

PROJECT HISTORY - 2021

ANNUITY DISCLOSURE MODEL REGULATION (#245)

1. Description of the Project, Issues Addressed, etc.

The *Annuity Disclosure Model Regulation* (#245) was revised to address its application to participating income annuities.

2. Name of Group Responsible for Drafting the Model and States Participating

The Annuity Disclosure (A) Working Group of the Life Insurance and Annuities (A) Committee was responsible for drafting the revisions.

States Participating:

Mike Yanacheak, Chair	Iowa
Chris Struk	Florida
Julie Holmes and Craig VanAalst	Kansas
Adewole Odumade	Maryland
John Robinson	Minnesota
Frank Stone	Oklahoma
Sarah Neil/Matt Gendron	Rhode Island
Doug Danzeiser/Phil Reyna	Texas

3. Project Authorized by What Charge and Date First Given to the Group

In 2016, the Life Insurance and Annuities (A) Committee adopted a charge for the Annuity Disclosure (A) Working Group to: "Review and revise, as necessary, Section 6—Standards for Annuity Illustrations in the *Annuity Disclosure Model Regulation* (#245) to take into account the disclosures necessary to inform consumers in light of the product innovations currently in the marketplace."

At the 2017 Summer National Meeting, the Executive (EX) Committee and Plenary adopted a Request for NAIC Model Law Development "to revise Section 6—Standards for Illustrations in the *Annuity Disclosure Model Regulation* (#245) to address issues identified by the Working Group related to innovations of annuity products currently in the marketplace that are not addressed or addressed adequately in the current standards."

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated.

The Annuity Disclosure (A) Working Group met six times to discuss an issue identified under its charge: that the model prohibits the illustration of "non-guaranteed elements," which could be construed to include participating income annuities because of the formula used to calculate the dividend scale.

New York Life had been working with state insurance regulators since 2015 to develop language for inclusion in Model #245 to allow for the illustration of participating income annuities. The Working Group heard presentations explaining the issue and discussed a proposal forwarded by New York Life. The Working Group reviewed, discussed and revised the proposal. All drafts and comments were posted on the NAIC website. On March 2, 2018, the Working Group adopted draft revisions addressing participating income annuities.

5. A General Description of the Due Process (e.g., exposure periods, public hearings or any other means by which widespread input from industry, consumers and legislators was solicited)

The Annuity Disclosure (A) Working Group met Nov. 22, 2016; Dec. 14, 2017; March 9, 2017; April 13, 2017; Feb. 15 2018; March 2, 2018; and June 4, 2018. All drafts and comments were posted to the NAIC website. The Working Group adopted the revisions addressing participating income annuities on March 2, 2018, and the Life Insurance and Annuities (A) Committee adopted the revisions during the 2018 Summer National Meeting. These revisions were adopted and held by the Committee pending resolution of an additional issue that the Working Group identified. The Working Group did not end up making any additional revision to the model. During the 2021 Spring National Meeting, the Committee agreed to disband the Working Group once these revisions to Model #245 were considered by the Membership.

6. A Discussion of the Significant Issues (e.g., items of some controversy raised during the due process and the group's response)

During its Feb. 15 meeting, the Working Group discussed concerns that the American Academy of Actuaries (Academy) raised with the participating income annuity proposal. The Academy was concerned that the proposal deviated from the current standard in its use of projected improvements and that it did not apply the change consistently across product types. New York Life explained that the proposal was purposefully narrow in scope to address a particular issue with a particular product; only participating income annuities include the potential for additional income in the form of dividends based on the divisible surplus of the company. New York Life also worked with Missouri to revise the proposal to include additional disclosures about future rate assumptions, and it included a requirement that consumers are shown an additional, more conservative illustrated scale when current interest rates are less than the long-term interest rates.

7. Any Other Important Information (e.g., amending an accreditation standard)

None.

PROJECT HISTORY - 2015

ANNUITY DISCLOSURE MODEL REGULATION (#245)

1. Description of the Project, Issues Addressed, etc.

The *Annuity Disclosure Model Regulation* (#245) was revised to clarify its application to contingent deferred annuities (CDAs) by:

- Adding a drafting note to clarify that the requirement to provide a Buyers Guide would not be appropriate for CDAs unless, or until such time as, the NAIC adopts a Buyers Guide that specifically addresses CDAs.
- Adding to Section 4. Definitions: Registered product means an annuity contract or life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933, with a drafting note stating that registered products include, but are not limited to, CDAs.

2. Name of Group Responsible for Drafting the Model and States Participating

The Contingent Deferred Annuity (A) Working Group of the Life Insurance and Annuities (A) Committee was responsible for drafting the revisions.

States Participating:

Ted Nickel, Chair	Wisconsin	Roger A. Sevigny/Keith Nyhan	New Hampshire
Robert Chester	Connecticut	Joseph Torti III/Elizabeth Dwyer	Rhode Island
Jim Mumford	Iowa	Michael Humphreys	Tennessee
Jason Lapham	Kansas	Tomasz Serbinowski	Utah
Bruce R. Ramge	Nebraska		

3. Project Authorized by What Charge and Date First Given to the Group

The project was authorized in 2012 by the following charge: Appoint a Contingent Deferred Annuity (A) Working Group to develop NAIC guidelines and/or model bulletin that can serve as a reference for states interested in modifying their annuity laws to clarify their applicability to contingent deferred annuities (CDAs) and, as part of this work, review existing NAIC model laws and regulations applicable to consumer protection issues associated with CDAs.

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated.

The revisions to the *Annuity Disclosure Model Regulation* (#245) were drafted by the Contingent Deferred Annuity (A) Working Group. The revisions, and comments received on them, were reviewed and discussed by the Working Group. All comments were posted on the NAIC website. The Working Group adopted a draft of proposed revisions at the 2014 Fall National Meeting, which was then forwarded to the Life Insurance and Annuities (A) Committee. The Life Insurance and Annuities (A) Committee also adopted the revisions at the 2014 Fall National Meeting.

All drafts were distributed to more than 100 interested parties and posted on the NAIC website. Numerous interested parties participated, including: the American Council of Life Insurers (ACLI); the National Association

or Fixed Annuities (NAFA); the Insured Retirement Institute (IRI); the National Association of Insurance and Financial Advisors (NAIFA); Birny Birnbaum (Center for Economic Justice—CEJ); and the American Academy of Actuaries (Academy).

5. A General Description of the Due Process (e.g., exposure periods, public hearings or any other means by which widespread input from industry, consumers and legislators was solicited)

The Contingent Deferred Annuity (A) Working Group met at each national meeting and held interim meetings and interim conference calls beginning in June 2012 until adopting the revisions at the 2014 Fall National Meeting.

6. A Discussion of the Significant Issues (e.g., items of some controversy raised during the due process and the group's response)

There were concerns that using the term “CDAs” when revising the model would be too limiting and that subsequent model revisions would be necessary to address every innovation in the industry. The language adopted seeks to address this concern by using broader language and using drafting notes to clarify that the terms are intended to include CDAs.

7. Any Other Important Information (e.g., amending an accreditation standard)

None

PROJECT HISTORY - 2011

ANNUITY DISCLOSURE MODEL REGULATION (#245)

1. Description of the Project, Issues Addressed, etc.

The following is a list of the major changes to the *Annuity Disclosure Model Regulation* (#245) adopted by the working group:

- The Buyer's Guide was separated from being an appendix to the model.
- The scope of the model was broadened to include variable annuities and other registered products to make its scope comparable to the *Suitability in Annuity Transactions Model Regulation* (#275). As in that model, this model also contains a safe harbor for SEC and FINRA approved disclosure documents, although it will disappear if the SEC and/or FINRA do not develop some shortened disclosure form for variable annuities by January 2013. Variable annuity illustrations are excluded from coverage because FINRA has extensive rules governing variable annuity illustrations. The safe harbor does not cover delivery of a Buyer's Guide for the sale of variable annuities so any sale of any kind of fixed deferred, indexed deferred or variable annuity requires that an Annuity Buyer's Guide be delivered.
- In the requirements for the disclosure document, provisions clarifying certain aspects of how indexed annuities should be disclosed were added. Clarifications of other sections were also made although no major substantive modifications were made to these provisions.
- An entirely new section entitled "Standards for Annuity Illustrations" was added. It includes the following major requirements.
 - It is a supplement to the disclosure document.
 - The use of an illustration is not mandatory either by the carrier or the producer and can be used for the initial sale or for subsequent contacts with the owner.
 - If it is used, it has to be prepared by the carrier or by a third party authorized by the carrier prior to its use and subject to a system of control by the carrier over its use.
 - It contains several limitations on the use of assumptions, terms, benefits, riders, etc. but the major limitation on the illustration of nonguaranteed values is the use of current conditions and not any assumed future conditions.
 - It contains several specific requirements and limitations relating to indexed annuity illustrations.
 - It contains several specific requirements and limitations relating to illustrations of annuities with market value adjustments.
 - It adds an optional section for recordkeeping similar to the *Suitability in Annuity Transactions Model Regulation* (#275).

2. Name of Group Responsible for Drafting the Model and States Participating

The Annuity Disclosure (A) Working Group of the Life Insurance and Annuities (A) Committee was responsible for drafting the revisions.

States Participating:

Jim Mumford, Chair	Iowa	Robert Commodore/Paul Hanson /Tamara Kopp	Minnesota
Steve Ostlund	Alabama	Thomas B. Considine	New Jersey
Dan Honey	Arkansas	Gail Keren/Martin Schwartzman	New York
Peg Brown/Paula Sisneros	Colorado	Michelle Brugh	Ohio
Mary Ellen Breault	Connecticut	Betsy Jerome	Utah
Mary Beth Senkewicz	Florida	Fred Nepple	Wisconsin
Marlyn Burch	Kansas		

3. Project Authorized by What Charge and Date First Given to the Group

The project was authorized in 2008 by the following charge: Review and consider changes to the *Annuity Disclosure Model Regulation* (#245) to improve the disclosure of information provided for annuity products, both generally and specifically, and to provide insurers uniform guidance in developing disclosure information and documents and monitoring distribution thereof in order to better inform annuity consumers about the annuity product purchased and how it works. The Executive (EX) Committee approved the model law request for revising the *Annuity Disclosure Model Regulation* (#245) at the 2008 Fall National Meeting.

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated

The model was drafted by the Working Group. The revisions, and comments received on them, were reviewed and discussed by the Working Group. All comments were posted on the NAIC Web site. The Working Group adopted a draft of proposed revisions at the 2010 Fall National meeting on Oct. 18, 2010, which was then forwarded to the Committee.

All drafts were distributed to over 200 interested parties and posted on the NAIC Web site. Numerous interested parties participated, including industry representatives, such as the American Council of Life Insurers (ACLI), the National Association for Fixed Annuities (NAFA), and the Insured Retirement Institute (IRI); insurance producer representatives, such as the National Association for Insurance and Financial Advisors (NAIFA); consumer representatives, such as Brenda Cude (University of Georgia) and Karroll Kitt (University of Texas) and The Academy of Actuaries (AAA).

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)

The Working Group has met at every National Meeting since 2008 Fall National Meeting and held intermittent conference calls. Since the 2010 Summer National Meeting, the Working Group was able to have 5 conference calls and make substantial progress in revising the model.

6. A Discussion of the Significant Issues (items of some controversy raised during the drafting process and the group's response)

The industry supported regulatory oversight for annuity illustrations to assure a level playing field for companies and producers. The insurance industry, consumer representatives and the AAA all worked together on revising the model regulation.

7. Any Other Important Information (e.g., amending an accreditation standard).

None.