4, 6D and 8

Review Procedures and Criteria

Review the above documents to determine that proper disclosure has been made.

Verify that prior to payment of accelerated benefits the insurer has obtained from any assignee or irrevocable beneficiary a signed acknowledgment of concurrence for accelerated benefit payout.

The regulated entity may offer waiver of premium in absence of such provision in an existing policy. At the time accelerated benefits are claimed, the insurer must explain any continuing premium requirements to maintain the policy in force.

Unfair discrimination is prohibited.

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F. Underwriting and Rating

Use the standards for this business area that are listed in Chapter 20—General Examination Standards and the standards set forth below.

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STANDARDS

UNDERWRITING AND RATING

Standard 1

Pertinent information on applications that form a part of the policy and contract is complete and accurate.

Apply to: All life and annuity products

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations (Note: Reference applicable Interstate Compact uniform standards for products approved by the Compact)

_____ All applications

Others Reviewed

NAIC Model References

Review Procedures and Criteria

Determine if the requested coverage is issued.

Determine if the regulated entity has a verification process in place to determine the accuracy of application information.

Verify if applicable nonforfeiture options and dividend options are indicated on the application.

Determine how automatic premium loan options are disclosed on the application.

Verify that changes to the application and supplements to the application are initialed by the applicant.

Verify that supplemental applications are used, where appropriate.

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STANDARDS

UNDERWRITING AND RATING

Standard 2

The regulated entity complies with the specific requirements for Acquired Immune Deficiency Syndrome (AIDS)-related concerns in accordance with statutes, rules and regulations.

Apply to: All life and annuity products

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Life insurance applications and related disclosure and consent forms

_____ Health questionnaires for applicants

_____ Medical underwriting guidelines

_____ Regulated entity's guidelines regarding the handling of AIDS-related test results, if such tests are allowed

Others Reviewed

NAIC Model References

Review Procedures and Criteria

Ensure the regulated entity does not use medical records indicating AIDS-related concerns to discriminate against applicants without medical evidence of disease. Companies shall establish reasonable procedures related to the administration of an AIDS-related test.

- Medical underwriting guidelines may consider factual matters that reveal the existence of a medical condition. For example, no adverse underwriting decision shall be based on medical records that only indicate the applicant demonstrated AIDS-related concerns by seeking counseling from a health care professional;
- Disclosure forms signed by the applicant must clearly disclose the requirement, if any, for applicants to take an AIDS-related test and should be a part of the underwriting file; and
- Applications must contain a consent form for such testing.

Review any application forms and health questionnaires used by the regulated entity or its producers for questions that would require the applicant to provide information regarding sexual orientation.

- Questions may ask if the applicant has been diagnosed with AIDS or AIDS-Related Complex (ARC), if they are designed to establish the existence of the condition, but are not used as a proxy to establish sexual orientation of the applicant.

Ensure the regulated entity or insurance support organization does not use the sexual orientation of an applicant in the underwriting process or in the determination of insurability.

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Underwriting guidelines must not consider an applicant's sexual orientation to be a factor in the determination of insurability.

A sample of underwriting files for denied applications should be reviewed to verify that denials were non-discriminatory.

Review inspection reports to determine if they are being used in a discriminatory manner, or ordered on the basis of the regulated entity's guidelines (e.g., based on the amount of insurance).

Neither the marital status, living arrangements, occupation, gender, medical history, beneficiary designation, nor the ZIP code or other territorial classification may be used to establish the applicant's sexual orientation.

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G. Claims

Use the standards for this business area that are listed in Chapter 20—General Examination Standards and the standards set forth below.

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STANDARDS

CLAIMS

Standard 1

The regulated entity provides the required disclosure material to policyholders at the time an accelerated benefit payment is requested.

Apply to: All life insurance products that contain a benefit provision or benefit rider for the payment of accelerated benefits

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Claim procedure manuals

_____ Claim files

_____ Claim complaint records

Others Reviewed

NAIC Model References

Accelerated Benefits Model Regulation (#620)

Review Procedures and Criteria

Review the regulated entity's procedures, training manuals and claim bulletins to determine if claim procedures meet the requirements for disclosure at the time benefits are requested. Required disclosures include:

- Disclosure of possible tax consequences and advice that the claimant seek assistance from a tax advisor;
- A written statement to the policyowner and to the irrevocable beneficiary explaining any effect the payment will have on the policy's cash value, accumulation account, death benefit, premium, policy loans and policy liens;
- A statement warning that receipt of accelerated benefits may adversely affect claimant eligibility for government benefits or entitlements;
- Administrative expense charges, if any, applicable to the payment of accelerated benefits;
- Any continuing premium requirement to keep the policy in force;
- Lump sum settlement options are required; and
- Any accidental death benefits remain intact.

Review claim files for documentation that required disclosure notices were issued in a timely manner.

Review claim-related complaint files for complaints from policyowners not receiving required disclosure material.

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Accelerated benefits are available on the effective date of the policy or rider for accidents and no more than 30 days following the effective date for illness.

No restrictions are permitted on use of accelerated benefit proceeds.

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**STANDARDS
CLAIMS**

Standard 2

The regulated entity does not discriminate among insureds with differing qualifying events covered under the policy or among insureds with similar qualifying events covered under the policy.

Apply to: All life insurance products that contain a benefit provision or benefit rider for the payment of accelerated benefits

Priority: Essential

Documents to be Reviewed

- _____ Applicable statutes, rules and regulations
- _____ Regulated entity’s claim procedures manual and claim bulletins
- _____ Claims training manual
- _____ Claim files

Others Reviewed

- _____
- _____

NAIC Model References

Accelerated Benefits Model Regulation (#620)

Review Procedures and Criteria

Review procedure manuals, training manuals and the regulated entity’s internal claim bulletins to determine if regulated entity standards exist for consistent evaluation of criteria for approval of accelerated benefits payments.

Review claim files to verify that the regulated entity does not apply further conditions on the payment of accelerated benefits beyond those conditions specified in the policy or benefit rider.

STANDARDS

CLAIMS

Standard 3

The regulated entity provides the beneficiary, at the time a claim is made, written information describing the settlement options available under the policy and how to obtain specific details relevant to the settlement options.

Apply to: All life insurance companies

Priority: Essential

Documents to be Reviewed

- _____ Applicable statutes, rules and regulations
- _____ Claim procedure manuals/claim training manuals/claim bulletins
- _____ Claim files
- _____ Claim complaint records
- _____ Disclosures provided to beneficiaries

Others Reviewed

- _____
- _____

NAIC Model References

Retained Asset Accounts Sample Bulletin (#573)

Review Procedures and Criteria

Review the regulated entity’s procedures, training manuals and claim bulletins to determine if claim procedures meet the requirements for disclosure at the time benefits are requested. Required disclosures include:

- Written information provided to the beneficiary describing available settlement options under the policy; and
- Written information provided to the beneficiary informing the beneficiary how to obtain specific details regarding available settlement options;

A “retained asset account” as defined in the *Retained Asset Accounts Sample Bulletin (#573)* means any mechanism whereby the settlement of proceeds payable under a life insurance policy is accomplished by the insurer or an entity acting on behalf of the insurer depositing the proceeds into an account with check or draft writing privileges, where those proceeds are retained by the insurer, pursuant to a supplementary contract not involving annuity benefits.

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If the regulated entity settles benefits through a retained asset account, examiners should review and verify in accordance with the applicable state's record retention requirements that the regulated entity has established and implemented procedures to ensure that the regulated entity has:

- a) Provided the following written disclosures to the beneficiary before the account is selected, if optional, or established, if not:
 - Payment of the full benefit amount is accomplished by delivery of the “draft book”/“check book”;
 - One draft or check may be written to access the entire amount, including interest, of the retained asset account at any time;
 - Whether other available settlement options are preserved until the entire balance is withdrawn or the balance drops below the regulated entity's minimum balance requirements;
 - A statement identifying the account as either a checking or draft account and an explanation of how the account works;
 - Information about the account services provided and contact information where the beneficiary may request and obtain more details about such services;
 - A description of fees charged, if applicable;
 - The frequency of statements showing the current account balance, the interest credited, drafts/checks written and any other account activity;
 - The minimum interest rate to be credited to the account and how the actual interest rate will be determined;
 - The interest earned on the account may be taxable;
 - Retained asset account funds held by regulated entities are not guaranteed by the Federal Deposit Insurance Corporation (FDIC) but are guaranteed by the state guaranty associations (where permitted by state law). The beneficiary should be advised to contact the National Organization of Life and Health Insurance Guaranty Associations (www.nolhga.com) to learn more about the coverage limitations to his or her account;
 - A description of the regulated entity's policy regarding retained asset accounts that may become inactive; and
- b) Provided the beneficiary with a supplemental contract that clearly discloses the rights of the beneficiary and obligations of the regulated entity under the contract.

Review claim files for documentation that required disclosure notices were issued in a timely manner.

Review claim-related complaint files for complaints from beneficiaries not receiving required disclosure material.

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H. Supplemental Checklist for Marketing and Sales Standard #1

Yes	No	Requirement
For companies that use enrollment periods:		
		Advertisements should specify the date by which the applicant must mail the application, which should be not less than 10 days and not more than 40 days from the date the enrollment period is advertised for the first time.
For direct response policies:		
		The advertisement should not state or imply there is a cost savings because there is no insurance producer or commission, unless true.
		The advertisement should not use the terms “inexpensive,” “low cost” or other similar language when the policies are being marketed to persons who are 50 years of age or older when the policy is guaranteed issue.
For graded or modified benefit policies:		
		The advertisement must prominently display any limitation of benefits.
		If the premium is level and coverage decreases or increases with age or duration, that fact must be prominently disclosed.
		If the death benefit varies with the length of time the policy has been in force, the advertisement should accurately describe and clearly call attention to the amount of minimum death benefit under the policy.
		The advertisement should not use the terms “inexpensive,” “low cost” or other similar language when the policies are being marketed to persons who are 50 years of age or older, when the policy is guaranteed issue.
For policies with premium changes:		
		The advertisement for a policy with non-level premiums should prominently describe the premium changes.
		An advertisement in which the insurer describes a policy where it reserves the right to change the amount of the premium during the policy term, but which does not prominently describe this feature, is deemed to be deceptive and misleading and is prohibited.
For policies with non-guaranteed policy elements:		
		An advertisement should not utilize or describe non-guaranteed policy elements in a manner that is misleading or has the capacity or tendency to mislead.
		An advertisement should not state or imply that the payment or amount of non-guaranteed policy elements is guaranteed. If non-guaranteed policy elements are illustrated, they must be based on the insurer’s current scale, and the illustration must contain a statement to the effect that they are not to be construed as guarantees or estimates of amounts to be paid in the future.

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H. Supplemental Checklist for Marketing and Sales Standard #1 (cont'd)

		An advertisement that includes any illustrations or statements containing or based upon non-guaranteed elements should set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed elements.
		If an advertisement refers to any non-guaranteed policy element, it should indicate that the insurer reserves the right to change any such element at any time and for any reason. However, if an insurer has agreed to limit this right in any way—such as, for example, if it has agreed to change these elements only at certain intervals or only if there is a change in the insurer’s current or anticipated experience—the advertisement may indicate any such limitation on the insurer’s right.
		An advertisement should not refer to dividends as “tax free” or use words of similar import, unless the tax treatment of dividends is fully explained, and the nature of the dividend as a return of premium is indicated clearly.
For policies sold to students:		
		The envelope in which insurance solicitation material is contained may be addressed to the parent(s) of students. The address may not include any combination of words which imply that the correspondence is from a school, college, university or other education or training institution, nor may it imply that the institution has endorsed the material or supplied the insurer with information about the student, unless such is a correct and truthful statement.
		All advertisements including, but not limited to, informational flyers used in the solicitation of insurance must be identified clearly as coming from an insurer or insurance producer, if such is the case, and these entities must be clearly identified as such.
		The return address on the envelope may not imply that the soliciting insurer or insurance producer is affiliated with a university, college, school or other educational or training institution, unless true.
For individual deferred annuity products or deposit funds:		
		Any illustrations or statements containing or based upon interest rates higher than the guaranteed accumulation interest rates should set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed accumulation interest rates. The higher interest rates should not be greater than those currently being credited by the company, unless the higher rates have been publicly declared by the company with an effective date for new issues not more than 3 months subsequent to the date of declaration.

Revisions made since the previous draft dated 8/22/22 are shown in blue highlight. The revisions are on pages 30 and 34

Revisions shown in yellow are the 8/22/22 changes made to the 4/19/22 initial exposure draft

H. Supplemental Checklist for Marketing and Sales Standard #1 (cont’d)

		If an advertisement states the net premium accumulation interest rate, whether guaranteed or not, it should also disclose in close proximity thereto and with equal prominence, the actual relationship between the gross and the net premiums.
		If a contract does not provide a cash surrender benefit prior to commencement of payment of annuity benefits, an illustration or statement concerning such contract should prominently state that cash surrender benefits are not provided.
For combination life insurance and annuity products:		
		An advertisement of a life insurance product and an annuity as a single policy or life insurance policy with an annuity rider should include a disclosure before the application is taken (if the policy contains an unconditional refund provision of at least 10 days, the disclosure statement can be delivered with the policy, or upon the applicant’s request, whichever occurs sooner). The disclosure defines the gross annual life and premium annuity percentages and guaranteed cash value of the annuity and should include the first 5 policy years, the tenth and twentieth policy years, at least one age from 60 to 70 and the scheduled commencement of annuity payments.

I. Supplemental Checklist for Marketing and Sales Standard #4

For all illustrations: Determine if the illustration contains the following:

Yes	No	Requirement
		The illustration should be clearly labeled “life insurance illustration.”
		Name of insurer.
		Name and business address of producer or insurer’s authorized representative, if any.
		Name, age and gender of proposed insured except where a composite illustration is permitted.
		Underwriting or rating classification upon which the illustration is based.
		Generic name of the policy, the company product name, if different, and the policy form number.
		Initial death benefit.
		Dividend option election or application of non-guaranteed elements, if applicable.

(Life Insurance Illustrations Model Regulation (#582), Section 6A)

Note: “Generic name” means a short title descriptive of the policy being illustrated, such as “whole life,” “term life” or “flexible premium adjustable life.”

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I. Supplemental Checklist for Marketing and Sales Standard #4 (cont'd)

Determine if the *basic* illustration contains or complies with the following:

Yes	No	Requirement
		Date illustration prepared.
		Page numbers for entire illustration and explanatory notes.
		Assumed dates of payment receipt and benefit payout within a policy year.
		The issue age plus the number of years the policy is assumed to have been in force, if the age is shown as a component of tabular detail.
		Assumed payments on which the illustrated benefits and values are based are identified as premium outlay or contract premium. For policies that do not require a specific contract premium, the illustrated payments should be identified as premium outlay.
		Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium should be shown and clearly labeled guaranteed.
		Non-guaranteed elements should not be based on a scale more favorable to the policyowner than the insurer's illustrated scale at any duration. These elements should be clearly labeled non-guaranteed.
		Guaranteed elements, if any, should be shown before corresponding non-guaranteed elements, and should be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements.
		Account or accumulation value of a policy, if shown, should be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.
		Value available upon surrender should be identified by the name this value is given in the policy being illustrated and should be the amount available to the policyowner in a lump sum after deduction of surrender charges, policy loans and policy interest, as applicable.
		Illustration may show policy benefits and values in graphic or chart form in addition to tabular form.
		Non-guaranteed elements should be accompanied by a statement indicating that, "The benefits and values are not guaranteed; the assumptions on which they are based are subject to change by the insurer, and actual results may be more or less favorable."

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I. Supplemental Checklist for Marketing and Sales Standard #4 (cont'd)

		If the illustration shows that the premium payor may have the option to allow policy charges to be paid using non-guaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on the actual results, the premium payor may need to continue or resume premium outlays. Similar disclosure should be made for premium outlay of lesser amounts or shorter duration than the contract premium. If a contract premium is due, the premium outlay should not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid.
		If the applicant plans to use dividends or policy values, guaranteed or non-guaranteed, to pay all or a portion of the contract premium policy charges, or for any other purpose, the illustration may reflect those plans and the effect on future policy benefits and values.
		A brief description of the policy being illustrated, including a statement that it is a life insurance policy.
		A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration should show the premium outlay that must be paid to guarantee coverage for the term of the policy, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code.
		A brief description of any policy features, riders or options, guaranteed or non-guaranteed, shown in the basic illustration, and the effect they may have on the benefits and values of the policy.
		Identification and a brief definition of column headings and key terms used in the illustration.
		The following statement, “This illustration assumes that the currently illustrated non-guaranteed elements will continue unchanged for all years shown. This is not likely to occur. Actual results may be more or less favorable than those shown.”
		Following the narrative summary, a basic illustration should include a numeric summary of the death benefits and values and the premium outlay and contract premium as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values should be based on the contract premium. This summary should be shown for at least policy years 5, 10, 20 and at age 70, if applicable, on the three bases shown below. For multiple life policies the summary should show policy years 5, 10, 20 and 30.

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I. Supplemental Checklist for Marketing and Sales Standard #4 (cont'd)

		<p>The columns of the numeric summary should include:</p> <p>Bases 1: Policy guarantees</p> <p>Bases 2: Insurer's illustrated scale</p> <p>Bases 3: Insurer's illustrated scale used, but with the non-guaranteed elements reduced as follows:</p> <ul style="list-style-type: none"> • Dividends at 50 percent of the dividends contained in the illustrated scale used; • Non-guaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and • All non-guaranteed charges, including, but not limited to, term insurance charges and mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.
		If coverage would cease before policy maturity or age 100, the year in which coverage ceases should be identified for each of the three bases.
		The following statement signed and dated by the applicant or policyowner: "I have received a copy of this illustration and understand that any non-guaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."
		The following statement signed and dated by the insurance producer or other authorized representative of the insurer: "I certify that this illustration has been presented to the applicant, and that I have explained that any non-guaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."
		<p>A basic illustration must include the following for at least each policy year from one to 10 and for every fifth policy year thereafter, ending at age 100, policy maturity or final expiration, and except for term insurance beyond the 20th year, for any year in which the premium outlay and contract premium, if applicable, is to change:</p> <ul style="list-style-type: none"> • Premium outlay and mode the applicant plans to pay and the contract premium as applicable; • The corresponding guaranteed death benefit, as provided in the policy; • Corresponding guaranteed value available upon surrender, as provided in the policy; • Non-guaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any non-guaranteed elements are shown, they must be shown at the same durations as the corresponding guaranteed elements, if any; and • If no guaranteed benefit value is available at any duration for which a non-guaranteed benefit or value is shown, a zero should be displayed in the guaranteed column.

"Basic illustration" means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and non-guaranteed elements.

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I. Supplemental Checklist for Marketing and Sales Standard #4 (cont'd)

A supplemental illustration may be provided as long as:

Yes	No	Requirement
		It is appended to, accompanied by, or preceded by a basic illustration.
		The non-guaranteed elements shown are not more favorable to the policyowner than the corresponding elements in the basic illustration.
		It contains the same statement required of a basic illustration that non-guaranteed elements are not guaranteed.
		The premium outlay/contract premium must be equal to the premium outlay/contract premium shown in the basic illustration.
		A notice is included referring to the basic illustration for guaranteed elements and other important information.

“Supplemental illustration” means an illustration furnished in addition to a basic illustration that meets the applicable requirements of [*Life Insurance Illustrations Model Regulation* (#582)], and that may be presented in a format differing from the basic illustration, but may only depict a scale of non-guaranteed elements that is permitted in a basic illustration.

I. Supplemental Checklist for Marketing and Sales Standard #4 (cont'd)

Determine if the universal life illustration has the following:

Yes	No	Requirement
		<p>Any statement of policy cost factors or benefits shall contain:</p> <ul style="list-style-type: none"> • The corresponding guaranteed policy cost factors or benefits, clearly identified; • A statement explaining the non-guaranteed nature of any current interest rates, charges or other fees applied to the policy, including the insurer’s rights to alter any of these factors; • Any limitations on the crediting of interest, including identification of those portions of the policy to which a specified interest rate shall be credited; • Any illustration of the policy value shall be accompanied by the corresponding net cash surrender value; • Any statement regarding the crediting of a specific current interest rate shall also contain the frequency and timing by which such rate is determined; • If any statement refers to the policy being interest-indexed, the index shall be described. In addition, a description shall be given of the frequency and timing of determining the interest rate and of any adjustments made to the index in arriving at the interest rate credited under the policy; • Any illustrated benefits based upon non-guaranteed interest, mortality or expense factors shall be accompanied by a statement indicating that these benefits are not guaranteed; and • If the guaranteed cost factors or initial policy cost factor assumptions would result in policy values becoming exhausted prior to the policy’s maturity date, such fact shall be disclosed, including notice that coverage will terminate under such circumstances.

(*Universal Life Insurance Model Regulation* (#585), Section 8A)

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I. Supplemental Checklist for Marketing and Sales Standard #4 (cont'd)

Determine whether, in addition to all other illustration requirements, indexed universal life (IUL) illustrations contain or comply with the following requirements specified in *Actuarial Guideline XLIX— The Application of the Life Illustrations Model Regulation to Policies with Index Based Interest* (AG 49). (Section 4 and Section 5 apply to new business and in force illustrations for policies sold on or after Sept. 1, 2015, and Section 6 and Section 7 apply to new business and in force illustrations for policies sold on or after March 1, 2016.)

Yes	No	N/A	Requirement
			The illustration actuary uses the current annual cap for the Benchmark Index Account offered with the illustrated policy (AG 49, Section 4.A.i.).
			The illustration actuary uses a hypothetical, supportable current annual cap for a hypothetical, supportable Index Account that meets the definition of a Benchmark Index Account (AG 49, Section 4.A.ii.). Note: Actuarial judgment may be used by the illustration actuary. Support for the determination of the hypothetical cap may be requested of the illustration actuary by the examiner. The examiner may refer this support to an actuarial or investment specialist for review as necessary.
			The maximum credited rate used for the Illustrated Scale is the arithmetic mean of the geometric average annual credited rates calculated in 4.A. (per AG 49, Section 4.B.). Note: Review may be referred by the examiner to an actuarial or investment specialist as necessary.
			Where other Index Accounts are used in illustrations, the illustration actuary determined the Illustrated Scale (according to AG 49, Section 4.C.). Note: Review may be referred by the examiner to an actuarial or investment specialist as necessary.
			The insurer updated the credited rate for each Index Account (in accordance with AG 49 Section 4.B. and Section 4.C.) within three months of the beginning of the calendar year of the illustration (AG 49, Section 4.D.).
			The illustrated rate credited to the loan balance shall not exceed the illustrated loan charge by more than 100 basis points (AG 49, Section 6).
			The basic illustration includes a ledger using the Alternate Scale shown alongside the ledger using the Illustrated Scale with equal prominence (AG 49, Section 7.A.).
			The basic illustration includes a table showing the minimum and maximum of the geometric average annual credited rates calculated in AG 49, Section 4.A. (AG 49, Section 7.B.).
			The basic illustration includes a table showing actual historical index changes and corresponding hypothetical interest rates using current index parameters for the most recent 20-year period for each Index Account illustrated (AG 49, Section 7.C.).

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

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I. Supplemental Checklist for Marketing and Sales Standard #4 (cont'd)

Ensure variable life illustrations contain or comply with the following:

Yes	No	Requirement
		The hypothetical interest rates used to illustrate accumulated policy values must be an annual effective gross rate after brokerage expenses and prior to any deduction for taxes, expenses and contract charges.
		If illustrations of accumulated policy values are shown, then for the highest interest rate used, one illustration must be based solely upon guarantees contained in the policy contract being illustrated.
		Except for illustrations contained in the prospectus, the pattern of premium payments used in an illustration should be the initial pattern requested by the proposed policyholder at inception or upon changes in face amount requested by the policyholder.
		If the illustrated policy contract provides for a variety of investment options, the illustration may either use an asset charge, which is reasonably representative, or use the asset charge of a particular option. The illustration should clearly identify the asset charge and either label it “hypothetical” or identify the fund.
		The illustration must disclose the transaction charges that will be levied against the contract because of transactions requested in accordance with rights and privileges specified in the policy contract. Any charge for the exercise of a right or privilege upon which the illustration is based must be reflected in the illustrated values. The nature of any other such charges must be disclosed in a clear statement accompanying such illustrations.
		A clear statement must be made following the table of illustrated accumulated policy values that use of hypothetical investment results does not in any way represent actual results or suggest that such results will be achieved and must indicate that the policy values which actually arise will differ from those shown, whenever the actual investment results differ from the hypothetical rates illustrated. Assumptions upon which illustrations are based must be clearly disclosed.
		Any sales illustration to a prospective policyholder must reflect the policy being presented accurately. Misleading statements or captions or other misrepresentations are prohibited.
		The requested sales illustration must be printed clearly and legibly on hard paper copy. An illustration displayed on a computer screen may be used in addition to, but not as a substitute for, hard paper copy.

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I. Supplemental Checklist for Marketing and Sales Standard #4 (cont’d)

	<p>In connection with variable life insurance contracts offering both fixed and variable funding options:</p> <ul style="list-style-type: none"> • An illustration of the variable funding option must comply with these guidelines; • If an illustration of the fixed funding option is shown, accumulated policy values must be shown on the basis of guaranteed rates. One or more additional rates may also be shown, but such rates may not exceed current rates; and • A summary illustration may be given in which results from comparable illustrated and hypothetical interest rates are combined. Such summary must cross-reference to the accompanying separate illustrations of the fixed and variable funding options.
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(Life Insurance Illustrations Model Regulation (#582))

J. Supplemental Checklist for Marketing and Sales Standard #8

Yes	No	Requirement
Ensure the disclosures include:		
		The fact that a life insurance policy is involved or being used to fund a prearrangement.
		The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator and any other person.
		The relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement.
		<p>The impact on the prearrangement of the following:</p> <ul style="list-style-type: none"> • Any changes in the life insurance policy including, but not limited to, changes in the assignment, beneficiary designation or use of the proceeds; • Any penalties to be incurred by the policyholder as a result of failure to make premium payments; • Any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy; • A list of the merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need; • All relevant information concerning what occurs and whether any entitlements or obligations arise, if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the prearrangement; • Any penalties or restrictions, including, but not limited to, geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the prearrangement guarantee; and • The fact that a sales commission or other form of compensation is being paid and, if so, the identity of such individuals or entities to whom it is paid.

July 6, 2023

Sent via electronic mail to
Matthew.tarpley@tdi.texas.gov
PWAllace@naic.org

Matt Tarpley, Chair
Market Conduct Examination Guidelines (D) Working Group
c/o Petra Wallace, Sr. Market Regulation Specialist
National Association of Insurance Commissioners
1100 Walnut St. Suite 1500
Kansas City MO 64106

RE: Exposure Drafts
Chapter 4 – Collaborative Actions 06-06-23
Chapter 23 – Conducting the Life and Annuity Exam 06-06-23

Dear Mr. Tarpley,

Thank you for the opportunity to provide comments to these very important chapters of the *Market Regulation Handbook*. We appreciate all the time and effort expended to review and draft the revisions. We believe the revisions will be very helpful to in the future.

Chapter 4 – Collaborative Actions

Missouri feels the requirements set forth in Section E are very much needed and will be extremely useful for consistency and completeness of multistate actions going forward. To build on these efforts, Missouri is providing a few suggestions and comments for consideration as follows:

1. Page 14.A., last paragraph – Consider adding the following or similar language to the paragraph to ensure that all lead states have an opportunity to weigh in on the language before presenting it to the company(ies):

Prior to sharing the MSA with the Company, the MSA should be provided to the lead states for review. A period of at least 10 working days should be allowed for the lead states to provide feedback. All feedback should be considered by the group in drafting a final version of the MSA. The final MSA should be agreed to by all lead states prior to sharing with the entity(ies) examined.

2. Page 16.B.2.c. Self-Reporting – Consider removing “follow-up audit, examination,” from the first sentence. This seems out of place since the section title is ‘Self-Reporting’.

3. Page 17.D.2. Exhibits, first paragraph – Some state laws may not treat exhibits the same as the report. Missouri law considers the exhibits to be work papers and are, therefore, confidential. The final report is a public document in Missouri. Should this section be changed to allow this to be consistent with each state’s laws? Or that it will follow the managing lead state’s laws?
4. Page 18 – Consider changing the word “chilling” to “detrimental” or similar term that is common to insurance terminology.

Chapter 23 – Conducting the Life and Annuity Exam

Many changes have been incorporated in this chapter and we appreciate the group’s consideration of our comments. There is one item that still stands out to us in this chapter and that is the placement of the Supplement Checklists. The existing checklists are at the end of the chapter but the new ones have been inserted immediately after the applicable standard. If the new checklists are to remain where they currently appear, then the lettering of the chapter sections should be updated to be in alphabetical order based on the physical order of items. The physical order of the items in the current draft is as follows:

- A. Operations/Management
- B. Complaint Handling
- C. Marketing and Sales (Several specialized Supplemental Checklists are available in Sections H–N of this chapter)
- K. Supplemental Checklist for Marketing and Sales Standard #10
- L. Supplemental Checklist for Marketing and Sales Standard #12
- M. Supplemental Checklist for Marketing and Sales Standard #16
- N. Supplemental Checklist for Marketing and Sales Standard #17
- D. Producer Licensing
- E. Policyholder Service
- F. Underwriting and Rating
- G. Claims (Several specialized checklists are available in Sections H–J of this chapter)
- H. Supplemental Checklist for Marketing and Sales Standard #1
- I. Supplemental Checklist for Marketing and Sales Standard #4
- J. Supplemental Checklist for Marketing and Sales Standard #8

For consistency purposes, we ask that you consider moving Supplemental Checklists K through M to the bottom or re-lettering the list so that the letters are in logical order.

Thank you again for the opportunity to provide comments and we appreciate your consideration again.

Sincerely,



Teresa Kroll,
Chief Examiner, Market Conduct
Missouri Department of Commerce and Insurance
Division of Market Regulation



July 6, 2023

Submitted electronically to pwallace@naic.org

Re: Chapter 23- June 6, 2023 Draft (Revisions related to the February 2020 adopted revisions to the Suitability in Annuity Transactions Model Regulation #275)

To: The NAIC Market Conduct Examination Guidelines (D) Working Group (“Working Group”)

On behalf of our members, the Insured Retirement Institute, Inc. (“IRI”)¹ appreciates the opportunity to provide additional comments on the Chapter 23 – June 6, 2023 Draft (“Draft Guidelines”).

We have no objection to the added language acknowledging the ongoing discussions of the Annuity Suitability Working Group about the Safe Harbor provisions.

We would also like to reiterate our recommendations from our September 16, 2022, letter, and we encourage the Working Group to make these updates. These additional edits are important in order to ensure consistency with all the updates to Model #275 and to avoid any potential confusion.

- 1) On page 46 of the Draft Guidelines, within L. Supplemental Checklist for Marketing and Sales Standard #12, we propose the following additional checklist item so that examiners can ensure that producer training complies with the Model #275 updates:

“A producer who has completed an annuity training course approved by the department of insurance prior to the effective date of the regulation shall, within six (6) months after the effective date of the regulation, complete either:

- (a) A new four (4) credit training course approved by the department of insurance after the effective date of the regulation; or
- (b) An additional one-time one (1) credit training course approved by the department of insurance and provided by the department of insurance-approved education provider on appropriate sales practices, replacement and disclosure requirements under the amended regulation.”

- 2) On pages 15, 18, and 32 of the Draft Guidelines, we recommend the following change in order to ensure consistency with the Model #275 Updates:

¹ IRI is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks, and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., the top 10 distributors of annuities ranked by assets under management and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

July 6, 2023

“The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding ~~36~~ 60 months.”

- 3) On page 40 of the Draft Guidelines, within K. Supplemental Checklist for Marketing and Sales Standard #10, we recommend that the checklist item stating, “Nothing in this subsection restricts an insurer from ~~contracting for delegating~~ performance of a function (including maintenance of procedures) required under this subsection” be changed back to the language from the April 19, 2022, draft. The “contracting for” language is consistent with Model #275 and using a different term here could cause confusion about the insurer’s responsibilities, and as such, we recommend leaving “contracting for” and removing “delegating”.

On behalf of IRI and our members, thank you again for the opportunity to provide these comments and for all of the work done to update these Guidelines. We would be happy to discuss further with you and look forward to collaboration and partnership with the Working Group.

Sincerely,

Sarah E. Wood

Sarah Wood
Director, State Policy & Regulatory Affairs
Insured Retirement Institute
swood@irionline.org

Chapter 4—Collaborative Actions

This chapter offers guidelines and techniques that may assist states in determining the need to collaborate on regulatory response when an issue impacting multiple jurisdictions is detected. Additionally, the chapter explains how a Request for Review (RFR) can result in regulatory responses coordinated through the Market Actions (D) Working Group and identifies key players in a Market Actions (D) Working Group collaborative action. Although a variety of approaches among the continuum of market actions may be appropriate and should be considered, the final portion of the chapter offers guidelines for conducting the collaborative regulatory response of multistate examinations.

A. Collaborative Action Guidelines

1. Goal

By collaborating, states that identify issues or concerns with regulated entities can respond in a more effective, efficient and expedient manner. By implementing market analysis techniques and sharing pertinent information with other states and the Market Actions (D) Working Group, states can identify those regulated entities where there is a shared concern regarding the regulated entities' market practices. The goal of this chapter is to establish procedures and guidelines for state Collaborative Action Designees (CADs) to use in facilitating the communication and coordination of regulatory responses between and among the states. Moreover, this chapter is designed to identify alternatives to performing a single state market conduct examination and assist the states in effectively addressing problem insurers or other regulated entities whose business crosses jurisdictional boundaries. Coordinated, collaborative regulation will benefit both regulated entities and the states.

Examples of some of the benefits of collaborating efforts instead of pursuing individual state responses include the following:

- States may address specific regulatory issues that cross jurisdictional boundaries more efficiently;
- States will benefit from sharing techniques, skills, resources and experience;
- States may achieve greater regulatory leverage to resolve multistate market regulatory issues or concerns;
- Fewer individual state market conduct examinations will result in less expensive market regulation oversight and will reduce the amount of regulatory intervention needed to resolve regulatory concerns;
- Corrective action may be enforced on a multistate or national basis rather than a state-by-state basis; and
- Greater consistency among state regulatory responses.

2. Definitions

Collaborative Action Designee (CAD): The one person appointed by the commissioner or each state to be their representative in market conduct collaborative matters.

Final Report: A final document prepared by the Managing Lead State in conjunction with the other Lead States in accordance with this handbook and issued by the Participating States upon completion of the response. Any recommendations for continued review or state-specific addenda should also be included in this document, if appropriate.

Initiating State: The state insurance department that determines the need for a response and brings it to the attention of other states, the regulated entity's domestic state, or to the Market Actions (D) Working Group.

Interested State: A state insurance department that expresses an interest in the concern or problem with said regulated entity.

Lead State: One or more states that assist in leading the collaborative regulatory response.

Managing Lead State (MLS): The state insurance department identified by the Market Actions (D) Working Group or the Lead States to coordinate the collaborative regulatory response.

Market Actions (D) Working Group: A group of regulators chosen for their market conduct expertise to act as a forum and resource for states on issues suitable for collaboration.

Market Analysis: The process by which a state reviews data and information to determine whether specific areas of regulatory concern are occurring in the marketplace.

Non-Participating State: A state that decides not to assume any role in regulatory response or does not have an interest in the area of review.

Participating State: An interested state that decides to participate in a regulatory response but does not necessarily take an active role in the action.

Referring State: The state that submits a Request for Review (RFR) to the Market Actions (D) Working Group.

Regulated Entity: Any person, firm or company engaging in, proposing or attempting to engage in any transaction, kind of insurance or surety business; and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of a state insurance commissioner.

Regulatory Review Trigger: An event or identified concern that prompts a regulatory review.

State Addendum: A document containing state-specific findings and recommendations based on that state's statutes and regulations.

3. Assumptions

These guidelines are based on several assumptions defined and agreed upon by the members of the NAIC:

- a. Collaborative actions will be considered when there is an issue or area of concern that impacts multiple jurisdictions. Collaboration would not be appropriate when the issue involves compliance with a state-specific law if other states do not have similar statutes;
- b. Collaborative actions can be conducted for both nationally significant and non-nationally significant regulated entities;
- c. All impacted states will be encouraged to participate in the collaborative regulatory response when possible;
- d. The collaborative action, depending on the severity of the problem and the level of the response taken, can be handled by one designated state that reports to the other states, or by a group of Lead States, where one state is designated as the Managing Lead State (MLS), others are designated as additional Lead States and together the "Lead States" work collaboratively while other states may passively participate in the process;
- e. States retain the ability to choose to participate in a collaborative action and may designate another state to review the information on its behalf. However, if a Participating State does designate another state to review information on its behalf, it is the Participating State's responsibility to outline its interpretation of its own laws it would like included in the review;
- f. Participating states retain their authority to initiate their own regulatory response if a collaborative action does not cover the scope of an area of concern to that state;
- g. The collaborative review will follow the guidelines and standards outlined in this handbook. Lead States should agree on the appropriate standards to be applied during the review;
- h. Each Participating State will determine if state-specific recommendations and actions are needed at the end of the collaborative action process, based on the findings by the Lead States;
- i. Verification that the regulated entity has complied with findings and recommendations of a final report is a separate administrative function that may or may not occur through either a collaborative or individual state follow-up effort, continuum response, examination or re-examination;
- j. Regulator resources responsible for completing the work to review data and information will be available for any follow-up proceedings required. Each state participating in the collaborative action is responsible for any expenses associated with the appearance of regulators at a proceeding arising out of the regulatory effort;

- k. If an examination is the collaborative action selected, Lead States will determine, and agree to use, computer software programs that will be employed in conjunction with the examination;
- l. Whenever a regulatory response is taken collaboratively, the Managing Lead State will provide a final report to Participating States and the Market Actions (D) Working Group; and
- m. In the case of Market Actions (D) Working Group actions, when selecting Lead States and Managing Lead States, the Market Actions (D) Working Group chair will consider at least the following criteria:
 - The domestic regulator of the regulated entity;
 - The top five premium volume and/or market share states;
 - The referring states requested participation level;
 - A state in which the identified issue appears to be more problematic;
 - Geographic balance between zones;
 - Specialized experience of a state’s staff members;
 - A state’s experience in managing complex investigations or collaborative actions; and
 - The ability to perform the duties and responsibilities of a Lead State and/or Managing Lead State.

4. Determinations

States should gather information from data currently available, including any state surveys and required data reports, information collected by the NAIC, information shared on NAIC regulatory forums, a variety of sources in both the public and private sectors, and information from within and outside of the insurance industry. Such information should be analyzed in order to develop a baseline understanding of the marketplace and to identify practices that deviate from the norm or that may pose a potential risk to insurance consumers in their state. States should refer to this handbook as one resource on how to perform analysis of a regulated entity’s market activities.

When further inquiry into a particular insurer or practice is determined necessary, the states’ Collaborative Action Designees (CADs) should consider collaboration as part of the continuum of market actions. If the regulated entity is a small regional insurer, then collaboration with one or more states may be beneficial. If the regulated entity is one of national significance, CADs should report their findings to the Market Actions (D) Working Group. Through the Market Actions (D) Working Group, CADs will be able to identify all other states that may have similar issues or concerns with the market practices of a regulated entity. In this way, the Market Actions (D) Working Group helps to eliminate duplicative inquiries and ensure more consistent consumer protection.

a. Determining Need for Collaboration

The following questions are designed to assist state Collaborative Action Designees (CADs) in determining whether an issue is appropriate for collaboration. CADs are encouraged to review these questions when an issue of concern is raised that involves a regulated entity that does business in more than one state.

1. Is your state’s concern something that would be of concern to other states?
 Yes No

General issues such as the timely payment of claims or inappropriate marketing and sales practices could be an issue of concern to multiple states. If the issue is based on a specific state statute, such as the suitability of life insurance product sales or a specific state-mandated benefit for health plans, the CAD should determine how many other states have similar statutes. The NAIC research librarians can provide a compendium or model law adoption chart to assist the CAD with this determination.

2. Is this a high-profile issue that has the potential to impact multiple jurisdictions?
 Yes No

3. Does the regulated entity have written premiums reported in two or more states for the previous calendar year?
 Yes No

If “Yes,” the CAD should contact all states where there is a new, open or called examination listed in the Market Action Tracking System (MATS) and discuss whether there are common issues or the ability for the other state to assist with the review of your area of concern. Note: All new, open or called examinations should be reviewed and the calling state’s CAD contacted to consider collaborations, even if the examination is a financial examination or appears to be unrelated to the topic of concern.

4. Are there any entries in the NAIC Market Information Systems or the Market Regulation electronic bulletin boards?
 Yes No

If there are, the CAD should contact CADs in states that appear to have common concerns and/or where there is a new, open or called examination status. The CADs can discuss whether there are common issues and the interest of other states to assist with regulatory responses in the area(s) of concern. Note: All new, open or called examinations, Level 1 or Level 2 Market Analysis reviews and initiatives should be reviewed and the state CAD contacted to consider collaborations, even if the examination is a financial examination or appears to be unrelated to the topic of concern.

5. Is this regulated entity already on the Market Actions (D) Working Group agenda?
 Yes No
6. Was the regulated entity selected by any other states for Level 1 or Level 2 Analysis reviews, and did at least one review recommend further analysis or referral to the Market Actions (D) Working Group?
 Yes No

If the answer to each of the above questions is “No,” this is probably not a good candidate for collaboration. If one or more responses are “Yes,” the CAD should consider collaboration and answer the questions in the next section to determine if the issue should be referred to the Market Actions (D) Working Group.

b. Determining Level of Collaboration

Once the need for collaborative has been determined, the questions below can assist in determining if the issue should be referred to the Market Actions (D) Working Group or addressed on a regional level.

1. Is the regulated entity nationally significant?
 Yes No

Note: It is not necessary that a regulated entity be nationally significant for Market Actions (D) Working Group referrals. However, if a regulated entity is nationally significant, it is more likely that other states are interested in the regulated entity’s activities or engaged in contact with the regulated entity for other or related issues.

2. Has the regulated entity previously been included on the Market Actions (D) Working Group agenda for this issue or any other issue?
 Yes No

If this information is unknown, NAIC staff may be able to provide some assistance. If available, the CAD should review the closing report, final report or other documentation created from previous Market Actions (D) Working Group action. If this is a related or similar issue that should have been resolved based on a prior collaborative effort, the CAD should submit the Request for Review (RFR) to the Market Actions (D) Working Group.

3. Has the regulated entity been chosen as part of the Market Actions (D) Working Group’s National Analysis Project?
 Yes No
4. Does the issue involve a significant amount of consumer harm?
 Yes No
5. Does the issue lend itself to a multistate resolution?
 Yes No

If the answer to any of these questions is “Yes,” the CAD should consider submitting a referral to the Market Actions (D) Working Group. If the answer to all of these questions is “No,” follow the Multistate Examination Process outlined later in this chapter.

B. Responsibilities of Key Players in a Collaborative Action

The different roles played within a collaborative action are often driven by the domestic, the state that brought the issue forward and top premium states. In the case of the Market Actions (D) Working Group, once members agree to a collaborative response, the Working Group chair will determine Lead States and the Managing Lead State (MLS). The Lead States will also issue an invitation for additional states to participate. Below are the responsibilities that different individuals assume as part of their role in a collaborative action.

1. Managing Lead State (MLS) Responsibilities

The MLS bears the overall responsibility to facilitate communication and coordinate activities in an efficient manner. The MLS is the key contact with the regulated entity under review. If necessary, the MLS will directly contract with and supervise any vendors hired. The MLS will carry out the collaborative action from the continuum of market actions as it is collectively determined by the Lead States. In addition to general Lead State responsibilities (see Section C2 below), MLS duties include:

- Determining the number of Lead States needed and recruiting additional Lead States, if needed, in collaboration with the Market Actions (D) Working Group chair if applicable;
- Convening the Lead States for initial strategy planning to determine the appropriate course of action and scope of issues to be addressed;
- Considering all options in the continuum of market actions and determining an effective course of action. An examination is only to be conducted if other regulatory options in the continuum are not considered sufficient;
- Organizing an initial meeting with the regulated entity to review collaboration or Market Actions (D) Working Group processes and discuss issues. Sample initial meeting notice letters are available to regulators through NAIC staff;
- Entering and updating the action in the Market Action Tracking System (MATS);
- Scheduling regular meetings and calls with the regulated entity to ensure that the process continues to be efficient and effective;
- Keeping the domestic state apprised of the status of the collaborative action and requesting any assistance from the domestic state as necessary, if the MLS is not the domestic state;
- Scheduling regular meetings with all Lead States, vendors and/or independent contractors;
- Closely monitoring all vendors and/or contractors for appropriate billing practices;
- If state staff are to be used as part of the collaborative action, communicating with CADs to obtain resources and schedule activities; and

- If the issue is a Market Actions (D) Working Group action:
 - Providing a presentation to the Market Actions (D) Working Group outlining the general scope of the collaborative action prior to the initiation of the effort. The presentation shall include a preliminary timeline for various stages and completion of the regulatory effort;
 - Providing an update and revised timeline to the Market Actions (D) Working Group within 30 days of the Lead States' decision to change the plan, if the MLS determines that circumstances require a substantial change in the planned course of action;
 - Providing an update on the progress of the action to the Market Actions (D) Working Group at each NAIC national meeting and, upon request, on the Market Actions (D) Working Group conference calls. Providing details on action findings when they are available, and terms of proposed resolutions/settlements; and
 - Completing the Market Actions (D) Working Group Managing Lead State Post-Mortem Report Form.

2. Lead State Responsibilities

The Lead States commit to serve as team members who share an equal responsibility to make all key decisions in the collaborative action. The Lead States shall work collaboratively to determine the following:

- If violations occurred and the extent of any violations found;
- An appropriate corrective action by the regulated entity that will help prevent further, similar violations;
- A plan of remediation, if necessary, and its scope;
- Post-collaborative action reporting by the regulated entity, if any;
- The scope of post-collaborative action monitoring necessary by the Lead States;
- An administrative sanction, as necessary, its scope; and
- Applicable use of the Market Actions (D) Working Group *Best Practices for Multistate Settlement Agreements*, as needed.

In general, a Lead State should be prepared to do the following:

- Attend conference calls and in-person meetings to discuss the collaborative action;
- Carry out assignments related to the collaborative action in a timely manner; and
- Review all materials prior to meetings.

3. Replacement of a Lead State

In the event that a Lead State or Managing Lead State is unable to continue to serve, the Managing Lead State or other Lead States by agreement will appoint a replacement. In the case of a Market Actions (D) Working Group action, the Working Group chair will appoint a new Managing Lead State, and if a team fails to make efficient progress to conduct or finalize the collaborative action, the chair has discretion to relieve any of the Lead States of their duties and appoint new Lead States. If any one of the Lead States believes that the conduct of a Lead State is detrimental to the collaborative action, that state should contact the Managing Lead State, or the Market Actions (D) Working Group chair if applicable, to discuss these concerns. The Working Group chair has discretion to remove and replace a Lead State at any time during a Market Actions (D) Working Group collaborative action.

4. Participating State Responsibilities

Any state may elect to participate in a collaborative action by executing the participation agreement form sent by the Managing Lead State at initiation of the action. The invitation and form will outline the major issues found and, in most cases, briefly outline the scope of the action. All Participating States will have access to confidential and privileged information, provided that the state has signed the NAIC Master Information Sharing and Confidentiality Agreement.

Participating States do not take an active role in the action; however, they should contact the Managing Lead State to discuss any new issues of consideration for inclusion in the collaborative action. Participating States agree to provide interpretation of the Participating State's laws if requested and respond to any requests for information. If the Managing Lead State finds that the state issue is not an appropriate part of the collaborative action, the state may then initiate a separate regulatory effort.

In some cases, only Participating States may be eligible to receive a portion of any monetary sanction imposed on the regulated entity. A Participating State is not required to accept the proposed resolution presented by the Lead States; however, a Participating State does agree to consider the proposed resolution.

C. Market Actions (D) Working Group

The Market Actions (D) Working Group is the forum for identifying and addressing issues of multistate concern. Members of the Market Actions (D) Working Group are chosen for their experience and qualifications within the market conduct arena. Members meet at each NAIC national meeting and hold periodic conference calls in the interim. Each state's CAD is invited to attend calls and NAIC national meetings and is able to participate but not vote on acceptance of actions.

In addition to referring issues to the Market Actions (D) Working Group and participating in its activities, CADs should remain cognizant of the issues that the Working Group addresses by attending meetings and calls to determine their importance in the market in a regulator's state.

The Market Actions (D) Working Group has an interest in monitoring all multistate enforcement efforts and will work to assist collaboration and communication on all such efforts. However, the Working Group must focus its efforts on projects and entities that will impact a significant number of NAIC members and consumers. Issues that impact only a few states will be monitored and, should a small group of states decide to conduct a collaborative action independent of the Market Actions (D) Working Group, the Working Group or NAIC staff will provide assistance upon request with communications, general information or other, similar resources.

1. National Analysis Project

This annual project coordinated by the Market Actions (D) Working Group members uses market conduct and financial annual statement information to identify companies that are exhibiting indications of current or potential concerns and then coordinates analysis of the identified entities. Issues found through this process may be handled on an individual state basis or eventually be referred to the Working Group through the Request for Review process. The goal is to uncover issues sooner, decreasing consumer harm and reducing the number of duplicative actions.

2. Request for Review (RFR)

When a Market Analysis Chief (MAC) discovers an issue that impacts multiple jurisdictions, the MAC should consult with their state Collaborative Action Designee (CAD). Working together and answering the questions in Subsection 4a and 4b of this chapter, the CAD and MAC may determine that a referral should be made to the Market Actions (D) Working Group. The referral form is available to regulators and once completed, it should be submitted to the Working Group's designated NAIC staff support. The RFR should include the results of Level 1 and Level 2 Analysis reviews, if available, as well as any supporting documentation. NAIC staff will assist state regulators to ensure proper RFR procedures are followed.

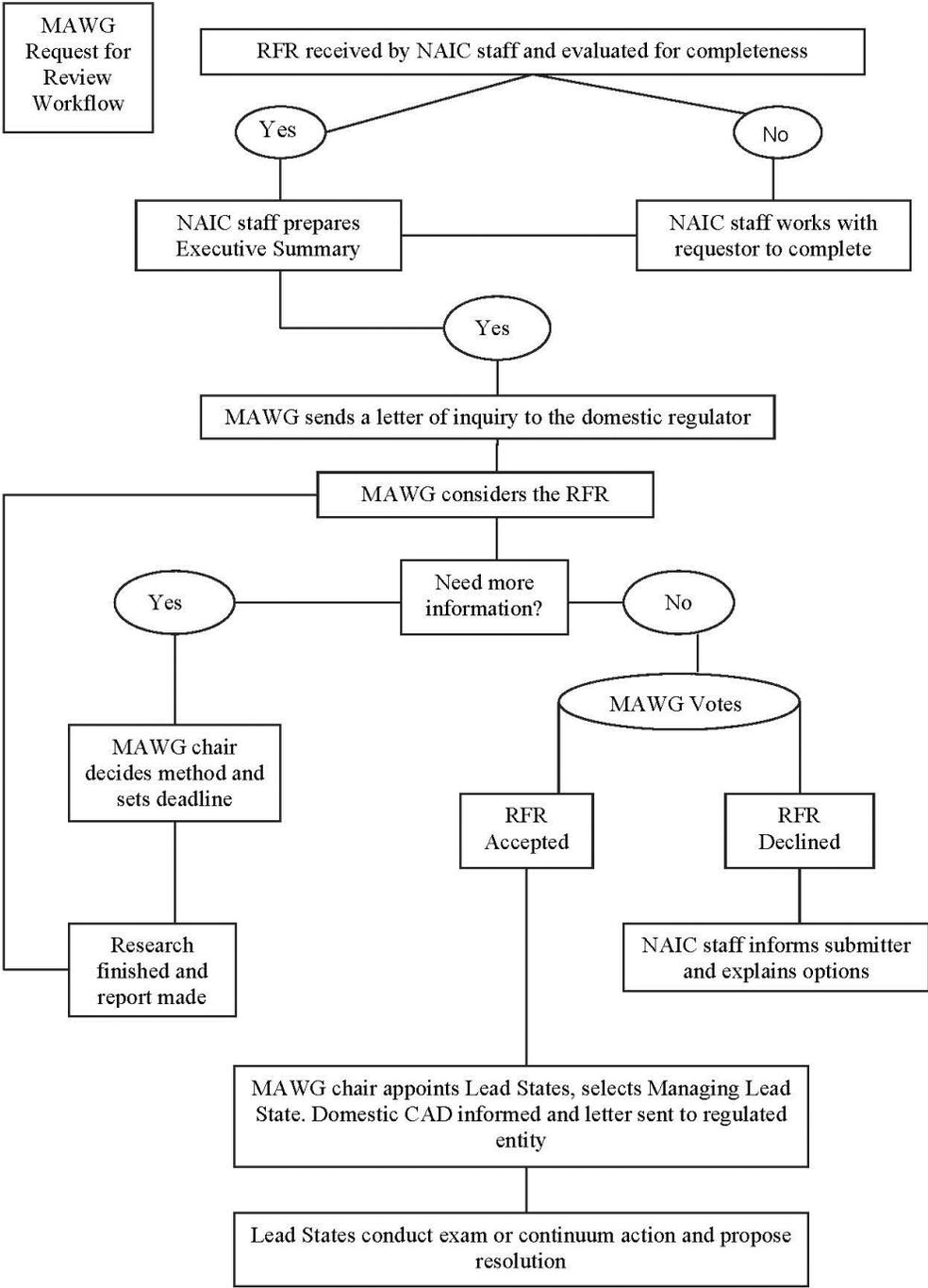
The Market Actions (D) Working Group will consider each RFR and determine whether to pursue the matter as a Working Group collaborative action. Among other criteria, Working Group members consider whether a material issue or pattern of conduct exists that demonstrates a systemic failure of the internal control systems of an entity that affects multiple jurisdictions. The Working Group will also consider whether consumers are at risk of not receiving contracted benefits or of suffering other serious harm.

Prior to the Market Actions (D) Working Group's vote on acceptance, if the referring regulator is not the domestic, or has not previously contacted the domestic, the Working Group chair will contact the domiciliary state insurance department and request information concerning the RFR. The letter may include questions about the regulator's awareness of and actions related to the alleged problem and whether the state has any plan of action or monitoring in place.

Once the Market Actions (D) Working Group chair determines there is sufficient information to make a decision, if there is a quorum, a vote is taken. A three-fourths majority is required to accept the RFR for a Working Group collaborative action. If an RFR is declined, NAIC staff will contact the CAD of the referring state and provide guidance and suggestions as to other steps that may be taken.

The steps in the RFR process are outlined in the flowchart on the following page.

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D. Multistate Examination Process

This section contains the steps to determine the need for, and how to best conduct a multistate market conduct examination. For purposes of this discussion, the proposed deliverable is assumed to have been met/achieved before moving on to the next section.

1. Document the Need for an Examination

The state Collaborative Action Designee (CAD) will work with the Market Analysis Chief (MAC) to determine which entities should be the focus of attention for the state. Through internal decision-making processes, the CAD and other state staff should ascertain that other choices from the continuum of market actions are not adequate or appropriate. At the point of determining the need for an examination, the CAD should take the following steps:

Steps:

- a. Document the need for an examination based upon identified triggers;
- b. Prepare a justification memo; and
- c. Obtain necessary approvals and support from the commissioner and legal department.

Deliverable:

A justification memo, which documents the need for an examination.

2. Determine if Multistate Examination is Appropriate

Several jurisdictions may have a joint interest in the market performance of a company, and their collective concerns may be best met through a multistate examination of that company. In determining appropriateness of a multistate examination, the state CAD should consider the similarity of product(s) across jurisdictions, differences in state regulations of product(s) and location of the offices of the insurer, and any other factors that may apply. Multistate examinations are not appropriate when company behaviors are specific to one jurisdiction.

Steps:

- a. Follow Steps 1 through 6 in Subsection 4a of Section A of this chapter to determine if a collaborative action is appropriate;
- b. Follow Steps 1 through 5 in Subsection 4b of Section A of this chapter to determine if a Market Actions (D) Working Group Request for Review (RFR) is appropriate; and
 - If yes, confirm commissioner support for a potential Working Group collaborative action, complete and submit the RFR to the Working Group.
 - If no, the issue is not appropriate for the Working Group but is appropriate for collaboration.
- c. In either case, the collaborative action itself will typically follow the path outlined below.

Deliverable:

A possible Market Actions (D) Working Group RFR recommending a collaborative examination based on documented triggers.

3. Work with the Domiciliary State

At this point, the CAD of the initiating state (if not the domiciliary state) will contact the CAD of the domiciliary state to determine what that department of insurance may have done previously to uncover or address the issue.

Steps:

- a. The initiating state CAD notifies the domiciliary state of concerns and interest, and receives and reviews any response/input from domiciliary state; and
- b. The initiating state CAD and domiciliary state determine the scope of the problem and draft notification to all states.

Deliverable:

A listing of all potentially affected states and description of the issues of concern, including magnitude. A clear understanding of the role of the domiciliary state and which state will lead the examination.

4. Initiate Collaborative Examination

The CAD of the Lead State, whether the initiating state or domiciliary state (if different) will still want to use the Market Actions (D) Working Group's forum to provide information on the action and solicit other potentially impacted states.

Steps:

- a. Notify the Market Actions (D) Working Group and each state's CAD of the intended collaborative action. Include at least the following:
 - A brief description of the issue;
 - A list of possibly affected states;
 - An invitation for any interested states to join the action;
 - A request for information from any other states that have addressed the issue; and
 - Possible assistance desired from the Working Group or NAIC staff.
- b. Interested states submit participation responses, including the following:
 - Whether the state intends a passive or lead role;
 - If the state wishes to take a lead role:
 - Number of staff that will be dedicated by that state; and
 - Staff availability dates;
 - The state's statutory authority to examine company records;* and
 - An authorization to review records.
- c. Review invitation responses to determine:
 - Any state-specific concerns of Participating States;
 - If other states have addressed the problem(s), collect information on findings; and
 - Which states wish to be named a Lead State.
- d. Enter the examination call in the Market Action Tracking System (MATS), noting that it is a multistate action.

*The domiciliary state has authority to look at all records of their domiciled companies. Most states can authorize another state to review their own records.

Deliverable:

A list of Participating States with desired participation level, resources available and authorization to review records. (All information is entered into NAIC systems as the examination proceeds.)

5. Plan the Examination

The Managing Lead State Coordinator assumes the role of coordinating and planning the examination. This function may be part of the state CAD's responsibility, or another staff member may be designated. The CAD may still be responsible for any communications with the Market Actions (D) Working Group or NAIC staff to request advice or assistance.

Steps:

- a. The Managing Lead State (MLS) assigns the Examiner-in-Charge (EIC). Criteria for selecting an EIC include:
 - Minimum qualifications;
 - Expertise based on scope of the examination; and
 - A representative from the Lead State (recommended).

- b. The MLS and EIC plan the examination in coordination with other Lead States, addressing:
 - Scope statement (market conduct areas to be covered);
 - Number of examiners and other resource requirements;
 - List of runs or records needed based on period of review;
 - Role Participating States will play;
 - Tasks that go into the plan;
 - Tentative schedule (time frame and sequence of examination events); and
 - Location(s);

Note: The MLS should consider input from Participating States to prepare the examination plan.

- c. The MLS and EIC set the start date and date of pre-examination conference;
- d. The MLS and EIC develop a confidentiality clause for the examination;
- e. The MLS finalizes the examination plan. The examination plan, including confidentiality clause, should be distributed to and signed by all Participating State CADs; and
- f. The MLS updates the Market Action Tracking System (MATS).

Deliverable:

A formal examination plan that has been agreed to by all Lead States. The plan should include details regarding:

- Statutory authority of Participating States;
- Roles of Lead and Participating States;
- Estimated number of examiners;
- Expected resources required;
- Resources available;
- Identity of the EIC;
- Scope statement;
- Examination start date and estimated completion date; and
- List of runs, records and information required.

6. Notify Company

Let the company or companies know that an examination has been called.

Steps:

- a. The Managing Lead State (MLS) sends examination notification to the company. Timing and content follow guidelines for regular examinations;
- b. The MLS receives the company's response, including identification of the company's examination coordinator;
- c. The EIC assembles the company's response information:
 - Coordinator/contact name;
 - Location of documents; and
 - Other requested information.

Deliverable:

Examination notification is sent to the company.

7. Perform Pre-Examination Activities

Pre-examination activities for a multistate examination follow the guidelines outlined in this handbook. It is the responsibility of the Managing Lead State to coordinate pre-examination activities and the responsibility of the Lead State CAD to ensure adequate communication activities among all Participating States.

8. Conduct Examination

Conduct the examination following the guidelines outlined in this handbook. It is the responsibility of the EIC to coordinate and conduct the examination and the responsibility of the Managing Lead State (MLS) to ensure adequate communication among all Participating States.

Steps:

- a. The EIC is responsible for conducting the examination;
- b. The EIC is responsible for on site coordination;
- c. The EIC is responsible for addressing state-specific concerns of Participating States during the examination;
- d. The EIC is responsible for communication with company management;
- e. The Lead State CAD is responsible for communication with the Participating States;
- f. The MLS and EIC coordinate a wrap-up session with the company; and
- g. All Participating States should continue to maintain applicable confidentiality until the conclusion of the examination and/or settlement.

9. Write the Multistate Examination Summary

Upon conclusion of the examination, a multistate examination summary is drafted by the EIC. The Managing Lead State (MLS) will help coordinate the communication of comments on the summary by Participating States.

No state-specific examination findings or recommendations are included in the multistate examination summary. These will be handled with state-specific addendum and will incorporate conclusions based on individual state statutes and regulations.

Steps:

- a. The EIC coordinates the drafting of the multistate examination summary and state-specific findings (which are not included in the summary itself);
- b. The Lead State CAD exposes a draft of the multistate examination summary;
 - Distribute to all Participating States;
 - Gather Participating State responses; and
 - Resolve discrepancies.
- c. The EIC finalizes the multistate examination summary and obtains a sign-off from Participating States;
- d. The MLS or EIC distributes the approved multistate examination summary to the company, and the Lead State CAD distributes the final copy to all Participating State CADs; and
- e. The Lead State CAD updates the Market Action Tracking System (MATS).

10. Finalize the Examination Report

Final Examination Report = Multistate Examination Summary + State Addendum

Each Participating State may issue an examination report or choose to adopt the Lead State report that consists of the multistate examination summary. Alternatively, each Participating State may issue an optional state addendum, taken from the EIC's report on findings related to state-specific issues.

Examination Report

The state addendum details the state's specific examination findings and recommendations, based on that state's own statutes and regulations.

Steps:

- a. Each Participating State CAD sends the state's final examination report to the company:
 - Receive and evaluate the company response; and
 - Include the company response as part of the report.
- b. Each state CAD finalizes its state's examination report; and
- c. Each Participating State should record the applicable administrative resolution for its state in the appropriate NAIC database.

E. Conclusion of Collaborative Enforcement Actions

When a collaborative effort produces findings for which a regulatory penalty or sanction is contemplated, such action should be memorialized in a written consent order, voluntary settlement agreement or similarly titled settlement document. States may contemplate a collaborative enforcement action at the same time as a pending civil court action concerning similar issues, such as a class action lawsuit. Such an enforcement action may or may not occur simultaneously with a settlement of the civil action. Negotiations for coordinated regulatory and civil settlement should be the responsibility of the Lead State(s).

In the event a collaborative effort is challenged, or Lead States cannot reach a settlement, they should develop a resolution strategy. Lead States should outline their strategy and recommendations to ensure violations are appropriately addressed in the correct jurisdictions. Examiners from Participating States must be made available for follow-up proceedings, if required. Expenses associated with the appearance of any examiners at a proceeding arising out of the examination must be borne by the states conducting the action.

1. Best Practices for Multistate Settlement Agreements

The purpose of this document is to outline best practices that will meet the needs of multiple jurisdictions affected by the business practices of regulated persons/entities. It is important to recognize that although state departments of insurance have the authority to perform multistate examinations and investigations of potential violations of insurance law, the states cannot require regulated persons/entities to participate in a multistate settlement agreement (MSA). Thus, multistate settlement agreements are commonly entered into by way of mutual agreement with the applicable regulated entity as a way to uniformly and efficiently resolve regulatory matters.

The *Best Practices for Multistate Settlement Agreements* document is intended to provide guidance to regulators with respect to engaging in multistate settlement negotiations and drafting multistate settlement agreements. It is recognized that the terms of the agreement may vary depending on the subject matter of the examination/investigation, the nature of the violation, the duration of noncompliance, the number of consumers affected, and the number of states in which the regulated entity is doing business, among other considerations. However, agreements should be negotiated and drafted in a manner that is intended to promote participation by regulators and effectively address the issues of concern to regulators. With this in mind, best practices have been developed to effectuate the greatest amount of participation among the states in multistate settlement agreements. A complete copy of the *Best Practices for Multistate Settlement Agreements*, adopted by the Market Actions (D) Working Group, is available to regulators. Below are some provisions of the document, which have been provided in order to promote transparency about the MSA process.

A. Procedure

Who Leads Settlement Negotiations?

States seeking to initiate a multistate settlement are encouraged to bring such matters to the attention of the Market Actions (D) Working Group (MAWG). MAWG's main role is to support collaborative actions among the states to address common regulatory compliance issues. MAWG reviews submissions from state regulators or other sources that identify regulated entities that have a current or potential market regulatory issue that impacts multiple jurisdictions. MAWG determines if it will take a role in initiating regulatory action.

If MAWG does take a role in initiating a multistate regulatory action, according to established procedures, MAWG will participate in determining whether the Managing Lead State (MLS) in any MAWG initiative should be the state of domicile or another state. More than one Lead State may be designated by MAWG. The Lead State(s) will assume the responsibility for developing final action, including developing any MSA.

Provide Periodic MAWG Updates

At least one Lead State should be available to participate in MAWG and Collaborative Action Designee (CAD) conference calls. Participation in these calls will provide an opportunity for the Lead State(s) to address issues and questions presented by MAWG members and CADs and to update the states on the progress and direction of active collaborative actions.

B. Contents of MSAs

1. Background

a. Statutory Authority

The MSA should include any and all relevant statutory authority of the MLS.

b. The Parties

The MSA should define the parties to the agreement:

1. Regulated Entity – The MSA should state the name of each and every company and/or individual that is party to the agreement. Because state databases, as well as NAIC databases, are populated on a company level, insurance companies that are a party to the agreement should be listed separately rather than as a group;
2. Lead State(s) – The MSA should indicate the states that have taken a leadership role in the examination/investigation and development of the MSA;
3. Domestic Regulators – The MSA may indicate the state where the regulated entity is domiciled;
4. Participating State(s) – Often defined in an MSA as “the insurance regulators of each of the remaining jurisdictions and the District of Columbia that agree to and approve the MSA;
5. Signatory Regulators – Often defined in an MSA to include the Lead State(s) and Participating State(s) collectively; and
6. Monitoring Regulators – If the regulators who will be overseeing corrective action plans, claims reassessments, progress reports, or follow up examinations subsequent to the MSA are different from the Lead State(s), a set of monitoring regulators should be defined.

c. Recitals/Recitation of Events Leading Up to the Action

The MSA should include a statement of the facts that gave rise to the necessity of an MSA. The recitals should contain:

1. A statement regarding the jurisdiction of the Lead State(s) over the regulated entity;
2. An explanation as to the commencement or initiation of the action that gave rise to the MSA;
3. Identification of multistate areas of concern. The MSA should list the issues that gave rise to collaborative action; and
4. Violations that are being pursued by the Lead State(s).

d. Scope of the MSA

The MSA should include a statement as to the scope of the agreement with as much specificity as possible. As part of determining the scope of the MSA, the Lead State(s) should review the particular company’s corporate governance to determine if the agreement should include corporate governance features.

The parties to the MSA may agree that specific issues will not be addressed by the MSA. Any stipulations between the parties to reserve an issue from consideration should be specifically stated in the MSA. Any potential Participating State that wishes to reserve an issue yet participate in the collaborative action must notify the MLS of the state’s conditions for participation. Such reservation should be for good cause and

as limited as possible. The reservation of an issue should be communicated to the regulated entity by the MLS. Such a reservation may require a separate written agreement between the potential Participating State and the regulated entity. It should be understood that the regulated entity is not required to accept the reservation. In such instances, the state and regulated entity may choose to handle that state's issues in a separate action.

2. Remedies/Remediation

a. Corrective Action

A primary goal of any MSA should be to achieve compliance with the regulated entity on a national basis. The MSA should define any required corrective action with specificity, including a specified period of time for completion. Corrective actions should be reasonably calculated to undo past harm, where possible, and to eliminate future violation of the insurance laws in the Participating State(s).

The Lead State(s) or Monitoring Lead State(s) should retain the authority to oversee any compliance efforts that require communication with policyholders/consumers to ensure that the regulated entity communicates directions, instructions and information in a manner that is easily understood by affected consumers. Further, the corrective action plan should incorporate contact information that affords policyholders/consumers an opportunity to seek information from persons with knowledge over the subject matter.

b. Follow-up Audits/Examinations

A follow-up audit or examination process in an MSA should proceed in a timely manner after any period of corrective action and should be as objective and transparent as possible. The MSA should indicate:

1. The regulators that will be responsible for the follow-up audit or examination;
2. The date the follow-up audit or examination is scheduled to begin;
3. The time period that the follow-up audit or examinations is expected to cover;
4. The examination standards from the handbook that will be applied during the audit/examination;
5. The compliance expectations of the examination team;
6. Consequences that will be applied as a result of the regulated entity failing to meet specified compliance thresholds; and
7. Whether participating regulators are precluded from conducting their own examinations until the adoption of the follow-up examination for the issues involved.

c. Self-Reporting

The MSA may provide for a follow-up audit, examination, or periodic self-reporting. If self-reporting is required as a condition of the MSA, the Lead State(s) or Monitoring State(s) must be prepared to review and provide feedback to the regulated entity that is required to provide the reports. Should the Lead State(s) determine that self-reporting is a condition to settlement, the MSA should specify the following:

1. Reporting deadlines;
2. Required contents of the reports;
3. The regulator(s) responsible for receiving the reports;
4. The expectations of the regulator(s) responsible for receiving the reports;
5. Expected compliance standards;
6. Any penalties or other consequences for failing to meet compliance standards based solely on reporting; and
7. Any penalties or other consequences for failing to meet reporting deadlines without obtaining an extension.

d. Penalties/Fines Costs

Penalty and fine provisions should be structured in a manner that is consistent with the laws of the Participating States. For instance, many states do not permit penalties to be designated as “administrative costs” or “assessments.” Further, some states do not have a mechanism that allows a penalty to be paid to a third party in the form of a contribution or charitable donation.

C. Consent Orders of Other Adoption Orders

A Participating State may elect or be required by law to execute a Consent Order or other type of Adoption Order that adopts an MSA. Any Consent Order or other Adoption Order executed should be consistent with the terms of the MSA and should not include any additional duties or obligations upon the parties to the agreement that are not specifically required by that state’s law. A Participating State should not reserve any issues from inclusion in the MSA that were not communicated to the MLS at the time of indicating a willingness to participate in the collaborative action.

Any required or elected Consent Order or other Adoption Order shall be executed and final within any participation deadlines established by the MSA.

Any state that had indicated a willingness to participate in the collaborative action but does not intend to execute or participate in the MSA shall advise the MLS of the Participating State’s intent to not participate. The Participating State is encouraged to explain the reasons for not intending to participate in the MSA. By doing so, the Lead State(s) may be in a position to renegotiate with the regulated entity in order to address the outstanding reservations or concerns of the Participating State.

D. Confidentiality

1. Report

Final examination/investigation reports establish the foundation for future administrative action. These reports should be shared with participating regulators as soon as is practicable after they are completed.

Where permitted by law, final examination/investigation reports should be open for public disclosure after final administrative action has been taken. Any limitation to the public distribution of final examination/investigation reports should be clearly stated in the MSA, including any waiting period required prior to public disclosure. It may be practical to include the report as an exhibit in the MSA. Reasons for any limitations for making documents public should be listed.

2. Exhibits

In many instances, final examination/investigation reports include exhibits. Exhibits attached to reports should be handled with the same confidentiality and public disclosure standards applied to the final examination/investigation reports.

a. MSA and Other Adoption Orders

Unless otherwise required by law, the MSA and any other order entered into by the Participating State adopting the MSA should not be confidential after the order is executed and final. Rather, final actions of regulators, as well as duties imposed upon regulated persons/entities pursuant to the MSA, should be transparent and available for public disclosure.

b. Settlement Offers/Negotiations

Notes, materials, draft documents, discussions, and any other information developed during the course of settlement negotiations should be considered a component of the examination/investigation work papers and should not be subject to public disclosure after the MSA has been finalized. The release of preliminary settlement information to the public that is an integral part of negotiations would have a chilling effect on future settlement negotiations.

DRAFT

July 6, 2023

Sent via electronic mail to
Matthew.tarpley@tdi.texas.gov
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Matt Tarpley, Chair
Market Conduct Examination Guidelines (D) Working Group
c/o Petra Wallace, Sr. Market Regulation Specialist
National Association of Insurance Commissioners
1100 Walnut St. Suite 1500
Kansas City MO 64106

RE: Exposure Drafts
Chapter 4 – Collaborative Actions 06-06-23
Chapter 23 – Conducting the Life and Annuity Exam 06-06-23

Dear Mr. Tarpley,

Thank you for the opportunity to provide comments to these very important chapters of the *Market Regulation Handbook*. We appreciate all the time and effort expended to review and draft the revisions. We believe the revisions will be very helpful to in the future.

Chapter 4 – Collaborative Actions

Missouri feels the requirements set forth in Section E are very much needed and will be extremely useful for consistency and completeness of multistate actions going forward. To build on these efforts, Missouri is providing a few suggestions and comments for consideration as follows:

1. Page 14.A., last paragraph – Consider adding the following or similar language to the paragraph to ensure that all lead states have an opportunity to weigh in on the language before presenting it to the company(ies):

Prior to sharing the MSA with the Company, the MSA should be provided to the lead states for review. A period of at least 10 working days should be allowed for the lead states to provide feedback. All feedback should be considered by the group in drafting a final version of the MSA. The final MSA should be agreed to by all lead states prior to sharing with the entity(ies) examined.

2. Page 16.B.2.c. Self-Reporting – Consider removing “follow-up audit, examination,” from the first sentence. This seems out of place since the section title is ‘Self-Reporting’.

3. Page 17.D.2. Exhibits, first paragraph – Some state laws may not treat exhibits the same as the report. Missouri law considers the exhibits to be work papers and are, therefore, confidential. The final report is a public document in Missouri. Should this section be changed to allow this to be consistent with each state’s laws? Or that it will follow the managing lead state’s laws?
4. Page 18 – Consider changing the word “chilling” to “detrimental” or similar term that is common to insurance terminology.

Chapter 23 – Conducting the Life and Annuity Exam

Many changes have been incorporated in this chapter and we appreciate the group’s consideration of our comments. There is one item that still stands out to us in this chapter and that is the placement of the Supplement Checklists. The existing checklists are at the end of the chapter but the new ones have been inserted immediately after the applicable standard. If the new checklists are to remain where they currently appear, then the lettering of the chapter sections should be updated to be in alphabetical order based on the physical order of items. The physical order of the items in the current draft is as follows:

- A. Operations/Management
- B. Complaint Handling
- C. Marketing and Sales (Several specialized Supplemental Checklists are available in Sections H–N of this chapter)
- K. Supplemental Checklist for Marketing and Sales Standard #10
- L. Supplemental Checklist for Marketing and Sales Standard #12
- M. Supplemental Checklist for Marketing and Sales Standard #16
- N. Supplemental Checklist for Marketing and Sales Standard #17
- D. Producer Licensing
- E. Policyholder Service
- F. Underwriting and Rating
- G. Claims (Several specialized checklists are available in Sections H–J of this chapter)
- H. Supplemental Checklist for Marketing and Sales Standard #1
- I. Supplemental Checklist for Marketing and Sales Standard #4
- J. Supplemental Checklist for Marketing and Sales Standard #8

For consistency purposes, we ask that you consider moving Supplemental Checklists K through M to the bottom or re-lettering the list so that the letters are in logical order.

Thank you again for the opportunity to provide comments and we appreciate your consideration again.

Sincerely,



Teresa Kroll,
Chief Examiner, Market Conduct
Missouri Department of Commerce and Insurance
Division of Market Regulation