

## LIFE INSURANCE (A) COMMITTEE

### Reference:

1990 Proc. I p. 437  
1990 Proc. II p. 563

Harold C. Yancey, Chair—Utah  
Mike Weaver, Vice Chair—Ala.

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### AGENDA

1. Adopt September 11 Kansas City and November 5 Conference Call Minutes
2. Report of Product Development Task Force
3. Report of Life & Health Actuarial (Technical) Task Force
4. Adopt December 2 Minutes and Accelerated Benefit Model Regulation
5. Adopt November 21 and December 1 Minutes and Amendments to Life Insurance Disclosure Model Regulation and Disclosure Form
6. Adopt Resolution Regarding Rules Governing the Advertising of Life Insurance
7. Adopt Illustrated Interest Projections Bulletin
8. Any Other Matters Brought Before the Committee

### REPORT

The Life Insurance (A) Committee met in the Lafoon Room of the Galt House Hotel in Louisville, Ky., at 8:30 a.m. on Dec. 5, 1990. A quorum was present and Harold C. Yancey (Utah) chaired the

meeting. The following committee members or their representatives were present: Mike Weaver, Vice Chair (Ala.); David J. Lyons (Iowa); Douglas D. Green (La.); George Fabe (Ohio); Gerald Grimes (Okla.); Theodore "Ted" Kulongoski (Ore.); and Steven T. Foster (Va.).

**1. Adopt September 11 Kansas City and November 5 Conference Call Minutes**

Upon motion duly made and seconded, the minutes of the Sept. 11 Kansas City and Nov. 5 Conference Call were adopted (Attachments Ten and Nine respectively).

**2. Report of Product Development Task Force**

John Montgomery (Calif.) presented the report of the task force containing four recommendations from the Life and Health Actuarial (Technical) Task Force being presented for exposure. He referred committee members to these specific recommendations which are detailed within the task force minutes.

Mr. Montgomery recommended that the committee consider continuation of this task force to deal with special or new life insurance products.

Upon motion duly made and seconded, the Dec. 3 minutes, including exposure of the actuarial task force recommendations, were adopted.

**3. Report of Life & Health Actuarial (Technical) Task Force**

Mr. Montgomery discussed the actuarial task force recommendations being presented for committee consideration.

1. Recommend adoption of the amendments to the Standard Valuation Law.
2. Recommend exposure of the draft model Actuarial Opinion and Memorandum Regulation.
3. Recommend approval of the addition of Project 21 Valuation Actuary Concept - Long-Range Issues to the agenda of the actuarial task force as a Priority 2 Project.
4. Recommend approval for the deletion of Project 12 NAIC Model Regulation Concerning Use of Gender-Blended Mortality Tables and Smoker - Nonsmoker Mortality Tables from the agenda of the actuarial task force.
5. Recommend approval of the addition of Project 13 Non-guaranteed Element Annual Statement Interrogatories to the agenda of the actuarial task force as a Priority 2 Project.

Jim Swenson (Ore.) commented on the noteworthy achievement of the amendments to the proposed Standard Valuation Law and applauded the efforts of Mr. Montgomery, the American Academy of Actuaries and industry representatives for moving forward in this context.

Upon motion duly made and seconded, the report of the Life and Health Actuarial (Technical) Task Force of Dec. 1 was adopted.

**4. Adopt December 2 Minutes and Accelerated Benefits Model Regulation**

Upon motion duly made and seconded, the minutes of the Accelerated Benefits Working Group meeting of Dec. 2 were adopted (Attachment One).

Anne Jewel (Ohio), a member of the Accelerated Benefits Working Group, offered an amendment to Section 1 of the exposure draft of the model regulation. She said the language would clearly exempt those policies subject to regulation under the Long-Term Care Insurance Model Act. Julie Spiezio (American Council of Life Insurance—ACLI) commented that she serves on both the advisory committee to this working group and the advisory committee to the Joint Accelerated Benefits (B) Working Group. She said that this proposal accurately reflects the discussion that took place among the regulators at the joint working group meeting.

Upon motion duly made and seconded, the Accelerated Benefits Model Regulation was adopted as amended (Attachment Two).

5. Adopt November 21 and December 1 Minutes to Life Marketing Practices to Senior Citizens Working Group and Amendments to Life Insurance Disclosure Model Regulation and Disclosure Form

Commissioner David Lyons (Iowa) commended David Rodgers (Wash.), Jim Swenson (Ore.), Dean Gallagher (Okla.), Bob Wright (Va.), Roger Strauss (Iowa) and NAIC staff for their participation in development of the work product of this group. He said there are three forms to be considered by the committee: the amendments to the Life Insurance Disclosure Model Regulation, a new disclosure form for consumers entitled "Financial Review of this Policy" and a resolution to the Executive Committee pertaining to the Rules Governing the Advertising of Life Insurance. He asked that consideration be given by the parent committee to the continuation of a working group to address the remaining issues on these life products. The first issue is the actuarial review of the value of the products which will be conducted by an NAIC life and health staff actuary. The second item is a review being conducted by Jim Swenson of the individual industry marketing practices to enable identification of those methodologies which would allow for delivery of the disclosure form to the consumer at the point of sale.

Commissioner Lyons indicated that there is one further technical correction to two sections of the Life Insurance Disclosure Model Regulation. He assured the committee that working group members are in agreement with this amendment to Section 6E(2)(f) and Section 8I. The language as proposed by industry would delete inconsistent language in those two sections which require that this disclosure form alternately be "attached to the policy" and "delivered to the insured." He said the suggested amendment provides for "simultaneous delivery" and provides the prominence and timeliness required for the disclosure form. As originally drafted, the language "attached to the policy" connotes that the form is a part of the policy and subject to the Entire Contract Clause.

Commissioner Lyons noted that the company is still responsible for the information contained on the disclosure form and that this amendment in no way reduces the ability of the insurance department or the applicant to take action on any misrepresentations of an agent.

Ed Zimmerman (ACLI) said the disclosure form is not a part of the policy, but that does not mean an insurance department or an applicant would not have a cause of action if there were misrepresentations by an agent. He reminded the committee that this disclosure form was intended to be a simple, straight forward form to facilitate consumer understanding. Neil Rector (Ohio) suggested language for a drafting note.

Upon motion duly made and seconded, the committee adopted language for a drafting note to clarify that the amended language does not diminish the insurer's responsibility for the actions of an agent in any misrepresentations on the disclosure form. Upon further motion duly made and seconded, the Life Insurance Disclosure Model Regulation, as amended, and the Financial Review of This Policy disclosure form were adopted (Attachments Three and Four respectively).

Ms. Jewel asked if the early discussions of the working group had centered upon the disclosure form being provided prior to delivery of the policy. Commissioner Lyons confirmed that was in the original work product of the group; however, he said the working group decided to require delivery at the earliest practical time which, until completion of the review by Mr. Swenson, appears to be at the point of issuance of the policy. Commissioner Foster echoed Ms. Jewel's concern and stated that his preference for time for delivery of the disclosure form to the consumer is at point of sale. He said he would support the model as currently drafted, recognizing the legitimate concern of how delivery required at point of sale would impact direct marketers.

Upon motion duly made and seconded, the minutes of the Nov. 21 and Dec. 1 meetings of the Life Marketing Practices to Senior Citizens Working Group were adopted (Attachments Five and Six respectively).

## 6. Adopt Resolution Regarding Rules Governing the Advertising of Life Insurance

Commissioner Lyons discussed the purpose of the Rules Governing the Advertising of Life Insurance, which is to set forth minimum standards and guidelines to assure full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts. He asked that this committee recommend for adoption this resolution which encourages those states which have not adopted this Rule to do so and encourages those states which have adopted the Rule to adopt the subsequent amendments and enforce the provisions of the Rule.

Upon motion duly made and seconded, the resolution was adopted for presentation to the Executive Committee (Attachment Seven).

## 7. Adopt Illustrated Interest Projections Bulletin

Commissioner Mike Weaver (Ala.) said that he, Commissioner Doug Green (La.) and Neil Rector had drafted a bulletin to assist insurers in conforming with the NAIC model on the Rules Governing the Advertising of Life Insurance, the Life Insurance Disclosure Model Regulation and the Unfair Trade Practices Act. He said two industry suggestions for amendment were considered by the working group in its conference call of Nov. 5, 1990 (Attachment Eight).

Tony Spano (ACLI) said that he agrees fully with the intent of the bulletin. He pointed out a potential drafting problem in Section IB and C. He said the original intent of the language of the amendment he submitted for the working group's consideration was that an advertisement must clearly state for each interest rate advertised, whether that rate is guaranteed. The language as currently stated requires that interest rates be stated in the policy if guaranteed.

Jack States (State Farm Life Insurance Co.) reiterated that the policy contains only the guaranteed rate and does not speak to any other rates of interest the company may pay. He said the purpose of the bulletin is to expand on the advertising rules which state what an advertisement must contain. Neil Rector clarified that the intent of the working group was to require full disclosure of guaranteed rates in both the advertisements and the policy. Commissioner Yancey recommended tabling this discussion until appropriate amendatory language could be drafted. Mr. Swenson questioned whether it was the intent of the group that an illustration was included within the term "advertising" for the purposes of this bulletin. Commissioner Yancey responded affirmatively.

Commissioner Lyons asked that the minutes reflect the request to the Executive Committee to place on the Life Insurance (A) Committee charge for 1991 the direction to address incomplete items in the original charge to the Life Marketing Practices to Senior Citizens Working Group.

Commissioner Yancey expressed his appreciation to all members of the committee's working groups and advisory committees for their participation during the year.

Having no further business, the Life Insurance (A) Committee adjourned at 9:30 a.m., to reconvene at 12:20 p.m. for further consideration of the Bulletin on Illustrated Interest Projections.

A quorum of the A Committee was present for further consideration of the Bulletin on Illustrated Interest Projections. Proposed amendments were considered which stated that any interest rate(s) shown in the policy must be guaranteed. The amendment also clarifies that for the purposes of this bulletin, an advertisement of an interest rate includes any use of illustrations to show the effect of interest rate projections.

Upon motion duly made and seconded, the bulletin was adopted as amended (Attachment Eight-A).

Having no further business, the Life Insurance (A) Committee adjourned at 12:30 p.m.

Harold C. Yancey, Chair, Utah; Mike Weaver, Vice Chair, Ala.; Margurite C. Stokes, D.C.; David J. Lyons, Iowa; Douglas D. Green, La.; George Fabe, Ohio; Gerald Grimes, Okla.; Theodore "Ted" Kulongoski, Ore.; Steven T. Foster, Va.

## ATTACHMENT ONE

Accelerated Benefits Working Group  
of the Life Insurance (A) Committee  
Louisville, Kentucky  
December 2, 1990

The Accelerated Benefits Working Group of the Life Insurance (A) Committee met in the Lafoon Room of the Galt House Hotel in Louisville, Ky., at 3 p.m. on Dec. 2, 1990. A quorum was present and Harold C. Yancey (Utah) chaired the meeting. The following working group members were present: Sheldon Summers (Calif.); Anne Jewel (Ohio); and Robert L. Wright, III (Va.). Also present were Carolyn Johnson and Judy Lee (NAIC/SSO).

Commissioner Harold C. Yancey (Utah) told the working group that any further amendments to the Accelerated Benefits Model Regulation would be considered prior to its adoption by the Life Insurance (A) Committee in Louisville. He asked Merle Pederson (Principal Financial Group), chair of the advisory committee, to suggest any further amendments. The following recommendations and specific amendments were made to the model regulation:

Section 4. The advisory committee suggested clearly exempting an insurer from requiring the signed acknowledgement from an assignee if the insurer is in fact the assignee as the result of an outstanding policy loan. The working group concurred in this recommendation and added clarifying language.

Section 5C. The advisory committee suggested that the current language does not sufficiently address the problems associated with a policy that discounts completely and therefore ceases to exist. In that type of situation the accidental death benefit provision would be affected, since it would also cease to exist. The working group concurred and added clarifying language.

Section 6C(1)(b). The advisory committee suggested an attempt to clarify this section so that instead of a blanket 30-day free look requirement, the language would be amended to provide that the standard be whatever the current free-look requirement is in each individual state with regard to direct response sales of life insurance policies. They recommended language in brackets which would direct individual insurance departments to insert their statutory citations which refer to the free-look requirement of direct response life insurance. The working group disagreed with this recommendation, preferring to delete language in this subparagraph requiring a 30-day free look and adding instead a drafting note recommending that states consider providing a 30-day free look period for this product.

Section 6C(3)(b). The advisory committee recommended that this subparagraph be clarified to show that the actuarial demonstration furnished to a department discloses the actuarial calculations only for the accelerated benefit provision of the policy. The working group concurred in this recommendation and added clarifying language.

Section 6D. The advisory committee recommended two technical amendments in this section. The first was to delete the words "actual or constructive" in the second sentence of the section since their import is implied by law and the words have no true meaning to the average consumer. The working group concurred in this recommendation.

The second recommendation was to delete the words "new or amended" in the last sentence, substituting "an amended." The working group concurred in this recommendation.

Section 10A(1). The advisory committee recommended adding the words "for the accelerated benefit" after the word "charge" at the end of the first sentence to clarify that the premium charge and/or cost of insurance charge being referred to applies only to the accelerated benefit provision. The working group concurred in this recommendation.

The second proposed amendment was to strike the words "and shall not be excessive" at the end of the second sentence. The advisory committee expressed concern that this language was too subjective and might result in rate regulation for which the departments have no statutory authority to develop standards. They noted that the phrase "sound actuarial principles" in and of itself ensures that premiums shall not be excessive based on the standards of the American Academy of Actuaries. Donna Claire (Chalke, Inc.) told the working group that the Life and Health Actuarial (Technical) Task Force accepted her report. Barbara Lautzenheiser (Lautzenheiser & Associates) said that the term "sound actuarial principles" has been around for approximately 20 years, used in law and encompasses both the adequacy and equity concerns. Bob Wright (Va.) expressed his disagreement with removal of the language, believing its inclusion further clarifies the intent of this subparagraph. Upon a vote of the working group the language "and shall not be excessive" was deleted.

Sections 10A(2)(b) and (3)(b). The advisory committee expressed concern that the language currently referring to policy loan interest rates is not definite enough and suggested that the words "statutory adjustable" be added to clarify both subparagraphs. This technical amendment was concurred in by the working group.

Section 10B(1). George T. Coleman (Prudential) asked for modification to this subparagraph to accommodate both additional premium and actuarial discount designs. He said that the words "benefits accelerated" are susceptible to two different

interpretations and the correct interpretation would be that they mean the gross amount accelerated to produce the actual accelerated benefit. He said in additional premium designs, the gross amount accelerated and the accelerated benefit are the same. In actuarial discount designs the gross amount accelerated is reduced by the components of the actuarial discount and any administrative expense charged to produce the net accelerated benefit paid. He said the distinction is important since in the exposure draft the cash value after acceleration is reduced on a pro rata basis based on the percentage of benefits accelerated. He said if this were interpreted as the amount actually paid to the policyholder as an accelerated benefit, the actuarial discount method would not work. The working group concurred in this recommendation and added clarifying language to this subparagraph.

Section 11B(1). A minor change was made in this subparagraph to capitalize the word "member." This recommendation was said to be technical, but important, since the capitalized term applies to "accredited" members of the Society of Actuaries.

The following action was taken in the Accelerated Benefits Model Regulation with regard to changes to group life policies with acceleration features:

Section 2A(1). The advisory committee recommends that the words "issued in this state" be inserted after the term "certificate holder" to insure that this provision is not interpreted as being extraterritorial. The working group refused to concur in this recommendation, expressing the opinion that state law already answers this concern.

Leonard Wood (N.C.) questioned how this additional language would apply to discretionary groups. Mr. Pederson responded that this subparagraph applies only to true group products and that the advisory committee had not considered how it would apply to discretionary groups. He said the advisory committee was in agreement that the laws in the state of policy delivery would apply.

Section 6C(1) and (2). The advisory committee recommended a new subparagraph be added to clarify solicitations for group insurance policies. The working group concurred in this recommendation and added a new subparagraph (c) in both instances to clarify requirements for group insurance policies.

Section 6C(3)(a). The advisory committee suggested adding language to the last sentence to clarify that the insurer has an obligation to present the certificate holder with premium charge information only when the certificate holder has the option of paying the charge. The working group refused to concur in the advisory committee recommendation.

Tom Jenkins (Mutual of Omaha) said that some products are included within a cafeteria-type plan and it is the certificate holder's option to select that benefit and pay the premium charge, and in some cases the election for inclusion in the plan is made by the risk manager. Mr. Wright expressed the opinion that the certificate holder should be informed if they are required to pay, even if the decision is out of their control and made by a risk manager. He said providing this information in the second instance would not be useful to the certificate holder any more than singling out any other increase.

Sarah Di Angelo (Del.) asked what happens in conversion of this benefit from a group policy to an individual policy. She said the premium charge needs to be disclosed to the individual in this instance. Commissioner Yancey responded that under a conversion, the individual would be informed of the premiums for the entire package. Ms. Claire added that she believed the conversion of this benefit is adequately covered under the group conversion rules. The working group was concerned that the only time that a disclosure would be made to a certificate holder is for those policies which have a separate charge for this benefit. The working group directed that the minutes reflect that their intent was not to require a breakout of the amount if there was not a separate charge to the certificate holder.

Section 6D. This recommendation is a group insurance request to clarify that a schedule page only be amended with regard to individual policies. They proposed to accomplish this by inserting the words "under an individual policy" after the word "benefits" in the last sentence. The working group declined to accept this amendment, preferring to add language to clarify that notification must also be given to the certificate holder under a group policy.

Section 10A(1). Mr. Coleman suggested the addition of a sentence to this subparagraph to clarify that the additional cost may also be reflected in the experience rating. When an experience rating refund is made to group policyholders, the accelerated benefit cost is deducted from that refund, thereby financing it through the experience rating refund. After discussion about whether this guideline is restrictive as to financing options and whether the experience rating financing option is acceptable, the working group concurred in the addition of this language.

Upon motion duly made and seconded, the working group adopted the amendments to the Accelerated Benefits Model Regulation as previously stated.

Mr. Pederson inquired if the chair intended to include a monitoring function of the implementation of this regulation as a charge to the 1991 Life Insurance (A) Committee. Commissioner Yancey responded that that decision would be made when the charges to the committees are discussed by the Executive Committee early next year. Mr. Pederson expressed the advisory committee's willingness to continue to work with the committee in this regard.

Having no further business, the Accelerated Benefits Working Group of the Life Insurance (A) Committee adjourned at 2:55 p.m.

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ACCELERATED BENEFITS GUIDELINE MODEL REGULATION  
12/5/90

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Section 1. Purpose

The purpose of this guideline regulation is to ~~assist the individual state insurance departments in addressing regulatory concerns associated with~~ regulate accelerated benefits provisions of individual and group life insurance policies and to provide a minimum level required standards of disclosure. This guideline regulation shall not apply to all accelerated benefits provisions of individual and group life insurance policies except those policies or riders subject to the Long-Term Care Insurance Model Act, issued or delivered in this state, on or after the effective date of this regulation.

Section 2. Definitions

A. "Accelerated benefits" covered under this guideline regulation are benefits payable under a life insurance contract:

- (1) To a policyowner or certificate holder, during the lifetime of the insured, in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider; and
- (2) Which reduce the death benefit otherwise payable under the life insurance contract (~~excluding accidental death and other ancillary benefits~~); and
- (3) Which are payable, ~~in a lump sum or in periodic payments, at the option of the insured upon the occurrence of a single qualifying event which results in the payment of a benefit amount fixed at the time of a9cceleration.~~

B. "Qualifying event" shall mean one or more of the following:

- (1) A medical condition which would result in a drastically limited life span as specified in the contract, for example, twenty-four (24) months or less; or
- (2) A medical condition which has required or requires extraordinary medical intervention, such as, but not limited to, major organ transplant or continuous artificial life support, without which the insured would die; or
- (3) Any condition which usually requires continuous confinement in an eligible institution as defined in the contract if the insured is expected to remain there for the rest of his or her life; or
- ~~(3) (4)~~ (4) A medical condition which would, in the absence of extensive or extraordinary medical treatment, result in a drastically limited life span. Such conditions may include, BUT ARE NOT LIMITED TO, one or more of the following:
  - (a) Coronary artery disease resulting in an acute infarction or requiring surgery;
  - (b) Permanent neurological deficit resulting from cerebral vascular accident;
  - (c) End stage renal failure; or
  - (d) Acquired Immune Deficiency Syndrome; or
  - ~~(d) (e)~~ (e) Other qualifying event medical conditions which the commissioner shall approve for any particular filing; or
- (5) Other qualifying events which the commissioner shall approve for any particular filing.

~~The necessity for a second medical opinion prior to payout is a decision left to the individual state insurance departments.~~

### Section 3. Type of Product

~~Accelerated benefit riders and life insurance policies with accelerated benefit provisions do not represent morbidity risks are primarily mortality risks rather than morbidity risks. They are life insurance benefits and state insurance codes should be amended, if necessary, to permit the writing of this type of life insurance product subject to [insert sections referencing life insurance provisions].~~

### Section 4. Assignee/Beneficiary

~~Prior to the payment of the accelerated benefit, the insurer shall receive is required to obtain from any assignee or irrevocable beneficiary a signed acknowledgement of concurrence for payout. If the insurer making the accelerated benefit is itself the assignee under the policy, no such acknowledgement is required.~~

### Section 5. Criteria for Payment

#### A. Percentage of Payout of Face Amount of Policy Lump Sum Settlement Option Required.

~~The benefit shall be paid in a lump sum, or in periodic payments for a fixed period of time, or in a fixed amount for an indefinite period of time, at the option of the insured. Companies may set minimums on the face amount of contracts for which the benefit shall be offered. Contract payment options shall include the option to take the benefit as a lump sum. The benefit shall not be made available as an annuity contingent upon the life of the insured.~~

#### B. Restrictions on Use of Proceeds.

~~No recommendation is offered on proposed restrictions for restrictions are permitted on the use of the proceeds.~~

#### C. Payment Provisions. Accidental Death Benefit Provision.

~~Decisions on payments shall be made according to the contract. If any death benefit remains after payment of an accelerated benefit, the accidental death benefit provision, if any, in the policy or rider shall not be affected by the payment of the accelerated benefit.~~

### Section 6. Disclosures

#### A. Descriptive Title.

~~The name given the coverage must be descriptive of the coverage provided, and The terminology "accelerated benefit" shall be included in the description-descriptive title. Products regulated under this regulation shall not be described or marketed as long-term care insurance or as providing long-term care benefits.~~

#### B. Tax Consequences.

~~Clear disclosure-A disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted of the potential tax implications of receiving this payout. The disclosure statement shall indicate that receipt of these accelerated benefits may be taxable, and insureds should seek assistance from their and that assistance should be sought from a personal tax advisor. Such disclosure-The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.~~

#### C. Solicitations.

~~(1) Prior to or concurrently with the application, the applicant shall be given an illustration numerically. A written disclosure including, but not necessarily limited to, a brief description of the accelerated benefit and definitions of the conditions or occurrences triggering payment of the benefits shall be given to the applicant. The description shall include an explanation of any demonstrating the effect of the payment of a benefit on the policy's cash value, accumulation account, death benefit, premium, policy loans and policy liens. In the event of direct mail solicitations, the disclosure shall be made upon acceptance of the application.~~

~~(a) In the case of agent solicited insurance, the agent shall provide the disclosure form to the applicant prior to or concurrently with the application. Acknowledgment of the disclosure shall be signed by the applicant and writing agent.~~

~~(b) In the case of a solicitation by direct response methods, the insurer shall provide the disclosure form to the applicant at the time the policy is delivered, with a notice that a full premium refund shall be received if the policy is returned to the company within the free-look period.~~

Drafting Note: States may wish to consider a 30-day free-look period for direct response solicitation.



(c) In the case of group insurance policies, the disclosure form shall be contained as part of the certificate of coverage or any related document furnished by the insurer for the certificate holder.

(2) Prior to or concurrently with the application, the applicant shall be given a written disclosure including, but not necessarily limited to, a brief description of the accelerated benefit and definitions of the conditions or occurrences triggering payment of the benefits. The disclosure shall be signed by the applicant, the policyowner and writing agent. If there is a premium or cost of insurance charge, the insurer shall give the applicant a generic illustration numerically demonstrating any effect of the payment of a benefit on the policy's cash value, accumulation account, death benefit, premium, policy loans and policy liens. In the event of direct mail solicitations, the disclosure shall be made upon acceptance of the application.

(a) In the case of agent solicited insurance, the agent shall provide the illustration to the applicant prior to or concurrently with the application.

(b) In the case of a solicitation by direct response methods, the insurer shall provide the illustration to the applicant at the time the policy is delivered.

(c) In the case of group insurance policies, the disclosure form shall be contained as part of the certificate of coverage or any related document furnished by the insurer for the certificate holder.

(3) Disclosure of Premium Charge.

(a) Insurers with financing options other than as described in Section 10 A(2) and (3) of this regulation shall disclose to the policyowner any premium or cost of insurance charge for the accelerated benefit. These insurers shall make a reasonable effort to assure that the certificate holder is aware of any additional premium or cost of insurance charge if the certificate holder is required to pay such charge.

(b) Insurers shall furnish an actuarial demonstration to the state insurance department when filing the product disclosing the method of arriving at their cost for the accelerated benefit.

(4) Disclosure of Administrative Expense Charge. The insurer shall disclose to the policyowner any administrative expense charge. The insurer shall make a reasonable effort to assure that the certificate holder is aware of any administrative expense charge if the certificate holder is required to pay such charge.

D. Marketing-Effect of the Benefit Payment.

This statement shall appear on the face of every policy or rider: "Cash values, loan values and the death benefit will be reduced if you receive an accelerated benefit." For policies which have no cash or loan values, this statement shall be appropriately modified. When a policyowner or certificate holder requests an acceleration, the insurer shall send a statement to the policyowner or certificate holder and irrevocable beneficiary showing any effect that the payment of the accelerated benefit will have on the policy's cash value, accumulation account, death benefit, premium, policy loans and policy liens. The statement shall disclose that receipt of accelerated benefit payments may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements. In addition, receipt of an accelerated benefit payment may be taxable and assistance should be sought from a personal tax advisor. When a previous disclosure statement becomes invalid as a result of an acceleration of the death benefit, the insurer shall send a revised disclosure statement to the policyowner or certificate holder and irrevocable beneficiary. When the insurer agrees to accelerate death benefits, the insurer shall issue an amended schedule page to the policyholder or notify the certificate holder under a group policy to reflect any new, reduced in-force face amount of the contract.

E. Additional Premium Charge.

See additional disclosure of premium charge under Section 10.

Section 7. Effective Date of the Accelerated Benefits

The accelerated benefit provision shall be effective for accidents on the effective date of the policy or rider. The accelerated benefit provision shall be effective for illness no more than thirty (30) days following the effective date of the policy or rider.

Section 8. Waiver of Premiums

The accelerated benefit provision. The insurer may or may not provide for the offer a waiver of premium for the accelerated benefit provision in the absence of a regular waiver of premium provision being in effect. At the time the benefit is claimed, the company-insurer shall explain any continuing premium requirement to keep the policy in force.

Section 9. Discrimination

Insurers shall not unfairly discriminate among insureds with differing qualifying events covered under the policy or among insureds with similar qualifying events covered under the policy. Insurers shall not apply further conditions on the payment of the accelerated benefits other than those conditions specified in the policy or rider.

## Section 10. Premiums-Actuarial Standards

## A. Disclosure of Additional Premium Charge:

The company shall disclose to the consumer any separate identifiable premium for the accelerated benefit. Those companies indicating that this accelerated benefit is offered without additional premium shall furnish a written explanation to the state insurance department when filing the product:

## B. Effect on Death Benefit, Cash Values, Future Premiums and Loan Balance:

## (1) Two options are available to finance the benefit:

- (a) The insured may make an additional premium payment or cost of insurance charge; or
- (b) The insured may take a present value of the face amount. The calculation would be based on any applicable actuarial discount appropriate to the policy design.

Drafting Note: The Life Insurance (A) Committee has given a charge to industry to set the actuarial standards on which this calculation is based:

## (2) Illustration of effect on other values:

Companies are required to illustrate, by numerical example, any effect the payment of the accelerated benefit has on the face amount, specified amount, accumulation account, cash values, loan balance, and future premiums. Each time an accelerated benefit payment is paid, the company is required to send a statement to the policyowner showing the numerical expression stated above. Upon the payment of an accelerated benefit amount, the company shall issue an endorsement to the policy to reflect any new, reduced, in-force face amount of the contract.

## (3) Effect on Cash Value:

- (a) When an accelerated benefit is payable, the NAIC preference is for a pro-rata reduction in the cash value, not a reduction of the full amount:

(b) Alternatively, the payment of accelerated benefits can be considered a non-interest bearing lien against the death benefit of the policy or rider and the access to the cash value shall be restricted to any excess of the cash value over the sum of other outstanding loans and the lien. If the lien approach is used, any accelerated death benefit payments shall first be applied toward repaying the portion of any other outstanding policy loans which would cause the sum of the accelerated death benefit and policy loans to exceed the cash value. Future access to the cash values and to policy loans would be limited to the difference between the cash value and the sum of the lien and any other outstanding policy loans.

- (c) In either case, the death benefit may not be reduced more than the amount of the accelerated benefits paid plus any applicable actuarial discount appropriate to the policy design for policies without additional premium payments. The accidental death benefit, if any, in the policy or rider shall not be affected by the payment of the accelerated benefit.

## A. Financing Options

(1) The insurer may require a premium charge or cost of insurance charge for the accelerated benefit. These charges shall be based on sound actuarial principles. In the case of group insurance, the additional cost may also be reflected in the experience rating.

(2) The insurer may pay a present value of the face amount. The calculation shall be based on any applicable actuarial discount appropriate to the policy design. The interest rate or interest rate methodology used in the calculation shall be based on sound actuarial principles and disclosed in the contract or actuarial memorandum. The maximum interest rate used shall be no greater than the greater of:

- (a) The current yield on 90 day treasury bills; or
- (b) The current maximum statutory adjustable policy loan interest rate.

(3) The insurer may accrue an interest charge on the amount of the accelerated benefits. The interest rate or interest rate methodology used in the calculation shall be based on sound actuarial principles and disclosed in the contract or actuarial memorandum. The maximum interest rate used shall be no greater than the greater of:

- (a) The current yield on 90 day treasury bills; or
- (b) the current maximum statutory adjustable policy loan interest rate.

The interest rate accrued on the portion of the lien which is equal in amount to the cash value of the contract at the time of the benefit acceleration shall be no more than the policy loan interest rate stated in the contract.

**B. Effect on Cash Value.**

(1) Except as provided in Section 10B(2), when an accelerated benefit is payable, there shall be no more than a pro rata reduction in the cash value based on the percentage of death benefits accelerated to produce the accelerated benefit payment.

(2) Alternatively, the payment of accelerated benefits, any administrative expense charges, any future premiums and any accrued interest can be considered a lien against the death benefit of the policy or rider and the access to the cash value may be restricted to any excess of the cash value over the sum of any other outstanding loans and the lien. Future access to additional policy loans could also be limited to any excess of the cash value over the sum of the lien and any other outstanding policy loans.

**C. Effect of Any Outstanding Policy Loans on Accelerated Death Benefit Payment.**

When payment of an accelerated benefit results in a pro rata reduction in the cash value, the payment may not be applied toward repaying an amount greater than a pro rata portion of any outstanding policy loans.

**Section 11. Reserves**

At the time of filing of the policy form, the valuation method and assumptions need to be filed with the state insurance department. The assumptions should reflect the statutory mortality and interest rate assumptions for life insurance policies and appropriate assumptions for the other provisions incorporated in the policy form.

**Section 11. Actuarial Disclosure and Reserves**

**A. Actuarial Memorandum**

A qualified actuary should describe the accelerated benefits, the risks, the expected costs and the calculation of statutory reserves in an actuarial memorandum accompanying each state filing. The insurer shall maintain in its files descriptions of the bases and procedures used to calculate benefits payable under these provisions. These descriptions shall be made available for examination by the commissioner upon request.

**B. Reserves**

(1) When benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves shall be determined in accordance with the Standard Valuation Law. All valuation assumptions used in constructing the reserves shall be determined as appropriate for statutory valuation purposes by a Member in good standing of the American Academy of Actuaries. Mortality tables and interest currently recognized for life insurance reserves by the NAIC may be used as well as appropriate assumptions for the other provisions incorporated in the policy form. The actuary must follow both actuarial standards and certification for good and sufficient reserves. Reserves in the aggregate should be sufficient to cover:

(a) Policies upon which no claim has yet arisen.

(b) Policies upon which an accelerated claim has arisen.

(2) For policies and certificates which provide actuarially equivalent benefits, no additional reserves need to be established.

(3) Policy liens and policy loans, including accrued interest, represent assets of the company for statutory reporting purposes. For any policy on which the policy lien exceeds the policy's statutory reserve liability such excess must be held as a non-admitted asset.

**Section 12. Filing Requirement [Optional]**

The filing [and prior approval] of forms containing an accelerated benefit is required.

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## ATTACHMENT THREE

LIFE INSURANCE DISCLOSURE MODEL REGULATION  
ADOPTED DRAFT 12/5/90

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## Section 1. Authority

This rule is adopted and promulgated by [title of supervisory authority] pursuant to Sections [4(1)(a) of the Unfair and Deceptive Acts and Practices in the Business of Insurance Act] of the Insurance Code.

## Section 2. Purpose

A. The purpose of this regulation is to require insurers to deliver to purchasers of life insurance information which will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

B. This regulation does not prohibit the use of additional material which is not a violation of this regulation or any other [state] statute or regulation.

## Section 3. Scope

A. Except for the exemptions specified in Subsection 3B, this regulation shall apply to any solicitation, negotiation or procurement of life insurance occurring within this state. Subsection 5C only shall apply to any existing nonexempt policy held by a policyowner residing in this state. This regulation shall apply to any issuer of life insurance contracts including fraternal benefit societies.

B. Unless specifically included, this regulation shall not apply to:

- (1) Annuities;
- (2) Credit life insurance;
- (3) Group life insurance (except for disclosures relating to preneed funeral contracts or prearrangements as provided herein. These disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy.);
- (4) Life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001 *et seq.* (ERISA) as amended;
- (5) Variable life insurance under which the amount or duration of the life insurance varies according to the investment experience of a separate account.

## Section 4. Definitions

For the purposes of this regulation, the following definitions shall apply:

A. Buyer's Guide. A Buyer's Guide is a document which contains, and is limited to, the language contained in Appendix A to this regulation or language approved by [title of supervisory authority].

B. **Cash Dividend.** A Cash Dividend is the current illustrated dividend which can be applied toward payment of the gross premium.

C. **Contribution Principle.** The Contribution Principle is a basic principle of dividend determination adopted by the American Academy of Actuaries with respect to individual life insurance policies. The Academy report, *Dividend Recommendations and Interpretations* (November 1985), describes this principle as the distribution of the aggregate divisible surplus among policies in the same proportion as the policies are considered to have contributed to divisible surplus. In a broad sense, the Contribution Principle underlies the essential equity implied by participating business.

D. **Current Dividend Scale.** The Current Dividend Scale is a schedule that exhibits dividends to be distributed if there is no change in the basis of these dividends after the time of illustration.

E. **Current Rate Schedule.** The Current Rate Schedule is a schedule showing the premiums that will be charged or the cash values or death or other benefits that will be available if there is no change in the basis of these items after the time of illustration.

F. **Discontinuity Index.** The Discontinuity Index is the sum of the backward second differences squared in the Yearly Prices of Death Benefits (per 1,000) for policy years through twenty-three. Examples of calculations appear in Appendix B of this regulation.

G. **Equivalent Level Death Benefit.** The Equivalent Level Death Benefit of a policy or term life insurance rider is an amount calculated as follows:

- (1) Accumulate the amount payable upon death, regardless of the cause of death, at the beginning of each policy year for ten (10) and twenty (20) years at five percent (5%) interest compounded annually to the end of the tenth and twentieth policy years respectively.
- (2) Divide each accumulation of Step (1) by an interest factor that converts into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in Step (1) over the respective periods stipulated in Step (1). If the period is ten (10) years, the factor is 13.207 and if the period is twenty (20) years, the factor is 34.719.

H. **Generic Name.** A Generic Name is a short title that is descriptive of the premium and benefit patterns of a policy or a rider.

I. **Investment Generation Method.** The Investment Generation Method is the method of determining dividends so that dividends for policies issued in specified years or groups of years reflect investment earnings on funds attributable to those policies.

J. **Cost Comparison Indexes.**

(1) **Surrender Cost Comparison Index - Illustrated Basis.** The Surrender Cost Comparison Index-Illustrated Basis is calculated by applying the following steps:

- (a) Determine the cash surrender value, if any, available at the end of the tenth and twentieth policy years, based on the company's Current Rate Schedule.
- (b) For participating policies, add the terminal dividend payable upon surrender, if any, to the accumulation of the annual Cash Dividends at five percent (5%) interest compounded annually to the end of the period selected and add this sum to the amount determined in Step (a).
- (c) Divide the result of Step (b) (Step (a) for nonparticipating policies) by an interest factor that converts it into an equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in Step (b) (Step (a) for nonparticipating policies) over the respective periods stipulated in Step (a). If the period is ten (10) years, the factor is 13.207 and if the period is twenty (20) years, the factor is 34.719.
- (d) Determine the equivalent level premium by accumulating each annual premium payable for the basic policy or rider, based on the company's Current Rate Schedule, at five percent (5%) interest compounded annually to the end of the period stipulated in Step (a) and dividing the result by the respective factors stated in Step (c). (This amount is the annual premium payable for a level premium plan.)
- (e) Subtract the result of Step (c) from Step (d).
- (f) Divide the result of Step (e) by the number of thousands of the Equivalent Level Death Benefit, using the company's Current Rate Schedule to determine the amount payable upon death for purposes of Section 4G(1), to arrive at the Surrender Cost Comparison Index-Illustrated Basis.

(2) **Surrender Cost Comparison Index - Guaranteed Basis.** The Surrender Cost Comparison Index - Guaranteed Basis is calculated by applying the steps indicated in (1) above but assuming that the company charges the

maximum premiums and provides the minimum cash values and, for purposes of Section 4(G)1, provides the minimum death benefits allowed by the policy, and, if the policy is participating, pays no dividends.

(3) Net Payment Cost Comparison Index - Illustrated Basis. The Net Payment Cost Comparison Index - Illustrated Basis is calculated in the same manner as the comparable Surrender Cost Comparison Index - Illustrated Basis except that the cash surrender value and any terminal dividend are set at zero.

(4) Net Payment Cost Comparison Index - Guaranteed Basis. The Net Payment Cost Comparison Index - Guaranteed Basis is calculated in the same manner as the comparable Surrender Cost Comparison Index - Guaranteed Basis except that the cash surrender value is set at zero.

K. Nonguaranteed Factor. A Nonguaranteed Factor is any premium, benefit, or other item entering into the calculation of the Surrender Cost Comparison Index - Illustrated Basis that can be changed by the company without the consent of the policy owner.

L. Policy Data. The Policy Data is a display or schedule of numerical values, both guaranteed and nonguaranteed, for each policy year or a series of designated policy years of the following information: illustrated annual, other periodic, and terminal dividends; premiums; death benefits; cash surrender values and endowment benefits.

M. Policy Summary. The Policy Summary is a written statement describing the elements of the policy, including, but not limited to:

- (1) A prominently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION.
- (2) The name and address of the insurance agent or, if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the Policy Summary.
- (3) The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written.
- (4) The Generic Name of the basic policy and each rider.
- (5) The following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns; including, but not necessarily limited to, the years for which Cost Comparison Indexes are displayed and the earlier of at least one age from sixty (60) through sixty-five (65) and policy maturity:
  - (a) The annual premium for the basic policy;
  - (b) The annual premium for each optional rider;
  - (c) The amount payable upon death at the beginning of the policy year regardless of the cause of death, other than suicide or other specifically enumerated exclusions, which is provided by the basic policy and each optional rider; with benefits provided under the basic policy and each rider shown separately;
  - (d) The total cash surrender values at the end of the year with values shown separately for the basic policy and each rider;
  - (e) The Cash Dividends payable at the end of the year with values shown separately for the basic policy and each rider (Dividends need not be displayed beyond the twentieth policy year);
  - (f) Any endowment amounts payable under the policy which are not included under cash surrender values above;
  - (g) If the policy has a Nonguaranteed Factor, the maximum premium, minimum amount payable upon death, minimum cash value, and minimum endowment amounts allowed by the policy. These amounts may be shown in addition on the basis of the Company's Current Rate Schedule and Current Dividend Scale.
- (6) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is adjustable, the Policy Summary shall also indicate that the annual percentage rate will be determined by the company in accordance with the provisions of the policy and the applicable law.
- (7) The Cost Comparison Indexes for ten (10) and twenty (20) years but in no case beyond the premium-paying period. Indexes shall be shown on the Guaranteed Basis as defined in Sections 4J(2) and 4J(4) and, if there are dividends or a Nonguaranteed Factor, shall also be shown on the Illustrated Basis as defined in Sections 4J(1) and 4J(3). Separate indexes shall be displayed for the basic policy and for each optional term life insurance rider. Such indexes need not be included for optional riders which are limited to benefits; such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than twelve (12) months and guaranteed insurability benefits; nor for any basic policies or optional riders covering more than one life.

(8) A Policy Summary which includes dividends shall also include a statement that dividends are based on the company's Current Dividend Scale and are not guaranteed.

(9) If the policy has a Nonguaranteed Factor, a statement indicating that the insurer reserves the right to change the Nonguaranteed Factor at any time and for any reason. However, if the insurer has agreed to limit this right in any way; such as, for example, if it has agreed to change a Nonguaranteed Factor only at certain intervals or only if there is a change in the insurer's current or anticipated experience; the statement may indicate any such limitation on the insurer's right.

(10) This statement in close proximity to the Cost Comparison Indexes:

"An explanation of the intended use of these indexes is provided in the Life Insurance Buyer's Guide."

(11) The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in Item (5) of this section shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as a blank space.

N. Portfolio Average Method. The Portfolio Average Method is the method of determining dividends so that, except for the effect of policy loans, dividends reflect investment earnings on funds attributable to all policies whenever issued.

O. Preneed Funeral Contract or Prearrangement. An agreement by or for an individual before that individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services.

P. Yearly Price of Death Benefits. The Yearly Price of Death Benefits per \$1,000 is calculated by applying the following formula:

$$YP = (P - Ov - (CVCv - CVP)) / (F \cdot .001)$$

Where YP = Yearly Price of Death Benefits per \$1,000

P = Annual premium

CVP = Sum of the cash value and terminal dividend at the end of the proceeding year.

CVC = Sum of the cash value and terminal dividend at the end of the current year.

D = Annual dividend

F = Face amount

v =  $1/(1.05)$

## Section 5. Duties of Insurers

### A. Requirements Applicable Generally

(1) The insurer shall provide, to all prospective purchasers, a Buyer's Guide and a Policy Summary prior to accepting the applicant's initial premium or premium deposit; provided, however, that:

(a) If the policy for which application is made or its Policy Summary contains an unconditional refund provision of at least ten (10) days, the Buyer's Guide and Policy Summary must be delivered with the policy or prior to delivery of the policy.

(b) If the Equivalent Level Death Benefit of the policy for which application is made does not exceed \$5,000, the requirement for providing a Policy Summary will be satisfied by delivery of a written statement containing the information described in Section 4M, Items (2), (3), (4), (5a), (5b), (5c), (6), (7), (9), (10), and (11).

(2) In the case of universal life and indeterminate premium products, the Statement of Policy Information for Applicant illustrated in Appendix D must be delivered at the time of application or within fifteen (15) working days thereafter, but at least five days before delivery of the policy.

If the policy is delivered sooner than five days after delivery of the disclosure statement, the free-look period shall be extended to fifteen (15) days. In the event the disclosure statement is not delivered at the time of application, the disclosure shall be accompanied by a statement that it is delivered for the express purpose of allowing comparison with other policies.

(3) In the case of a solicitation by direct response methods, the insurer shall provide the Statement of Policy Information for Applicant prior to accepting the applicant's application; provided however, that if the policy for which application is made contains an unconditional refund provision of at least ten (10) days, the Statement of Policy Information for Applicant may be delivered with the policy.

(4) If any prospective purchaser requests a Buyer's Guide, a Policy Summary or Policy Data, the insurer shall provide the item or material requested. Unless otherwise requested, the Policy Data shall be provided for policy years one through twenty (20), and for indeterminate premium and universal life products shall substantially conform to the illustration in Appendix D.

(5) If the Discontinuity Index of any policy exceeds:

(a) Any of the test limits for discontinuity set forth in Appendix C herein, the insurer shall, prior to the sale of any such policy, provide to the [title of supervisory authority] a statement identifying as accurately as possible the specific policy premium or benefit causing the policy's Discontinuity Index to exceed the test limits. Upon request of the [title of supervisory authority], the insurer shall also provide to the [title of supervisory authority] the Policy Data for policy years one through thirty (30), and the Discontinuity Index and its component calculations.

(b) The test limit set forth in Appendix C herein for the applicant's issue age, the insurer shall provide:

(i) The following statement displayed prominently on the Policy Summary and on all other sales material that show or incorporate a Cost Comparison Index: "This policy has an unusual pattern of premiums or benefits that may make comparison with the cost indexes of other policies unreliable. You should discuss this with your agent or this company. A statement of year-by-year information is available."

(ii) If the prospective purchaser requests it, a statement identifying as accurately as possible the specific policy premium or benefit causing the policy's Discontinuity Index to exceed the applicable test limit.

**B. Requirements Applicable to Participating Policies.** If a life insurance company illustrates policyholder dividends that are calculated in a manner or on a basis that:

(1) Deviates substantially from the Contribution Principle, the Policy Summary and all other sales material showing illustrated policyholder dividends must display prominently the following statement: "The illustrated dividends for this policy have not been determined in accordance with the Contribution Principle. Contact this company for further information."

(2) Uses the Portfolio Average Method, the Policy Summary and all other sales material showing illustrated policyholder dividends must include the following statement: "Illustrated dividends reflect current investment earnings on funds applicable to all policies and are based on the Current Dividend Scale. Refer to your Buyer's Guide for further information."

(3) Uses the Investment Generation Method, the Policy Summary and all other sales material showing illustrated policyholder dividends must include the following statement: "Illustrated dividends reflect current investment earnings on funds attributable to policies issued since 19[ ] and are based on the Current Dividend Scale. Refer to your Buyer's Guide for further information."

**Drafting Note:** Insert at [ ] the earliest year of the issue-year grouping used to determine the investment earnings on currently issued policies.

(4) Uses any combination of the Portfolio Average Method and the Investment Generation Method, the Policy Summary and all other sales material showing illustrated policyowner dividends must include an appropriate statement, analogous to the statements required by Sections 5B(2) and 5B(3), indicating how current investment earnings are reflected in illustrated dividends.

**C. Requirements Applicable to Existing Policies.**

(1) If a policy owner residing in this state requests it, the insurer shall provide Policy Data for that policy. Unless otherwise requested, the Policy Data shall be provided for twenty (20) consecutive years beginning with the previous policy anniversary. The statement of Policy Data shall include cash dividends according to the Current Dividend Scale, the amount of outstanding policy loans, and the current policy loan interest rate. Policy values shown shall be based on the dividend option in effect at the time of the request. The insurer may charge a reasonable fee, not to exceed \$\_\_\_\_, for the preparation of the statement.

(2) If a life insurance company:

(a) Deviates substantially from the Contribution Principle, it shall annually advise each affected policy owner residing in this state that the dividend paid that year was not determined in accordance with the Contribution Principle and that the policy owner may contact the company for further information.



(b) Is determining dividends, as of the effective date of this regulation, using the Investment Generation Method, it shall, within eighteen (18) months of such date, advise each affected policy owner residing in this state that the dividend for the policy reflects current investment earnings on funds applicable to policies issued from 19 [ ] through 19 [ ]. This requirement shall not apply to policies for which the amount payable upon death under the basic policy as of the date when advice would otherwise be required does not exceed \$5,000.

Drafting Note: Insert at [ ] the applicable years of issue.

(c) Changes its method of determining dividend scales on existing policies from or to the Investment Generation Method; it shall, no later than when the first dividend is payable on the new basis, advise each affected policy owner residing in this state of this change and of its implication on dividends payable on affected policies. This requirement shall not apply to policies for which the amount payable upon death under the basic policy as of the date when advice would otherwise be required does not exceed \$5,000.

(3) If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any Nonguaranteed Factor; it shall, no later than the first policy anniversary following the revision, advise accordingly each affected policy owner residing in this state.

#### Section 6. Special Plans

This section modifies the application of this regulation as indicated for certain special plans of life insurance:

##### A. Enhanced Ordinary Life Policies.

(1) An Enhanced Ordinary Life Policy is a participating policy which has the following characteristics for all issue ages:

(a) The basic policy has a guaranteed death benefit that reduces after an initial period of one or more years to a basic amount; and

(b) A special dividend option that provides

(i) a combination of immediate paid-up additions and one-year term insurance; or

(ii) deferred paid-up additions;

either of which on the basis of the Current Dividend Scale will provide a combined death benefit (reduced basic amount plus paid-up additions plus one-year term insurance) at least equal to the initial face amount.

(2) The crossover point of an Enhanced Ordinary Life Policy is the first policy anniversary at which the sum of the reduced basic amount and paid-up additions equals or exceeds the initial death benefit. For these policies:

(a) The cash value of benefits purchased by dividends payable on or before the crossover point is included in the cash surrender value for the purpose of Section 4J(1)(a);

(b) The death benefit purchased by dividends payable on or before the crossover point is included in the amount payable upon death for the purpose of Section 4G(1);

(c) Dividends payable after the crossover point are assumed to be paid in cash for the purpose of Section 4J(1)(b).

##### B. Flexible Premium and Benefit Policies. For policies commonly called "universal life insurance policies," which:

(1) Permit the policy owner to vary, independently of each other, the amount or timing of premium payments, or the amount payable on death; and

(2) Provide for a cash value that is based on separately identified interest credits and mortality and expense charges made to the policy.

All indexes and other data shall be displayed assuming specific schedules of anticipated premiums and death benefits at issue.

In addition to all other information required by this regulation, the Policy Summary shall indicate when the policy will expire based on the interest rates and mortality and other charges guaranteed in the policy and the anticipated or assumed annual premiums shown in the Policy Summary.

##### C. Multitrack Policies. For policies which allow a policyowner to change or convert the policy from one plan or amount to another, the Policy Summary:

(1) Shall display all indexes and other data assuming that the option is not exercised; and

(2) May display all indexes and other data using a stated assumption about the exercise of the option.

D. Policies with Any Rate Subject to Continued Insurability. For policies which allow a policyowner a reduced premium rate if the insured periodically submits evidence of continued insurability, the Policy Summary:

- (1) Shall display cost indexes and other data assuming that the insured always qualifies for the lowest premium;
- (2) Shall display cost indexes and other data assuming that the company always charges the highest premiums allowable; and
- (3) Shall indicate the conditions that must be fulfilled for an insured to qualify periodically for the reduced rate.

**E. Individualized Policy Information**

(1) In addition to all other information required by this regulation, in those situations specified in Section 8(I), the information illustrated in Appendix E shall be prepared on an individual basis.

(2) If an insurer uses a form other than the Financial Review of This Policy form, that form shall be approved for use by the state insurance department. An insurer may use the appropriate box or boxes from the top of the disclosure form for the specific policy being illustrated without seeking state insurance department approval for this change in the form.

(3) If cost of insurance, nonguaranteed dividends or benefits or potential preferential tax implications are presented in the policy, advertising, marketing materials, or verbally explained to the consumer, the agent, or company if a direct marketer, shall attach all those materials or representations to the Financial Review of This Policy form before issuance of the policy if not previously provided.

(4) If any method other than the Financial Review of This Policy form is used to explain the death benefit, a copy of the illustration signed by the applicant and the agent must be attached to the form.

(5) The information contained in Appendix E must be furnished to the applicant no later than the point of issue of the policy.

Drafting Note: The working group will create a report in the future to identify those marketing methodologies which could accommodate an earlier point of disclosure.

(6) The original of the individual information form shall be delivered simultaneously with the policy at issue and a copy shall be retained by the insurer as long as the policy remains in force, plus two years.

Drafting Note: This language cannot be construed to limit the ability of a regulator or a consumer to hold the insurer responsible for the actions of an agent in any misrepresentations on the disclosure form.

**E.** For all other special plans of life insurance, an insurer shall provide or deliver both a Policy Summary substantially similar to that described in Section 4M and a Buyer's Guide. Use of those materials shall be deemed to be substantial compliance with this regulation unless the [title of supervisory authority] makes a finding that such disclosure materials misrepresent a material term or condition of the contract or omit a material fact.

**Section 7. Preneed Funeral Contracts or Prearrangements**

The following information shall be adequately disclosed at the time an application is made, prior to accepting the applicant's initial premium or deposit, for a preneed funeral contract or prearrangement as defined in Section 4N above which is funded or to be funded by a life insurance policy:

- A. The fact that a life insurance policy is involved or being used to fund a prearrangement as defined in Section 4N of this regulation;
- B. 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;
- C. 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;
- D. The impact on the prearrangement
  - (1) of any changes in the life insurance policy including but not limited to, changes in the assignment, beneficiary designation or use of the proceeds;
  - (2) of any penalties to be incurred by the policyholder as a result of failure to make premium payments;
  - (3) of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy;

E. 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;

F. 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 as defined in Section 4N;

G. 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;

H. 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.

#### Section 8. General Rules

A. Each insurer shall maintain, at its home office or principal office, a complete file containing one copy of each document authorized and used by the insurer pursuant to this regulation. Such file shall contain one copy of each authorized form for a period of three years following the date of its last authorized use.

B. An agent shall inform the prospective purchaser, prior to commencing a life insurance sales presentation, that he or she is acting as a life insurance agent and inform the prospective purchaser of the full name of the insurance company which the agent is representing to the buyer. In sales situations in which an agent is not involved, the insurer shall identify its full name.

C. Terms such as financial planner, investment advisor, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is primarily engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.

D. Any reference to a dividend or Nonguaranteed Factor must include a statement that such item is not guaranteed and is based on the company's Current Dividend Scale or Current Rate Schedule. If a dividend or Nonguaranteed Factor would be reduced by the existence of a policy loan, a statement to this effect must be included in any reference to such dividend or Nonguaranteed Factor.

E. A system or presentation which does not recognize the time value of money through the use of appropriate interest adjustments shall not be used for comparing the cost of two or more life insurance policies. Such a system may be used for the purpose of demonstrating the cash-flow pattern of a policy if such presentation is accompanied by a statement disclosing that the presentation does not recognize that, because of interest, a dollar in the future has less value than a dollar today.

F. A presentation of costs or benefits, other than that required pursuant to this regulation, shall not display guaranteed and nonguaranteed factors as a single sum unless they are shown separately in close proximity thereto.

G. Any statement regarding the use of the Cost Comparison Indexes shall include an explanation to the effect that the indexes are useful only for the comparison of the relative costs of two or more similar policies.

H. A Cost Comparison Index which reflects a dividend or Nonguaranteed Factor shall be accompanied by a statement that it is based on the company's Current Dividend Scale or Current Rate Schedule and is not guaranteed.

I. Whenever a policy is issued for delivery in this state to an applicant at age sixty (60) or over, which limits death benefits during a period following the inception date of the policy or where the accumulated premiums exceed the death benefit at any point during the first ten (10) years, then the form labeled Appendix E to this regulation or a form containing substantially similar information and approved by the commissioner shall be completed by the insurer and delivered simultaneously with the policy.

#### Section 9. Failure to Comply

Failure of an insurer to provide or deliver a Buyer's Guide, a Policy Summary or Policy Data as provided in Sections 5 and 6 shall constitute an omission which misrepresents the benefits, advantages, conditions or terms of an insurance policy.

#### Section 10. Separability

If any provisions of this rule be held invalid, the remainder shall not be affected.

#### Section 11. Effective Date

This rule shall become effective [insert a date at least six months following adoption by the regulatory authority].

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## ATTACHMENT FOUR

**FINANCIAL REVIEW OF THIS POLICY**

☐ THIS IS A GUARANTEED ISSUE POLICY OFFERED WITHOUT AN ATTEMPT TO CLASSIFY RISKS BY DETERMINING YOUR STATE OF HEALTH. PREMIUMS MAY HAVE BEEN LOWER IF HEALTH INFORMATION HAD BEEN OBTAINED.]

☐ THIS IS A POLICY ISSUED ON THE BASIS OF THE ANSWERS TO THE HEALTH QUESTIONS SET FORTH IN THE APPLICATION. PREMIUMS MAY HAVE BEEN LOWER IF FURTHER HEALTH INFORMATION HAD BEEN OBTAINED.]

☐ THIS IS A POLICY WHERE THE ACCUMULATED PREMIUM EXCEEDS THE DEATH BENEFIT IN TEN YEARS OR LESS.)

Applicant Information:

NAME: \_\_\_\_\_ AGE: \_\_\_\_\_ SEX: \_\_\_\_\_

List other personal information used in determining the premium for this policy:

End of Policy Year	1 Premiums	2 Premiums Accumulating Interest at 5%*	3 Death Benefits**	4 Cash Surrender Value	5 Column 3 Minus Column 2 Net Gain (Net Loss)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

Definitions: The following terms used in the above chart are defined as:

1. **Premiums** - Amount you must pay each year to keep this policy in force.
2. **Premiums Accumulating Interest at 5%** - The amount which could be earned if, instead of purchasing insurance, the dollars were left to accumulate at 5% interest.
3. **Death Benefits** - The amount that will be paid upon your death exclusive of any supplementary benefits.
4. **Cash Surrender Value** - The amount the insurance company will pay you if you surrender your policy to the company for cash.
5. **Net Gain or Loss** - This column shows whether your money would have earned more or less at 5% interest than your life insurance benefit.

\*Note: This figure does not take into account the cost of insurance, any dividends or additional benefits which are not guaranteed under the policy, nor potential preferential tax implications.

(\*\*Agent/Company: If death benefits have been explained in any manner other than shown on the above chart (through use of CPI index, dividends, or other non-guaranteed increase or a reduction in premium), a copy of the illustration signed by the applicant and agent must be attached.)

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## ATTACHMENT FIVE

Life Marketing Practices to Senior Citizens Working Group  
of the Life Insurance (A) Committee  
Louisville, Kentucky  
December 1, 1990

The Life Marketing Practices to Senior Citizens Working Group of the Life Insurance (A) Committee met on December 1, 1990, at 3 p.m. in the Court Room of the Galt House Hotel in Louisville, Kentucky. Aquorum was present and David J. Lyons (Iowa) chaired the meeting. The following working group members were present: Roger Strauss (Iowa); Dean Gallagher (Okla.); Jim Swenson (Ore.); Robert L. Wright III (Va.); and David Rodgers (Wash.) Also present were Carolyn Johnson and Judy Lee (NAIC/SSO).

1. Adoption of November 21 Conference Call Minutes

Upon motion duly made and seconded, the minutes of the working group conference call of Nov. 21, 1990, were adopted.

2. Consideration of Technical Amendments

Commissioner David J. Lyons (Iowa) reported that comments on the Life Insurance Disclosure Model Regulation and Financial Review of this Policy Form were received from Bob Corn (Old American Ins. Co.), William N. Albus (National Association of Life Underwriters), Robert Myers (Neely and Player, representing Torchmark) and Charles McMains (Life Insurers Conference). He said those comments were considered at the Nov. 21 conference call and a number of noncontroversial changes were made to the regulation and the disclosure form. Roger Strauss (Iowa) highlighted the changes which are detailed in the minutes of the Nov. 21 conference call.

Robert M. Eubanks III (chair of the Advisory Committee) asked the working group to reconsider deleting the language in Section 6E(1) of the Life Insurance Disclosure Model Regulation defining limited benefit policies. He expressed concern that products be labeled "limited benefit life insurance" which is not a consistent labeling in all states. Commissioner Lyons reminded the group that this language had been removed from the definitions section of the model regulation at the Advisory Committee's request. He stated he believed the working group had accomplished its purpose by moving the language to Subsection E.

David L. Metzler (Old American Ins. Co.) referred to the language change in the boxes at the top of the disclosure form in which "different" was changed to "lower" at the last meeting. He said the use of the word "lower" seemed to indicate that premiums would be lower in all instances. He recommended retaining the word "different" since, in some instances, the premium could be higher if health information had been obtained. David Rodgers (Wash.) disagreed, saying he thought for people purchasing this type of insurance the premium would be lower. Commissioner Lyons reminded the group that this document is an attempt to educate the consumer and must be easily understood. Robin Talbert (American Association of Retired Persons) said she thought the target group for this product is the individuals that, if health insurance information had been obtained, would have received lower premiums so this language is appropriate. Bob Wright (Va.) reminded the group that this form is given to the consumer at the point of issuance of the policy so the rate is already stated. He said this form simply tells the consumers that they might have purchased a policy for a lower premium. Commissioner Lyons agreed and said "lower" delivers the correct connotation for this policy. The working group consensus was to leave the language as currently drafted.

Mr. Rodgers proposed changing the language in the first unnumbered column on the disclosure form to read "End of Policy Year" to clarify that the premiums are to be stated as of the end of the policy year. Further, it was recommended that the currently blank lines under the "year" column be numbered 1 through 10.

Upon motion duly made and seconded, the preceding changes were adopted as stated.

Mr. Rodgers recommended that the definition of "death benefits" contained in the disclosure form be amended to the amount that will be paid upon the insured's death from natural causes to avoid mistaking this benefit for an accidental death benefit. After discussion of the meaning of death from natural causes, and upon motion duly made and seconded, the definition of "death benefits" was amended to be the amount that will be paid upon the insured's death exclusive of any supplementary benefits.

Glenn Joppa (Union Fidelity Life Ins. Co.) said that direct response marketers know which product will be sold and want to simplify the disclosure form so that only one caption would be shown at the top. Upon motion duly made and seconded, the working group amended Section 6E(2) to allow sufficient flexibility for companies to correctly caption the disclosure form, choosing from the three options currently shown on the disclosure form, without having to seek approval from the state insurance department for this change.

Edward J. Zimmerman (American Council of Life Insurance) expressed concern that Section 6E(2)(f) implies that the forms attached to the policy become part of the contract and, therefore, subject to litigation. Mr. Strauss replied that if these forms are not attached to the policy and not a part of the contract, the insured could not dispute any material misstatement of information on the disclosure form. Keith Morris (J.C. Penney Life Ins. Co.) said he was not aware of any regulation where the disclosure form is made a part of the policy. Upon motion duly made and seconded, the working group voted to table this issue for further consideration at a later time, requesting that Mr. Zimmerman prepare a brief of the facts of this issue and present it to the Life Insurance (A) Committee.

Ron Sheffield (Ark.) asked for a clarification of which products are included in the definition of limited benefit life insurance policies. Commissioner Lyons responded that the working group had attempted not to label these products but to draft regulatory language to apply to policies that hit certain triggers. He said this was done in an effort to avoid the potential to create misinformation about which policies would be included within that label. Upon motion duly made and seconded, the working group deleted the title to Subsection E and all language contained within paragraph (1) thereof which defined "limited benefit life insurance" and directed staff to retitle Subsection E and renumber the subsequent paragraphs as appropriate.

Mr. Sheffield commented there are products in the marketplace that limit benefits which are not marketed to senior citizens. Commissioner Lyons agreed, but he said the charge to this working group was to focus its efforts on products marketed to senior citizens. He said other issues that are not being addressed by this working group will be forwarded to the parent committee for further consideration.

### 3. Cost of Insurance

Commissioner Lyons reported that language to address the inclusion of the cost of insurance on the disclosure form had been received from both the American Council of Life Insurance (ACLI) and the Life Insurers Conference (LIC). He reported that several alternatives were discussed by members of the working group to address this concern; however, in order not to diminish the importance of the premium accumulating at 5%, their decision was to add additional language to the disclosure form and amend Section 6E(3). He further stated that any representation made to a consumer would have to be attached to the policy. Mr. Morris expressed concern that all advertising materials required by Paragraph (3) would become a part of the contract. Alexis Berg (Colonial Penn Insurance Group) pointed out that the advertising materials are presented at time of sale and it would be duplicative to attach them to the disclosure form at point of issue. Commissioner Lyons suggested amending Paragraph (3) to state that any materials not previously provided would have to be attached to the disclosure form before issuance of the policy.

Mr. Eubanks pointed out that, as currently drafted, the regulation requires two sets of materials from direct marketers. Commissioner Lyons said he was inclined to allow advertising and marketing materials not to have to be attached since direct marketer materials are readily available. Mr. Swenson agreed but clarified that companies may have a similar form that explains dividends and that form must be attached to the disclosure form. Ms. Berg asked if it was intended that in an agent sale, a transcript be prepared of any discussion of nonguaranteed elements and attached to the disclosure form and subsequently to the policy. Mr. Swenson clarified that all material points of discussion and other disclosures must be reduced to writing and attached to the disclosure form.

Upon motion duly made and seconded, language was added to the disclosure form to clarify that "Premiums Accumulating Interest at 5%" does not take into account the cost of insurance, any dividends or additional benefits which are not guaranteed under the policy, nor potential preferential tax implications and that language was also made a part of Section 6E(3).

Mr. Zimmerman requested further consideration be given to deleting the terms "net gain" and "net loss" in column five and substituting (+) and (-). Ms. Talbert responded that the terms "net gain" and "net loss" are familiar to consumers and easily understood in this instance. The consensus of the working group was to leave column five as currently drafted.

Having no further business, the working group adjourned at 5 p.m.

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## ATTACHMENT SIX

### Life Marketing Practices to Senior Citizens Working Group of the Life Insurance (A) Committee Telephone Conference Call November 21, 1990

The Life Marketing Practices to Senior Citizens Working Group of the Life Insurance (A) Committee held a telephone conference call on Nov. 21, 1990, at 10:30 a.m. CST. A quorum of the working group participated in the call and Roger Strauss (Iowa) chaired the call. The following working group members participated in the call: Dean Gallagher (Okla.), Jim Swenson (Ore.), and David Rodgers (Wash.). Also participating were Carolyn J. Johnson and Judy Lee of the NAIC/SSO.

Mr. Strauss (Iowa) gave an overview of the additional industry comments received to date. He mentioned that letters were received from Robert C. Corn (Old American Insurance Company); William N. Albus (National Association of Life Underwriters); and Robert H. Myers Jr. (Torchmark). After considerable discussion by the working group members of the additional comments offered by industry, the working group took the following specific actions in the Life Insurance Disclosure Model Regulation:

Section 6E(1). Since the new Section 8(I) of the Life Insurance Disclosure Model Regulation serves not only as the trigger to determine when the disclosure form has to be provided but also serves as the definitional source for determining the type of policies subject to the disclosure requirement, the industry recommendation was to delete Paragraph (1) in its entirety. The working group consensus was to leave this paragraph as currently written in order to identify to policyholders the fact that some limited underwriting was utilized and that the cost of these products is higher than standard rates.

Section 6E(2)(a). The industry recommendation was to delete the specific criteria called for in the disclosure form and to reword the existing language in Subparagraph (a) to read: "In addition to all other information required by this regulation, in those situations specified in Section 8(I), the information illustrated in Appendix E shall be prepared on an individual basis." The working group concurred in this recommendation.

A further industry recommendation was to consider whether it would be appropriate to increase the age (such as to age 62 or 65) to more closely align with retirement when individuals are coming off of group life insurance and, therefore, more likely to be focusing on an individual plan. The working group consensus was that age 60 was the appropriate trigger for these policies.

Concerning the "Financial Review of This Policy" disclosure form, the working group took the following actions:

In the Definitions section, numbers four and five were switched to appropriately follow the order of the columns.

Another industry recommendation was to delete "Net Gain" and "Net Loss" in column five, substituting (+) for net gain and (-) for net loss. The working group concurred that this was a matter of semantics and it was more appropriate to leave the form as currently drafted.

A final industry recommendation was to reword the language in the first box at the top of the disclosure form, delete the second box and retain the language as currently drafted in the third box. The working group consensus was to leave the boxes as currently drafted. Jim Swenson (Ore.) stated that it is important that the policyholder be aware if the policy is guaranteed issue or based on limited health questions. Mr. Swenson suggested strengthening the language in boxes one and two by substituting the word "lower" for the word "different." The working group concurred in this amendment. Mr. Swenson said that the consumer must understand that premiums would be lower if health information had been obtained.

The working group discussed whether any amendment was necessary to column two and decided to leave that column heading as currently drafted. Mr. Swenson pointed out that though industry representatives had been requested to submit illustrations showing the effect of including the cost of insurance, no illustrations were received for working group consideration.

Having no further business, the working group adjourned at 11:15 a.m.

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## ATTACHMENT SEVEN

### Resolution Regarding the Rules Governing the Advertising of Life Insurance

WHEREAS, the purpose of the Rules Governing the Advertising of Life Insurance is to set forth minimum standards and guidelines to assure a full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts; and

WHEREAS, these rules provide in part that:

- o Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception.
- o The information required to be disclosed by these rules shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.
- o In the event an advertisement uses "Non-Medical," "No Medical Examination Required," or similar terms where issue is not guaranteed, further disclosure of equal prominence is required if issuance depends upon the answers to the health questions set forth in the application.
- o An advertisement for a policy containing graded or modified benefits shall prominently display any limitation of benefits.
- o An advertisement shall not use the words "inexpensive," "low cost," or words of similar import when such policies are being marketed to persons who are 50 years of age or older, where the policy is guaranteed issue.
- o Testimonials must be genuine, represent the current opinion of the author, be applicable to the policy advertised, and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective insureds.
- o If the individual making a testimonial, or an endorsement has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, such fact shall be prominently disclosed in the advertisement.
- o An advertisement for the solicitation or sale of a pre-need funeral contract to be funded by a life insurance policy or annuity contract shall adequately disclose the fact that a life insurance policy or annuity contract is involved, and

the nature of the relationship among the soliciting agent or agents, the provider of the funeral, the administrator and any other person.

- o The name of the insurer shall be clearly identified in all advertisements.
- o No advertisement shall use any combination of words, symbols or physical materials which by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a governmental program or agency or otherwise appear to be of such a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with such governmental program or agency.

NOW, THEREFORE, BE IT RESOLVED that the Life Insurance (A) Committee hereby encourages those states which have not adopted this rule to do so and encourages those states which have adopted this rule to adopt the subsequent amendments and enforce the provisions of this rule.

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#### ATTACHMENT EIGHT

##### Projected Interest Earnings (A) Working Group Telephone Conference Call November 5, 1990

The Projected Interest Earnings (A) Working Group held a telephone conference call at 3:05 p.m. on Nov. 5, 1990. A quorum participated in the call, chaired by Mike Weaver (Ala.). Other working group members participating were Doug Green (La.) and Neil Rector (Ohio). Also participating in the call were Carolyn Johnson and Judy Lee (NAIC/SSO).

The working group discussed proposed amendments to the June 4, 1990, exposure draft of the Bulletin on Illustrated Interest Projections.

Section IB and C. Tony Spano (American Council of Life Insurance) suggested amending the word "policy" in these two subsections to read "advertisement" since policies do not contain any advertised material. He said any references to "policy" in either of these two items would be inappropriate. The working group decided to add the following language after "policy" in both Subsections B and C: "and all advertisements with respect to that policy."

William N. Albus (National Association of Life Underwriters) suggested that in each instance where the words "interest," "interest rate" and "interest earnings" appear, the term "nonguaranteed policy elements" be substituted. He said this would conform the bulletin language to the language of the NAIC Model Rules Governing the Advertising of Life Insurance. After considerable discussion of the meaning of "nonguaranteed policy elements" in this bulletin, the working group decided not to accept this amendment.

Upon motion duly made and seconded, the working group adopted the Bulletin on Illustration Interest Projections, as amended.

Having no further business, the conference call was adjourned at 3:15 p.m.

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#### ATTACHMENT EIGHT-A

##### BULLETIN ON ILLUSTRATED INTEREST PROJECTIONS

(Effective Date)

##### SUBJECT:

(Recital of applicable authority if needed and purpose of bulletin. Issuance of bulletin is to assist insurers in conforming with the following NAIC models: Rules Governing the Advertising of Life Insurance, the Life Insurance Disclosure Regulation and the Unfair Trade Practices Act.)

##### I. Propositions Regarding Projected Interest Earnings

- A. An insurance company cannot advertise any interest rate for a product unless the rate actually then being paid by the company for that product is at least as high as the rate advertised;
- B. An advertisement must clearly state for each interest rate advertised whether that rate is or is not guaranteed;
- C. If an advertised rate is not guaranteed, the advertisement must state specifically under what condition(s) the insurance company may use a rate different than the one advertised;
- D. Any interest rate(s) shown in the policy must be guaranteed; and



E. For purposes of this bulletin, an advertisement of an interest rate includes any use of illustrations to show the effect of interest rate projections.

## II. Failure to Comply

Any agent or insurance company engaged in practices that do not comply with the above stated provisions, shall cease such practices immediately. Any agent or insurance company engaged in practices that do not comply with the above stated provisions shall be subject to immediate disciplinary action on the part of the Department of Insurance pursuant to the Unfair Trade Practices Act.

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## ATTACHMENT NINE

### Life Insurance (A) Committee Telephone Conference Call November 5, 1990

The Life Insurance (A) Committee held a telephone conference call at 2 p.m. CST on Nov. 5, 1990. A quorum of the committee participated in the call and Harold C. Yancey (Utah) chaired the meeting. The following committee members or their representatives participated in the call: Mike Weaver (Ala.); Margurite Stokes (D.C.); David J. Lyons (Iowa); Doug Green (La.); George Fabe (Ohio); Gerald Grimes (Okla.); Ted Kulongoski (Ore.); and Steven Foster (Va.). Also participating in the call were Robert M. Eubanks (Chair of the Advisory Committee to the Life Marketing Practices to Senior Citizens Working Group); Sheldon Summers (Calif.); Carolyn Johnson and Judy Lee (NAIC/SSO).

#### 1. Life Marketing Practices to Senior Citizens Working Group

Acting Commissioner David J. Lyons (Iowa) discussed the original charge to the working group, highlighting the work completed so far this year, and reviewed the minutes of the Oct. 27 meeting in Kansas City. The recent Washington Supreme Court decision regarding prohibition of the sale of life insurance policies where premium payments and interest over a 10 year period exceed the death benefits was reviewed.

Commissioner Lyons reported that there were three outstanding issues to be resolved at the Oct. 27 meeting. The first issue was to identify an appropriate triggering mechanism so that policies not related to the senior citizen market are not inadvertently included under this regulation. The working group limited the applicability of the disclosure to policies sold to persons age 60 and over in which the premium accumulated at 5% exceeds the death benefit at any point in the first 10 years.

The second issue was the timing of the disclosure; specifically, whether disclosure should be made at the point of solicitation/sale or at the point of issuance of the policy. The working group decided that disclosure would be required at the point of issue and that a review of the differences in marketing methodologies would be conducted with a future report to the Life Insurance (A) Committee concerning the ability to create a point of sale requirement for certain products. The point of issue disclosure is tied to a "10-day free-look" notice to provide the consumer with the right to return the policy. The marketing methodology review, chaired by Jim Swenson (Ore.), will identify the individual marketing methodologies which lend themselves to earlier disclosure.

The third issue pertains to the column on the disclosure form which shows premiums accumulated at 5% and the alleged comparison of the accumulated figure to savings accounts. Commissioner Lyons reported that he anticipates additional input from the advisory committee on this issue. The advisory committee stated that it is philosophically opposed to comparing the accumulated premiums to anything that is not an insurance product and added that this comparison was illegal. Commissioner Lyons said all references to savings accounts were removed from the disclosure form. Commissioner Lyons reported that the working group feels strongly that the disclosure form should recognize the time value of money. The advisory committee requested that if the time value of money is shown, they would like the cost of insurance to be disclosed to the consumer as well. Commissioner Lyons requested that any counterproposals to the accumulation language be submitted to the NAIC by Nov. 15. Those proposals will be forwarded to the working group and a conference call will be held to decide on the appropriate language prior to the December NAIC meeting. He further requested that the advisory committee prepare a letter stating whether the three issues had been resolved satisfactorily.

Commissioner Lyons reported that the working group had approved the rearrangement of columns on the disclosure form so that the "bottom line" would appear in the final column. The working group also discussed whether the illustration on the disclosure form should be extended to show year 15 and year 20 or age 99, whichever occurs first. The working group decided not to take this step before reviewing population profiles which will be provided by the advisory committee.

Superintendent Margurite Stokes (D.C.) asked if the American Association of Retired Persons (AARP) had been given an opportunity to comment on the age 60 trigger. Commissioner Lyons responded that Lee Norrgard (AARP) had been a participant in that discussion and had expressed no concern with the trigger. The working group discussed that consideration could be given to lowering the trigger if necessary in the future.

Neil Rector (Ohio) expressed concern over the timing of the disclosure, preferring that consumers be given the disclosure form at point of sale to assist them in making their decision. He said the problem the earlier disclosure creates for insurers

should be balanced by the consumers need to know this information. Superintendent Stokes concurred, stating that she has serious problems with providing the disclosure form after the consumer has made a decision to purchase the policy. She did not feel the free-look period was an acceptable substitute for giving the disclosure information at an earlier time. Commissioner Lyons said the advisory committee reported that the point of sale disclosure requirement impacted the direct marketers and other insurers who do not have individual information available to them at point of sale. He reiterated that the working group is going to review marketing methodologies and will recommend earlier disclosure be required for those segments of the market which can accommodate this. Mr. Eubanks commented that the insurers offer multiple products and multiple premium payment plans which complicates generating specific, individual information at the point of sale. Commissioner Lyons stated that direct marketers would have to make another mailing, waiting until the applicant responds that they have reviewed the disclosure form before issuing the policy. This interim step did not seem to be a viable option for a large segment of the market. Mr. Rector expressed concern that once the exposure draft sets out that disclosure is at point of issue, it is difficult to amend to an earlier disclosure time. He recommended the language be changed to reflect the timing of the disclosure at point of sale and then exempt out those marketing methodologies which cannot accommodate that time frame.

Robert L. Wright III (Va.) said that Virginia supports disclosure at the point of sale but feels at this point it is important to get the work product exposed. For that reason, he recommends that the amendments to the Life Insurance Disclosure Regulation be exposed as presented. He asked Ohio and the District of Columbia to actively support Oregon in looking at the market segmentation study and working to get this model language amended if the study supports that change. Commissioner Yancey inquired if anyone had reported on the percent of the total volume in this market written by direct marketers. He said if disclosure were required at the point of sale, the direct marketers are out of this business.

Commissioner Lyons reported that AARP will be doing a review with senior citizens on the readability and understandability of the disclosure form. He reminded committee members that the working group will be doing additional work to determine whether these policies provide minimum values to consumers. He said that decision would be made after an NAIC staff actuary completes a study of the value of these policies. The working group plans to provide that information and its recommendations to the Life Insurance (A) Committee in 1991.

Commissioner Lyons asked Mr. Eubanks to report to the committee on whether the advisory committee accepts the work product as currently drafted and their reaction to the premium accumulation issue. Mr. Eubanks said the advisory committee is split on the accumulation issue. He said the American Council of Life Insurance (ACLI) and individual advisory committee members would rather the draft not be adopted for exposure; however, he said his clients are ready to go forward with the language as drafted.

Commissioner Yancey thanked Commissioner Lyons and members of the working group and advisory committee for the time and attention they have given to these issues.

Upon motion duly made and seconded, the committee adopted by a seven to one vote the amendments to the Life Insurance Disclosure Model Regulation and the required disclosure form as adopted by the working group in their meeting of Oct. 27. Ohio voted against the motion to adopt; the District of Columbia voted for the motion to adopt with expressed reservation on the timing of the disclosure.

Upon motion duly made and seconded, the committee adopted the minutes of the Oct. 27 Kansas City meeting (Attachment Nine-A).

## 2. Accelerated Benefits Working Group

Commissioner Yancey reported that this working group and its advisory committee met in Kansas City on Oct. 26 to refine the Accelerated Benefits Guideline into an Accelerated Benefits Model Regulation. Sheldon Summers (Calif.) requested an amendment to the minutes of the Oct. 26 meeting to expand upon the statement beginning on Page 1 that "while it was noted that language may be included in the model regulation that the Department should have authority to require filing of these forms, it was not the intent that this requirement would trigger rate approval." He suggested language to clarify that the working group members preferred to keep their options open in this area and took no formal action relative to this request for inclusion in the minutes. He also suggested amendments to the model regulation.

Section 6C(3)(a). Mr. Summers recommended an amendment to clarify that the insurers required to make disclosure are those "with financing options other than as described in Section 10A(2) and (3)." The working group was concerned that there might be companies which would claim there was no extra premium charge or cost of insurance charge for the accelerated benefits. The purpose of this additional language is to try to avoid companies claiming that there is no charge when there is a charge built into the premium.

Section 12. Clarifying language was added within the brackets in this section.

Upon motion duly made and seconded, the committee adopted the amendments to the Oct. 26 Accelerated Benefits Working Group minutes (Attachment Nine-B) and the amendments to the Accelerated Benefits Model Regulation.

Section 2B(4). Dean Gallaher (Okla.) questioned the necessity of including the "but are not limited to" language in this subsection. Commissioner Yancey responded that this is an attempt to give state regulators an idea of the types of severe medical conditions which would trigger an accelerated benefit payment. The consensus of the committee was to leave this section as currently written.

Section 10A(3)(b). Mr. Summers suggested adding "variable" to clarify the current maximum policy loan interest rate referred to in this subparagraph. The consensus of the committee was to leave the language as currently drafted.

Section 6D. Anne Jewel (Ohio) suggested the addition of language within the statement to the policyowner, certificate holder and irrevocable beneficiary to alert them to the possible tax consequences of receipt of the accelerated benefit payment. Upon motion duly made and seconded, this amendment was adopted.

Upon motion duly made and seconded, the Accelerated Benefits Model Regulation was adopted as an exposure draft (Attachment Nine-C).

Having no further business, the Life Insurance (A) Committee adjourned at 3:05 p.m.

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#### ATTACHMENT NINE-A

##### Life Marketing Practices to Senior Citizens Working Group of the Life Insurance (A) Committee Kansas City, Missouri October 27, 1990

The Life Marketing Practices to Senior Citizens Working Group of the Life Insurance (A) Committee met in the Jay McShann A Room of the Allis Plaza Hotel, at 9 a.m., on Oct. 27, 1990. A quorum of the working group was present and David J. Lyons (Iowa) chaired the meeting. The following working group members were present: Roger Strauss (Iowa); Bret D. Dickey (Okla.); Jim Swenson (Ore.); Robert Wright III (Va.); and David Rodgers (Wash.). Also present were Carolyn J. Johnson and Judy Lee (NAIC/SSO).

#### A. Washington Supreme Court Decision

David Rodgers (Wash.) briefed the working group and advisory committee on the recent Washington Supreme Court decision regarding prohibition of the sale of life insurance policies where premium payments and interest over a 10-year period exceed the death benefits. The Washington Insurance Department was supported in its position by a unanimous decision of the Court, which accepted the Unfair Trade Practices Act as the authority for their regulation. Mr. Rodgers said other aspects of the case considered by the Court were administrative law, choice of remedy, jurisdictional review, constitutional law, administrative rules, and benefits exceeding premium.

Acting Commissioner David J. Lyons (Iowa) reiterated that it was still in the best interest of state regulation to proceed with the work of amending the Life Insurance Disclosure Model Regulation to provide guidance for regulating limited benefit life policies. Jim Swenson (Ore.) stated that the group should reach a decision on the disclosure issues. He added that the second phase of this process should be a review of the overall economics or values of the limited benefit life market. He stated that this review is on hold pending actuarial analysis by an NAIC actuary. He said the critical issue to be addressed is whether the policyholder is receiving full value with this type of policy. Commissioner Lyons concurred and added that once the NAIC has completed its actuarial analysis, the working group might want to consider setting some minimum values for these products. Mr. Rodgers added that both disclosure and minimum standards were thoroughly discussed in Washington. He said that Washington found that often a disclosure was used to protect the seller rather than the buyer. He further stated he would like to see this working group set some minimum values. He said Omega Insurance Company has worked with the Washington Insurance Department actuary on an annuity combined with decreasing term product and that another company has a single premium plan in place.

Edward J. Zimmerman (American Council of Life Insurance) offered a word of caution to regulators. He said that the Washington decision linchpin was whether Washington had statutory authority to make the decisions it was making. He further stated that only a few other states have the same kind of expansive authority and that the Washington ruling is not easily exportable to other states. Mr. Rodgers suggested regulators compare their Unfair Trade Practices Act with the Washington law as a starting point to determine if they have comparable authority to Washington's. Commissioner Lyons stated that many commissioners have judicial authority and with support from states like Washington, they can determine whether there are products in the marketplace that are violative of the spirit of the Unfair Trade Practices Act. Commissioner Lyons directed NAIC staff to prepare a legal review of the decision in the Washington case as an attachment to the minutes of this meeting (Attachment Nine-A1).

#### B. Disclosure Regulation Amendment

Robert H. Myers Jr. (Torchmark Companies, ENSURE Group) stated that two areas are to be addressed by the working group. He said that everyone supports full, fair and adequate disclosure, but the concern is whether that disclosure would come at point of sale or at point of issue. The second concern with the disclosure form as currently drafted is its apparent comparison to funds accumulating in a savings account.

Commissioner Lyons interjected that the third issue to be considered is the unintended effect on other policies and finding an appropriate trigger so that policies other than those sold to senior citizens are not subject to this regulatory authority. Lee Norrgard (American Association of Retired Persons) stated that he did not believe disclosure and the outcome of the Washington case are mutually exclusive. Commissioner Lyons stated that he would like to continue work on the disclosure

model for those policies which provide sufficient value to the policyholder, and that consideration might be given to banning those products which do not provide sufficient value to policyholders. He suggested that after disclosure and while working on standards for minimum value, a system of monitoring to assure consumer satisfaction should be designed. He asked members of the working group to consider an appropriate mechanism to achieve effective monitoring.

#### C. Triggering Mechanism

Commissioner Lyons asked the working group and advisory committee to consider an appropriate triggering mechanism so that policies not related to the senior citizen market are not inadvertently pulled under this regulation. He said one trigger might be age 60 which would avoid policies purchased at earlier ages. Roger Strauss (Iowa) discussed using a numerical approach for a premium per thousand rather than the age trigger. He stated that Washington had used an example of a premium of \$75.71 accumulated at 5% for 10 years which produces \$999.89. A premium higher than that amount would produce a negative result under the tabular illustration before the tenth year. Mr. Rodgers suggested that it would be easier to require a tabular illustration for any policy where the premium exceeds \$75 per thousand per year. Bob Wright (Va.) stated he would favor using a value approach rather than an age trigger. Commissioner Lyons suggested applying the value trigger to policies where the purchasing consumer is age 60 or over.

Upon motion duly made and seconded, the working group limited the applicability of the disclosure to policies sold to persons age 60 and over for policies with a premium paying period of 10 years as a trigger. After several questions were raised concerning the trigger, Mr. Swenson clarified that the trigger is applicable for policies sold to persons age 60 and over and that if the values available at death are less than the premium accumulated at 5% at any point through the first 10 years, the company has to produce a disclosure. Mr. Norrgard inquired if the 5% was compound interest; Mr. Swenson responded that it was.

The industry representatives agreed that they could support the age and value triggers as stated.

#### D. Premiums Accumulated at 5%

Commissioner Lyons said the second issue to be addressed is the wording on the disclosure form which allegedly compares premiums accumulating interest at 5% to funds accumulating in a savings account. Robert M. Eubanks (Mitchell Law Firm), advisory committee chair, commented that the current wording on the form is confusing to the consumer, leaving the impression that this is a savings account accumulation. Mr. Myers added that the net loss or net gain column is misleading because those terms usually apply to tax consequences. He further added that the 5% accumulating on the premium is misleading because the death benefit value is not disclosed in the first year. Mr. Rodgers replied that the 5% figure came from the Life Cost Disclosure Model Regulation which was fully supported by industry at adoption and in which the policyholder's money is valued at 5% per annum. He stated that the proposed form shows that the policyholder's money has a value over time. Mr. Norrgard disagreed that the form was misleading, stating that the consideration of the time value of money is not confusing to the average consumer.

Alan Blackwell (Old American Insurance Company) pointed out that there is no cost of insurance disclosed on this form. Bob Corn (Old American Insurance Company) stated that the proposed disclosure form is duplicative of the disclosures required in the Life Cost Disclosure Model and the policy summary page required to be given to consumers.

Mr. Swenson reiterated that all the disclosure form attempts to do is illustrate the value of the insurance protection, illustrating how this product works for the consumer rather than setting the funds aside to accumulate interest. Mr. Rodgers explained that the people purchasing this coverage usually have very small estates and their funds are depleted by payment of the premiums. Commissioner Lyons reminded the group that the form was an attempt to present information in a simple and meaningful manner to enable the consumer to understand what they are purchasing. He further stated that this form is giving only minimal information about what the consumer's dollar can earn. Mr. Swenson added that while it might be more valid to add the cost of insurance to the form, this information is not easily understood by the consumer. This is an attempt to give a snapshot of how this policy works for the consumer over the next ten years. John Hoey (National Liberty Corporation) agreed that the time value of money has relevance in this disclosure, but said that the concern arises over how to mechanically present that information.

Considerable discussion ensued over whether the industry was philosophically opposed to disclosure of the comparison called for in the disclosure form. Mr. Zimmerman responded that industry does not believe there is a simplistic way to represent the time value of money. He added that the industry wants to present the information fairly, which cannot be done without taking the cost of insurance into account. Mr. Eubanks stated that the language used in Column 2 is opposed by the advisory committee philosophically and legally. Mr. Myers stated that the description of the industry advisory committee as being philosophically opposed to disclosure is not accurate. He stated their opposition is based only on the assumption that this disclosure cannot be made accurately.

#### E. Timing of Disclosure

Commissioner Lyons suggested that the group move forward to consideration of the third issue and return to further discussion on the disclosure later in the meeting. The next issue was whether the disclosure should be made at the point of sale, at the point of issuance of the policy or as soon as practically possible. Commissioner Lyons suggested that the group mandate disclosure at point of issue and attempt to identify those instances where earlier disclosure could be accommodated. Mr. Eubanks commented that while he philosophically agrees with early disclosure and would like to see disclosure made at point of sale, he feels strongly that adequate and accurate disclosure cannot be made at that point. Glenn Joppa (Union

Fidelity Life Insurance Company) added that the direct response marketers do not have the ability to provide the required disclosure information at the point of sale. Commissioner Lyons suggested amending the proposed language in the Life Insurance Disclosure Regulation to require disclosure at the point of issue and to establish a review mechanism to segment the industry to determine those insurers which can make disclosure earlier than at point of issue.

Mr. Swenson commented that while he believes disclosure made at the point of sale is the most appropriate, he recognizes that for a number of marketing methodologies that would require an intermediate step which is not practical. He would encourage companies to produce the disclosure form at the earliest practical time, but no later than at point of issue. He suggested that the point of issue disclosure be tied to the "10-day free look" notice to provide the consumers with the right to return the policy if they do not want it. Bret Dickey (Okla.) stated that he would agree with disclosure made at point of issue, as long as the group agreed that there are differences in marketing methodologies which need to be addressed in the future.

Mr. Wright indicated that he believes disclosure should be made at point of sale because that is when the consumer is thinking about the implications of this purchase. He further indicated that he believes companies are capable of producing this information at point of sale if more computer capability can be provided. He stated that to have an impact for the consumer, the disclosure must be made at point of sale. Mr. Rodgers stated that a Washington actuary had developed a simple program to provide accurate disclosure information. He said the problem with disclosure at point of sale is that the company must have the age of the person and know the amount of insurance they expect to purchase. Mr. Rodgers further stated that he would support more disclosure at point of sale and would hope that industry could figure out how to get accurate disclosure information to the applicant. Mr. Wright suggested that direct response marketers could provide a toll free number for consumers to contact to obtain accurate disclosure information.

Commissioner Lyons suggested two approaches for the model. The first approach would be insertion of the point of issue language in the model with further review and refinement of the regulation when advances in technology permit accurate disclosure information at an earlier date. Secondly, language could be included in the model that disclosure is required at point of issue unless the commissioner determines that certain industry marketing methodologies can accommodate earlier disclosure. Mr. Eubanks suggested a drafting note indicating optional versions of the language at state discretion.

Upon motion duly made and seconded, the working group voted unanimously that the language as currently drafted in the Life Insurance Disclosure Model Regulation be amended to reflect that disclosure is required at the point of issue and that a review of the differences in marketing methodologies will be conducted with a future report to the Life Insurance (A) Committee related to the ability to create a point of sale requirement for certain products. Mr. Eubanks clarified that there would now be only one disclosure form with no signature requirement, rather than the separate forms drafted earlier for agent marketing forces and direct marketers; Commissioner Lyons concurred.

Commissioner Lyons asked the industry members in attendance at this meeting to indicate in writing to Jim Swenson by Nov. 25 whether their individual marketing methodology would lend itself to disclosure at point of issue or at point of sale. He clarified that this was to give the working group an initial indication of the various marketing methodologies throughout the industry and that further input from the industry would be welcome at a later date.

#### F. Disclosure Form

Mr. Rodgers requested that the currently numbered Columns 4 and 5 be switched so that the "bottom line," which is what the policyholder should understand, would appear in the final column on the disclosure form. Upon motion duly made and seconded, the rearrangement of Columns 4 and 5 was adopted (Attachment Nine-A2).

Mr. Rodgers further recommended that the illustration be extended to show year 15 and year 20 or age 99, whichever occurs first. He stated that of the people who buy policies at age 65, more than one-half will be alive at age 80. He said the high negative result in later years would be of significant consideration in this cost comparison. Mr. Blackwell pointed out that adding this information exacerbates the misinformation in the form by continuing to ignore the cost of insurance. Commissioner Lyons asked that the advisory committee review company data and determine the average number of years people live from date of purchase of these policies. Mr. Eubanks reminded the working group that the advisory committee's ad hoc group conducting its own actuarial review might generate these numbers. Commissioner Lyons asked if the population profile numbers would be available prior to the December meeting. He stated that the working group would like to know from industry whether this is important in this project so that a cost benefit analysis can be made. He said if the additional years would add relevant information, he wanted to have that information available to the consumer.

#### G. Premiums Accumulated at 5%

Returning to the issue of the alleged comparison to savings accounts, Mr. Zimmerman commented that he was concerned about the industry being portrayed as being philosophically opposed to disclosing information to consumers. He suggested that he could begin to address this issue and perhaps offer an alternative by sending a bulletin to his clients to solicit their reactions. Commissioner Lyons reiterated that he would entertain alternative language from industry if they disagree with the use of the 5% figure. He said the working group would indicate to the Life Insurance (A) Committee its strong feeling that the disclosure form must have some comparison to offer to the consumer. Mr. Eubanks pointed out that an early advisory committee draft of the disclosure form included the cost of insurance and recognized the time value of money. The minutes of the Aug. 13 meeting held in Kansas City state that the advisory committee form was addressed and dismissed with no reason given. Mr. Myers suggested that the earlier draft of the advisory committee's disclosure form be resurrected and presented to the working group for reconsideration. Mr. Swenson commented that he recalled the initial advisory committee

draft and believed the decision to amend that form was based on a need for simplicity. He asked that if the advisory committee resubmitted that form, the committee attempt to make the form as simple as possible. Commissioner Lyons assured the advisory committee that if it wants to resubmit a previous draft that the working group would consider it and offer comments on the previous proposal. He added that he would like to see any alternatives by Nov. 20.

#### H. Exposure Draft

Commissioner Lyons stated that he intended to ask the Life Insurance (A) Committee to expose the working draft from this meeting and to consider it for adoption at the December meeting in Louisville. Mr. Eubanks commented that members of the advisory committee had expressed opposition to exposure of the work product because of time constraints. He said the advisory committee would be very opposed to language in the present review form relative to the premiums accumulating interest as being misleading and possibly illegal.

Commissioner Lyons said that he had understood the advisory committee had previously opposed exposure on three points. The first point dealing with an appropriate trigger had been resolved in good faith today. The third point concerning the point of disclosure had been resolved. The second point is the remaining issue which could still be discussed in December. Mr. Zimmerman commented that he was not comfortable that exposure of the product and further amendment to it could be accomplished by Dec. 1. Commissioner Lyons reiterated that there were no new issues to be raised for consideration, only a refining of the current position in one instance. Mr. Myers pointed out that there would not be time to review any counterproposals if they are raised between now and Dec. 1.

Mr. Zimmerman inquired about the procedure for submitting counterproposals; Commissioner Lyons requested that any counterproposals be submitted to Judy Lee (NAIC/SSO) by Nov. 15. Those proposals would be forwarded to the working group and a conference call would be set up to decide on the appropriate language. He further stated that because of the number of deadlines established at this meeting for the advisory committee, he would recognize that the response to Mr. Swenson would be the lowest priority.

Commissioner Lyons further requested that the advisory committee join the working group in attempting to correct any inaccurate portrayal of this work product or its implications that may have inadvertently been communicated to regulators or other industry members.

Commissioner Lyons requested that the advisory committee prepare a letter to him after this meeting stating whether the issues addressed today have been satisfactorily resolved.

Commissioner Lyons reiterated that he intended to contact Commissioner Harold Yancey (Utah), chair of the Life Insurance (A) Committee, to request that the work product as amended at this meeting be considered as an exposure draft for final adoption in Louisville (Attachment Nine-C). He offered the advisory committee the opportunity of having a spokesperson participate in the conference call.

Having no further business, the Life Marketing Practices to Senior Citizens (A) Working Group adjourned at 12:40 p.m.

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#### ATTACHMENT NINE-A1

TO: Life Insurance (A) Committee  
FROM: Life Marketing Practices to Senior Citizens Working Group  
DATE: November 2, 1990  
RE: Washington Supreme Court Decision

A recent decision which may impact the future course of this group's charges is summarized for your information.

On Oct. 25, 1990, the Washington Supreme Court handed down its decision in the case of *Omega National Insurance Co. v. Marquardt*. The commissioner had promulgated a regulation which prohibits the sale of life insurance policies having a face value of less than \$25,000 if the premium payments plus interest over a 10-year period exceed the death benefits. Insurers and an insurance trade association sought a ruling that the commissioner did not have authority to adopt such a regulation. The commissioner adopted the rule under the state's unfair trade practices law which provides:

RCW Sec. 48.30.010

(1) No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such business as such methods, acts, or practices are defined pursuant to subsection (2) of this section.

(2) In addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation promulgated pursuant to chapter 34.04 RCW, define other methods of competition and other acts and practices in the conduct of such business reasonably found by the commissioner to be unfair or deceptive.

The commissioner stated that the reason for the rule was "to assure that death benefits payable under a life insurance policy are reasonable in relation to premiums paid for the insurance. In general, during its first 10 years, life insurance covered by the rule must provide benefits that equal or exceed the premiums paid therefore, plus interest. It would be an unfair trade practice to do otherwise." State Register 88-21-083 (1988).

The insurers challenged the rule on several grounds. They argued that the rule exceeded the commissioner's statutory authority, it was unreasonable, and was unconstitutional because it violated the due process, equal protection and the takings clause, and discriminated against the elderly. The scope of review of the Court was limited; the rule could be held invalid only if it exceeded the statutory authority of the agency or if it violated constitutional provisions.

I. Did the Commissioner Exceed His Statutory Authority?

The insurers argued that the commissioner was regulating rates and, instead of the more general trade practices chapter, they should use the specific chapter on rate regulation which prohibits the commissioner from promulgating any rule which affects life insurance rates. The Court concluded that the commissioner was not setting rates; his rule was aimed at banishing certain offensive products from the state marketplace. The rule defines certain types of policies which are inherently unfair. The insurance companies' argument would have the Court rule that the commissioner could not engage in any life insurance rulemaking that might have any effect on rates. This would eviscerate the authority granted by the legislature.

The Court will not substitute its judgment for that of the commissioner in determining whether the rule is reasonable. It is not the Court's function to second-guess decisions such as these; the wisdom or desirability of a rule is not subject to review by the courts.

II. Does the Rule Violate Constitutional Protection?

The Court held that the rule constituted a rational solution to a perceived problem. It did not violate the equal protection clause. Since the classification neither involved suspect criteria or affected fundamental rights the appropriate test is "minimum scrutiny" with a heavy presumption of constitutionality. The reasons the commissioner advanced for limiting the rule to policies under \$25,000 were persuasive and reasonable.

The insurance companies also argued that the rule discriminated against the elderly. Disregarding the issue of whether the insurers even had standing to assert the rights of the elderly, the rule applies evenhandedly to all buyers and does not establish distinct classes to whom it applies differently. It seeks to protect all buyers from purchasing policies which are inherently unfair.

The insurers urged the court to find an unconstitutional taking of property, but the court found no basis for that argument since the rule only applies prospectively. Nothing in the rule forces insurers to write policies for which they will not receive a fair return.

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## ATTACHMENT NINE-A2

### FINANCIAL REVIEW OF THIS POLICY

[For Use In Marketing  
Limited Benefit Life Insurance]

THIS IS A GUARANTEED ISSUE POLICY OFFERED WITHOUT AN ATTEMPT TO CLASSIFY RISKS BY DETERMINING YOUR STATE OF HEALTH. PREMIUMS MAY HAVE BEEN LOWER IF HEALTH INFORMATION HAD BEEN OBTAINED.

THIS IS A POLICY ISSUED ON THE BASIS OF THE ANSWERS TO THE HEALTH QUESTIONS SET FORTH IN THE APPLICATION. PREMIUMS MAY HAVE BEEN LOWER IF FURTHER HEALTH INFORMATION HAD BEEN OBTAINED.

THIS IS A POLICY WHERE  
THE ACCUMULATED PREMIUM  
EXCEEDS THE DEATH  
BENEFIT IN TEN YEARS OR  
LESS.

Applicant Information:

NAME: \_\_\_\_\_ AGE: \_\_\_\_\_ SEX: \_\_\_\_\_

List other personal information used in determining the premium for this policy:

[illegible]

**Definitions:** The following terms used in the above chart are defined as:

1. Premiums - Amount you must pay each year to keep this policy in force.
2. Premiums Accumulating Interest at 5% - The amount which could be earned if, instead of purchasing insurance, the dollars were left to accumulate at 5% interest.
3. Death Benefits - The amount that will be paid if you die.
4. Cash Surrender Value - The amount the insurance company will pay you if you surrender your policy to the company for cash.
5. Net Gain or Loss - This column shows whether your money would have earned more or less at 5% interest than your life insurance benefit.

[\*Agent/Company: If death benefits have been explained in any manner other than shown on the above chart (through use of CPI index, dividends, or other non-guaranteed increase or a reduction in premium), a copy of the illustration signed by the applicant and the agent must be attached.]

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**LIFE INSURANCE DISCLOSURE MODEL REGULATION  
EXPOSURE DRAFT 10/27/90**

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**Section 1. Authority**

This rule is adopted and promulgated by [title of supervisory authority] pursuant to Sections [4(1)(a) of the Unfair and Deceptive Acts and Practices in the Business of Insurance Act] of the Insurance Code.

**Section 2. Purpose**

- A. The purpose of this regulation is to require insurers to deliver to purchasers of life insurance information which will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.
- B. This regulation does not prohibit the use of additional material which is not a violation of this regulation or any other [state] statute or regulation.

**Section 3. Scope**

- A. Except for the exemptions specified in Subsection 3B, this regulation shall apply to any solicitation, negotiation or procurement of life insurance occurring within this state. Subsection 5C only shall apply to any existing nonexempt policy held by a policyowner residing in this state. This regulation shall apply to any issuer of life insurance contracts including fraternal benefit societies.
- B. Unless specifically included, this regulation shall not apply to:
  - (1) Annuities;
  - (2) Credit life insurance;
  - (3) Group life insurance (except for disclosures relating to preneed funeral contracts or prearrangements as provided herein. These disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy.);
  - (4) Life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001 *et seq.* (ERISA) as amended;
  - (5) Variable life insurance under which the amount or duration of the life insurance varies according to the investment experience of a separate account.

**Section 4. Definitions**

For the purposes of this regulation, the following definitions shall apply:

- A. **Buyer's Guide.** A Buyer's Guide is a document which contains, and is limited to, the language contained in Appendix A to this regulation or language approved by [title of supervisory authority].

B. **Cash Dividend.** A Cash Dividend is the current illustrated dividend which can be applied toward payment of the gross premium.

C. **Contribution Principle.** The Contribution Principle is a basic principle of dividend determination adopted by the American Academy of Actuaries with respect to individual life insurance policies. The Academy report, *Dividend Recommendations and Interpretations* (November 1985), describes this principle as the distribution of the aggregate divisible surplus among policies in the same proportion as the policies are considered to have contributed to divisible surplus. In a broad sense, the Contribution Principle underlies the essential equity implied by participating business.

D. **Current Dividend Scale.** The Current Dividend Scale is a schedule that exhibits dividends to be distributed if there is no change in the basis of these dividends after the time of illustration.

E. **Current Rate Schedule.** The Current Rate Schedule is a schedule showing the premiums that will be charged or the cash values or death or other benefits that will be available if there is no change in the basis of these items after the time of illustration.

F. **Discontinuity Index.** The Discontinuity Index is the sum of the backward second differences squared in the Yearly Prices of Death Benefits (per 1,000) for policy years through twenty-three (23). Examples of calculations appear in Appendix B of this regulation.

G. **Equivalent Level Death Benefit.** The Equivalent Level Death Benefit of a policy or term life insurance rider is an amount calculated as follows:

(1) Accumulate the amount payable upon death, regardless of the cause of death, at the beginning of each policy year for ten (10) and twenty (20) years at five percent (5%) interest compounded annually to the end of the tenth and twentieth policy years respectively.

(2) Divide each accumulation of Step (1) by an interest factor that converts into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in Step (1) over the respective periods stipulated in Step (1). If the period is ten (10) years, the factor is 13.207 and if the period is twenty (20) years, the factor is 34.719.

H. **Generic Name.** A Generic Name is a short title that is descriptive of the premium and benefit patterns of a policy or a rider.

I. **Investment Generation Method.** The Investment Generation Method is the method of determining dividends so that dividends for policies issued in specified years or groups of years reflect investment earnings on funds attributable to those policies.

J. **Cost Comparison Indexes.**

(1) **Surrender Cost Comparison Index - Illustrated Basis.** The Surrender Cost Comparison Index - Illustrated Basis is calculated by applying the following steps:

(a) Determine the cash surrender value, if any, available at the end of the tenth and twentieth policy years, based on the company's Current Rate Schedule.

(b) For participating policies, add the terminal dividend payable upon surrender, if any, to the accumulation of the annual Cash Dividends at five (5%) percent interest compounded annually to the end of the period selected and add this sum to the amount determined in Step (a).

(c) Divide the result of Step (b) (Step (a) for nonparticipating policies) by an interest factor that converts it into an equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in Step (b) (Step (a) for nonparticipating policies) over the respective periods stipulated in Step (a). If the period is ten (10) years, the factor is 13.207 and if the period is twenty (20) years, the factor is 34.719.

(d) Determine the equivalent level premium by accumulating each annual premium payable for the basic policy or rider, based on the company's Current Rate Schedule, at five percent (5%) interest compounded annually to the end of the period stipulated in Step (a) and dividing the result by the respective factors stated in Step (c). (This amount is the annual premium payable for a level premium plan.)

(e) Subtract the result of Step (c) from Step (d).

(f) Divide the result of Step (e) by the number of thousands of the Equivalent Level Death Benefit, using the company's Current Rate Schedule to determine the amount payable upon death for purposes of Section 4G(1), to arrive at the Surrender Cost Comparison Index - Illustrated Basis.

(2) **Surrender Cost Comparison Index - Guaranteed Basis.** The Surrender Cost Comparison Index - Guaranteed Basis is calculated by applying the steps indicated in (1) above but assuming that the company charges the

maximum premiums and provides the minimum cash values and, for purposes of Section 4(G)1, provides the minimum death benefits allowed by the policy, and, if the policy is participating, pays no dividends.

(3) Net Payment Cost Comparison Index - Illustrated Basis. The Net Payment Cost Comparison Index - Illustrated Basis is calculated in the same manner as the comparable Surrender Cost Comparison Index - Illustrated Basis except that the cash surrender value and any terminal dividend are set at zero.

(4) Net Payment Cost Comparison Index - Guaranteed Basis. The Net Payment Cost Comparison Index - Guaranteed Basis is calculated in the same manner as the comparable Surrender Cost Comparison Index - Guaranteed Basis except that the cash surrender value is set at zero.

K. Nonguaranteed Factor. A Nonguaranteed Factor is any premium, benefit, or other item entering into the calculation of the Surrender Cost Comparison Index - Illustrated Basis that can be changed by the company without the consent of the policy owner.

L. Policy Data. The Policy Data is a display or schedule of numerical values, both guaranteed and nonguaranteed, for each policy year or a series of designated policy years of the following information: illustrated annual, other periodic, and terminal dividends; premiums; death benefits; cash surrender values and endowment benefits.

M. Policy Summary. The Policy Summary is a written statement describing the elements of the policy, including, but not limited to:

- (1) A prominently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION.
- (2) The name and address of the insurance agent or, if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the Policy Summary.
- (3) The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written.
- (4) The Generic Name of the basic policy and each rider.
- (5) The following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns; including, but not necessarily limited to, the years for which Cost Comparison Indexes are displayed and the earlier of at least one age from sixty (60) through sixty-five (65) and policy maturity:
  - (a) The annual premium for the basic policy;
  - (b) The annual premium for each optional rider;
  - (c) The amount payable upon death at the beginning of the policy year regardless of the cause of death, other than suicide or other specifically enumerated exclusions, which is provided by the basic policy and each optional rider; with benefits provided under the basic policy and each rider shown separately;
  - (d) The total cash surrender values at the end of the year with values shown separately for the basic policy and each rider;
  - (e) The Cash Dividends payable at the end of the year with values shown separately for the basic policy and each rider (Dividends need not be displayed beyond the twentieth policy year);
  - (f) Any endowment amounts payable under the policy which are not included under cash surrender values above;
  - (g) If the policy has a Nonguaranteed Factor, the maximum premium, minimum amount payable upon death, minimum cash value, and minimum endowment amounts allowed by the policy. These amounts may be shown in addition on the basis of the Company's Current Rate Schedule and Current Dividend Scale.
- (6) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is adjustable, the Policy Summary shall also indicate that the annual percentage rate will be determined by the company in accordance with the provisions of the policy and the applicable law.
- (7) The Cost Comparison Indexes for ten (10) and twenty (20) years but in no case beyond the premium-paying period. Indexes shall be shown on the Guaranteed Basis as defined in Sections 4J(2) and 4J(4) and, if there are dividends or a Nonguaranteed Factor, shall also be shown on the Illustrated Basis as defined in Sections 4J(1) and 4J(3). Separate indexes shall be displayed for the basic policy and for each optional term life insurance rider. Such indexes need not be included for optional riders which are limited to benefits; such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than twelve (12) months and guaranteed insurability benefits; nor for any basic policies or optional riders covering more than one life.

(8) A Policy Summary which includes dividends shall also include a statement that dividends are based on the company's Current Dividend Scale and are not guaranteed.

(9) If the policy has a Nonguaranteed Factor, a statement indicating that the insurer reserves the right to change the Nonguaranteed Factor at any time and for any reason. However, if the insurer has agreed to limit this right in any way; such as, for example, if it has agreed to change a Nonguaranteed Factor only at certain intervals or only if there is a change in the insurer's current or anticipated experience; the statement may indicate any such limitation on the insurer's right.

(10) This statement in close proximity to the Cost Comparison Indexes:

"An explanation of the intended use of these indexes is provided in the Life Insurance Buyer's Guide."

(11) The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in Item (5) of this section shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as a blank space.

N. Portfolio Average Method. The Portfolio Average Method is the method of determining dividends so that, except for the effect of policy loans, dividends reflect investment earnings on funds attributable to all policies whenever issued.

O. Preneed Funeral Contract or Prearrangement. An agreement by or for an individual before that individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services.

P. Yearly Price of Death Benefits. The Yearly Price of Death Benefits per \$1,000 is calculated by applying the following formula:

$$YP = (P - Ov - (CVCv - CVP)) / (F \cdot .001)$$

Where YP = Yearly Price of Death Benefits per \$1,000

P = Annual premium

CVP = Sum of the cash value and terminal dividend at the end of the preceding year.

CVC = Sum of the cash value and terminal dividend at the end of the current year.

D = Annual dividend

F = Face amount

v = 1/(1.05)

## Section 5. Duties of Insurers

### A. Requirements Applicable Generally

(1) The insurer shall provide, to all prospective purchasers, a Buyer's Guide and a Policy Summary prior to accepting the applicant's initial premium or premium deposit; provided, however, that:

(a) If the policy for which application is made or its Policy Summary contains an unconditional refund provision of at least ten (10) days, the Buyer's Guide and Policy Summary must be delivered with the policy or prior to delivery of the policy.

(b) If the Equivalent Level Death Benefit of the policy for which application is made does not exceed \$5,000, the requirement for providing a Policy Summary will be satisfied by delivery of a written statement containing the information described in Section 4M, Items (2), (3), (4), (5a), (5b), (5c), (6), (7), (9), (10), and (11).

(2) In the case of universal life and indeterminate premium products, the Statement of Policy Information for Applicant illustrated in Appendix D must be delivered at the time of application or within fifteen (15) working days thereafter, but at least five days before delivery of the policy.

If the policy is delivered sooner than five days after delivery of the disclosure statement, the free-look period shall be extended to fifteen (15) days. In the event the disclosure statement is not delivered at the time of application, the disclosure shall be accompanied by a statement that it is delivered for the express purpose of allowing comparison with other policies.

(3) In the case of a solicitation by direct response methods, the insurer shall provide the Statement of Policy Information for Applicant prior to accepting the applicant's application; provided however, that if the policy for which application is made contains an unconditional refund provision of at least ten (10) days, the Statement of Policy Information for Applicant may be delivered with the policy.

(4) If any prospective purchaser requests a Buyer's Guide, a Policy Summary or Policy Data, the insurer shall provide the item or material requested. Unless otherwise requested, the Policy Data shall be provided for policy years one through twenty (20), and for indeterminate premium and universal life products shall substantially conform to the illustration in Appendix D.

(5) If the Discontinuity Index of any policy exceeds:

(a) Any of the test limits for discontinuity set forth in Appendix C herein, the insurer shall, prior to the sale of any such policy, provide to the [title of supervisory authority] a statement identifying as accurately as possible the specific policy premium or benefit causing the policy's Discontinuity Index to exceed the test limits. Upon request of the [title of supervisory authority], the insurer shall also provide to the [title of supervisory authority] the Policy Data for policy years one through thirty (30), and the Discontinuity Index and its component calculations.

(b) The test limit set forth in Appendix C herein for the applicant's issue age, the insurer shall provide:

(i) The following statement displayed prominently on the Policy Summary and on all other sales material that show or incorporate a Cost Comparison Index: "This policy has an unusual pattern of premiums or benefits that may make comparison with the cost indexes of other policies unreliable. You should discuss this with your agent or this company. A statement of year-by-year information is available."

(ii) If the prospective purchaser requests it, a statement identifying as accurately as possible the specific policy premium or benefit causing the policy's Discontinuity Index to exceed the applicable test limit.

**B. Requirements Applicable to Participating Policies.** If a life insurance company illustrates policyholder dividends that are calculated in a manner or on a basis that:

(1) Deviates substantially from the Contribution Principle, the Policy Summary and all other sales material showing illustrated policyholder dividends must display prominently the following statement: "The illustrated dividends for this policy have not been determined in accordance with the Contribution Principle. Contact this company for further information."

(2) Uses the Portfolio Average Method, the Policy Summary and all other sales material showing illustrated policyholder dividends must include the following statement: "Illustrated dividends reflect current investment earnings on funds applicable to all policies and are based on the Current Dividend Scale. Refer to your Buyer's Guide for further information."

(3) Uses the Investment Generation Method, the Policy Summary and all other sales material showing illustrated policyholder dividends must include the following statement: "Illustrated dividends reflect current investment earnings on funds attributable to policies issued since 19[ ] and are based on the Current Dividend Scale. Refer to your Buyer's Guide for further information."

**Drafting Note:** Insert at [ ] the earliest year of the issue-year grouping used to determine the investment earnings on currently issued policies.

(4) Uses any combination of the Portfolio Average Method and the Investment Generation Method, the Policy Summary and all other sales material showing illustrated policyowner dividends must include an appropriate statement, analogous to the statements required by Sections 5B(2) and 5B(3), indicating how current investment earnings are reflected in illustrated dividends.

**C. Requirements Applicable to Existing Policies.**

(1) If a policy owner residing in this state requests it, the insurer shall provide Policy Data for that policy. Unless otherwise requested, the Policy Data shall be provided for twenty (20) consecutive years beginning with the previous policy anniversary. The statement of Policy Data shall include cash dividends according to the Current Dividend Scale, the amount of outstanding policy loans, and the current policy loan interest rate. Policy values shown shall be based on the dividend option in effect at the time of the request. The insurer may charge a reasonable fee, not to exceed \$\_\_\_\_, for the preparation of the statement.

(2) If a life insurance company:

(a) Deviates substantially from the Contribution Principle, it shall annually advise each affected policy owner residing in this state that the dividend paid that year was not determined in accordance with the Contribution Principle and that the policy owner may contact the company for further information.

(b) Is determining dividends, as of the effective date of this regulation, using the Investment Generation Method, it shall, within eighteen (18) months of such date, advise each affected policy owner residing in this state that the dividend for the policy reflects current investment earnings on funds applicable to policies issued from 19 [ ] through 19 [ ]. This requirement shall not apply to policies for which the amount payable upon death under the basic policy as of the date when advice would otherwise be required does not exceed \$5,000.

Drafting Note: Insert at [ ] the applicable years of issue.

(c) Changes its method of determining dividend scales on existing policies from or to the Investment Generation Method; it shall, no later than when the first dividend is payable on the new basis, advise each affected policy owner residing in this state of this change and of its implication on dividends payable on affected policies. This requirement shall not apply to policies for which the amount payable upon death under the basic policy as of the date when advice would otherwise be required does not exceed \$5,000.

(3) If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any Nonguaranteed Factor; it shall, no later than the first policy anniversary following the revision, advise accordingly each affected policy owner residing in this state.

## Section 6. Special Plans

This section modifies the application of this regulation as indicated for certain special plans of life insurance:

### A. Enhanced Ordinary Life Policies.

(1) An Enhanced Ordinary Life Policy is a participating policy which has the following characteristics for all issue ages:

(a) The basic policy has a guaranteed death benefit that reduces after an initial period of one or more years to a basic amount; and

(b) A special dividend option that provides

(i) a combination of immediate paid-up additions and one-year term insurance; or

(ii) deferred paid-up additions;

either of which on the basis of the Current Dividend Scale will provide a combined death benefit (reduced basic amount plus paid-up additions plus one-year term insurance) at least equal to the initial face amount.

(2) The crossover point of an Enhanced Ordinary Life Policy is the first policy anniversary at which the sum of the reduced basic amount and paid-up additions equals or exceeds the initial death benefit. For these policies:

(a) The cash value of benefits purchased by dividends payable on or before the crossover point is included in the cash surrender value for the purpose of Section 4J(1)(a);

(b) The death benefit purchased by dividends payable on or before the crossover point is included in the amount payable upon death for the purpose of Section 4G(1);

(c) Dividends payable after the crossover point are assumed to be paid in cash for the purpose of Section 4J(1)(b).

### B. Flexible Premium and Benefit Policies. For policies commonly called "universal life insurance policies," which:

(1) Permit the policy owner to vary, independently of each other, the amount or timing of premium payments, or the amount payable on death; and

(2) Provide for a cash value that is based on separately identified interest credits and mortality and expense charges made to the policy.

All indexes and other data shall be displayed assuming specific schedules of anticipated premiums and death benefits at issue.

In addition to all other information required by this regulation, the Policy Summary shall indicate when the policy will expire based on the interest rates and mortality and other charges guaranteed in the policy and the anticipated or assumed annual premiums shown in the Policy Summary.

### C. Multitrack Policies. For policies which allow a policyowner to change or convert the policy from one plan or amount to another, the Policy Summary:

(1) Shall display all indexes and other data assuming that the option is not exercised; and

- (2) May display all indexes and other data using a stated assumption about the exercise of the option.

D. Policies with Any Rate Subject to Continued Insurability. For policies which allow a policyowner a reduced premium rate if the insured periodically submits evidence of continued insurability, the Policy Summary:

- (1) Shall display cost indexes and other data assuming that the insured always qualifies for the lowest premium;
- (2) Shall display cost indexes and other data assuming that the company always charges the highest premiums allowable; and
- (3) Shall indicate the conditions that must be fulfilled for an insured to qualify periodically for the reduced rate.

E. Limited Benefit Life Policies

(1) Descriptive Language

For the purposes of these products, the following descriptive language shall be used:

(a) Substandard Rates. If applicable, in marketing materials, specific language describing substandard rates by use of the phrase "higher than normal rates" shall be prominently displayed.

(b) Face Value. If applicable in describing the face value of a policy in marketing materials, the phrase "the amount of insurance will vary by age" shall be used.

(2) Individualized Policy Information

(a) In addition to all other information required by this regulation, the information illustrated in Appendix E shall be prepared on an individual basis. The form entitled "Financial Review of This Policy" shall include:

- (1) Premiums
- (2) Premiums accumulating interest at 5%
- (3) Death benefits
- (4) Cash surrender value
- (5) Net gain or loss

(b) If an insurer uses a form other than the Financial Review of This Policy form, that form shall be approved for use by the state insurance department.

(c) If other than guaranteed death benefits are presented in the policy, advertising, marketing materials, or verbally explained to the consumer, the agent, or company if a direct marketer, shall attach all those materials or representations to the Financial Review of This Policy form before issuance of the policy.

(d) If any method other than the Financial Review of This Policy form is used to explain the death benefit, a copy of the illustration signed by the applicant and the agent must be attached to the form.

(e) The information contained in Appendix E must be furnished to the applicant no later than the point of issue of the policy.

Drafting Note: The working group will create a report in the future to identify those marketing methodologies which could accommodate an earlier point of disclosure.

(f) The original of the individual information form shall be attached to the policy at issue and a copy shall be retained by the insurer as long as the policy remains in force, plus two years.

E. For all other special plans of life insurance, an insurer shall provide or deliver both a Policy Summary substantially similar to that described in Section 4M and a Buyer's Guide. Use of those materials shall be deemed to be substantial compliance with this regulation unless the [title of supervisory authority] makes a finding that such disclosure materials misrepresent a material term or condition of the contract or omit a material fact.

**Section 7. Preneed Funeral Contracts or Prearrangements**

The following information shall be adequately disclosed at the time an application is made, prior to accepting the applicant's initial premium or deposit, for a preneed funeral contract or prearrangement as defined in Section 4N above which is funded or to be funded by a life insurance policy:

- A. The fact that a life insurance policy is involved or being used to fund a prearrangement as defined in Section 4N of this regulation;
- B. 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;

- C. 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;
- D. The impact on the prearrangement
  - (1) of any changes in the life insurance policy including but not limited to, changes in the assignment, beneficiary designation or use of the proceeds;
  - (2) of any penalties to be incurred by the policyholder as a result of failure to make premium payments;
  - (3) of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy;
- E. 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;
- F. 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 as defined in Section 4N;
- G. 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;
- H. 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.

#### Section 8. General Rules

- A. Each insurer shall maintain, at its home office or principal office, a complete file containing one copy of each document authorized and used by the insurer pursuant to this regulation. Such file shall contain one copy of each authorized form for a period of three years following the date of its last authorized use.
- B. An agent shall inform the prospective purchaser, prior to commencing a life insurance sales presentation, that he or she is acting as a life insurance agent and inform the prospective purchaser of the full name of the insurance company which the agent is representing to the buyer. In sales situations in which an agent is not involved, the insurer shall identify its full name.
- C. Terms such as financial planner, investment advisor, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is primarily engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.
- D. Any reference to a dividend or Nonguaranteed Factor must include a statement that such item is not guaranteed and is based on the company's Current Dividend Scale or Current Rate Schedule. If a dividend or Nonguaranteed Factor would be reduced by the existence of a policy loan, a statement to this effect must be included in any reference to such dividend or Nonguaranteed Factor.
- E. A system or presentation which does not recognize the time value of money through the use of appropriate interest adjustments shall not be used for comparing the cost of two or more life insurance policies. Such a system may be used for the purpose of demonstrating the cash-flow pattern of a policy if such presentation is accompanied by a statement disclosing that the presentation does not recognize that, because of interest, a dollar in the future has less value than a dollar today.
- F. A presentation of costs or benefits, other than that required pursuant to this regulation, shall not display guaranteed and nonguaranteed factors as a single sum unless they are shown separately in close proximity thereto.
- G. Any statement regarding the use of the Cost Comparison Indexes shall include an explanation to the effect that the indexes are useful only for the comparison of the relative costs of two or more similar policies.
- H. A Cost Comparison Index which reflects a dividend or Nonguaranteed Factor shall be accompanied by a statement that it is based on the company's Current Dividend Scale or Current Rate Schedule and is not guaranteed.
- I. Whenever a policy is issued for delivery in this state to an applicant at age 60 or over, which limits death benefits during a period following the inception date of the policy or where the accumulated premiums exceed the death benefit at any point during the first ten (10) years, then the form labeled Appendix E to this regulation or a form containing substantially similar information and approved by the commissioner shall be completed by the insurer and delivered to the insured.



### Section 9. Failure to Comply

Failure of an insurer to provide or deliver a Buyer's Guide, a Policy Summary or Policy Data as provided in Sections 5 and 6 shall constitute an omission which misrepresents the benefits, advantages, conditions or terms of an insurance policy.

### Section 10. Separability

If any provisions of this rule be held invalid, the remainder shall not be affected.

### Section 11. Effective Date

This rule shall become effective [insert a date at least six months following adoption by the regulatory authority].

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## ATTACHMENT NINE-B

### Accelerated Benefits Working Group of the Life Insurance (A) Committee Kansas City, Missouri October 26, 1990

The Accelerated Benefits Working Group met in the NAIC/SSO office in Kansas City, Mo., at 9 a.m. on Oct. 26, 1990. A quorum was present and Harold C. Yancey (Utah) chaired the meeting. The following working group members were present: Sheldon Summers (Calif.); Randy Ward (Ohio); Bret Dickey (Okla.); and Robert Wright III (Va.). Also present were Marlyn Burch (Kan.); David Smith (Fla.); Carolyn Johnson and Judy Lee (NAIC/SSO).

Merle Pederson (Principal Financial Group), chair of the advisory committee, offered the following comments on the draft Accelerated Benefits Model Act.

Mr. Pederson said that a model regulation rather than a model act would be a more proper form for this work product. He said there are some 44 or 45 states that have adequate statutory authority to approve various forms of accelerated benefit products. The regulation would assist the insurance departments by being more flexible. The working group concurred in this recommendation and "act" was changed to "regulation" where appropriate.

Section 3. Mr. Pederson said the regulation must be clear as to whether accelerated benefit products are life or health insurance. He reiterated that the advisory committee feels they are life insurance products and that Section 3 as currently drafted accommodates that philosophy. Sheldon Summers (Calif.) offered an amendment to Section 3 which, if inserted as the final sentence in that section, would read: "However, since elements of morbidity risk do exist, these products shall be subject to prior approval in those states which require prior approval of health insurance products." He stated that California has prior approval of health insurance products but not of life insurance products. He added that these products are currently considered health insurance in California and the California Department wants to continue to have the authority for prior approval of accelerated benefit products. David Smith (Fla.) said Florida has authority to handle the products either way. He pointed out that these events are triggered by a morbidity risk. Donna Claire (Chalke, Inc.) reminded the group that if the products are characterized as health insurance, it may pose tax consequences at payment. George Coleman (Prudential) said that characterization would subject them to health insurance regulations as well. Commissioner Yancey commented that even though the event is triggered by a morbidity risk, the payment is a life insurance product and a life insurance benefit which is regulated by the life insurance code.

Julie Spiezio (American Council of Life Insurance) reiterated the ACLI position that in spite of the trigger it is still a life insurance benefit that is paid out and there is no health insurance component. Ms. Spiezio referred working group members to her June 29 letter addressed to Director Susan Gallinger (Ariz.) and Commissioner Harold Yancey which discusses the applicability of the NAIC Long-Term Care Model Act and Regulation to life insurance policies providing long-term care benefits through acceleration of the death benefit. Mr. Summers asked for input on any alternatives that might assist California with its desire to retain prior approval of accelerated benefit products. Several alternatives were discussed.

Diana Marchesi (Transamerica Life Companies) asked that the minutes reflect that while it was noted that language may be included in the regulation that the department should have authority to require filing of these forms, it was not the intent that this requirement would trigger rate approval. Preferring to keep their options open in this area, the working group took no formal action relative to her request.

In Executive Session the working group decided against amending Section 3 of the regulation. They added an optional Section 12 entitled Filing Requirement which states that the filing of forms containing an accelerated benefit is required. Further, Section 12 includes bracketed language that a state could include which would require the approval of accelerated benefit forms by state insurance departments.

Section 4. Tom Meyer (Jackson National Insurance Company) discussed that this section could engender law suits if the company is forced to insert itself into the relationship between the policyowner and the irrevocable beneficiary. He said that requiring the company to obtain a signed acknowledgement of concurrence for payout from the irrevocable beneficiary could lead to payment of this benefit being denied by the company if they cannot obtain the signed acknowledgment. Commissioner

Yancey asked how the irrevocable beneficiary is protected when the payout of the accelerated benefit amount is the total death benefit. Mr. Meyer concurred that was a problem; however, he stated that Jackson National pays out only a percentage of the death benefit, and the irrevocable beneficiary is still entitled to the remaining benefit. Mr. Coleman commented that Prudential would not permit the policyowner to take out a loan or access this benefit if there is an irrevocable beneficiary. Mr. Pederson said he felt this was a public policy decision best left to the companies. In Executive Session, the working group decided to leave this section as currently drafted. They expressed their belief that this language alerts the companies to a potential problem when irrevocable beneficiaries are designated by the policyowner.

Section 6B. This subsection currently requires that the first page of any accelerated benefit policy or rider contain a disclosure statement regarding the tax consequences of an accelerated benefit request for payment. Mr. Meyer said that this requirement is unnecessarily duplicative and creates administrative problems for life insurers without any corresponding benefit to consumers. Chuck Budinger (Ill.) stated that Illinois previously had this requirement but has since deleted it. Bob Wright (Va.) commented that a decision to remove this requirement is premature since Congress has not acted on the tax implications. Virginia feels that disclosure to the consumer of the potential tax consequences should be made. Mr. Meyer said Jackson National believes that these benefits are not taxable and that Congress will make that clarification. He said his company has an opinion from Peat, Marwick to back that assertion. In Executive Session the working group decided to make no amendments to this section, believing that the disclosure statement should be on the first page of the policy or rider and any other related documents to alert the consumer to the possibility of negative tax consequences.

Section 6C(1)(b). Mr. Smith pointed out that as currently drafted this subparagraph would require direct response marketers to make an additional mailing if they have to wait for receipt of an acknowledgement of the disclosure form from the applicant before issuing the policy. He suggested this could better be handled through a free-look provision for direct response companies. Mr. Wright expressed Virginia's position that the disclosure form be delivered at point of solicitation in order to be most effective for the consumer. In Executive Session the working group amended the language to read that the disclosure form must be delivered at the time the policy is issued and tying this provision to a 30-day free-look period.

Section 6C(2)(b). The working group additionally amended this subparagraph to read that in case of a solicitation by direct response marketers the written illustration would be provided at the time the policy is delivered.

Section 9. Tom Meyer discussed that as currently drafted the language seems to indicate that every life threatening condition must be covered. The working group concurred that that was not the intent of the model. Clarifying language was added that the qualifying events are only those covered under the policy.

Section 10A(3). Mr. Pederson pointed out that as currently drafted the language requires that the interest charge on the amount of the accelerated benefit be accrued at an interest rate no greater than the loan rate on currently issued policies. He pointed out that a problem arises with variable loan rate contracts where the interest rate changes on the policy anniversary date. Ms. Claire offered an amendment that would set the interest rate at 18% based on the usury laws in various states. She said this is a short-term benefit so the rate should be tied to that of short-term loans rather than long-term loans. She also suggested that the methodology used for determining the rate should be clearly disclosed to regulators.

After considerable discussion of the appropriate language, the working group amended the language in Paragraphs (2) and (3) to state that the interest rate or interest rate methodology used in the calculation should be based on sound actuarial principles and disclosed in the contract or actuarial memorandum. Language was added to state that "the maximum interest rate used shall be no greater than the greater of the current yield on 90 day treasury bills or the current maximum policy loan interest rate." The advisory committee recommendation for additional percentages tied to both those rates was not accepted by the working group. Additionally, in Paragraph (3) the working group added language to state "the interest rate accrued on the portion of the lien which is equal in amount to the cash value of the contract at the time of the benefit acceleration shall be no more than the policy loan interest rate stated in the contract."

Section 10B(2). The advisory committee recommended and the working group concurred in a stylistic change using more permissive language to allow companies to be more liberal in their offerings.

Section 10D. The advisory committee recommended changing the final word of the first sentence of this subsection from "payments" to "premiums" to more accurately reflect what was intended. Subsequently in Executive Session, however, the working group deleted Subsection D, except for the last sentence, as being unnecessary due to other changes made. The accidental death benefit provision was then moved to Section 5C as a criteria for payment.

Section 11. The advisory committee recommended the deletion of the current language in Section 11 and substituted language which served to expand the rights of regulators and actuaries. In Executive Session the working group accepted the new language with minor amendments. Ms. Claire discussed an actuarial guideline which had been drafted to cover the actuarial aspects of accelerated benefits. This guideline will be a part of the actuarial task force minutes and will be included in the *Examiners Handbook* if adopted.

Having no further business, the open session of the Accelerated Benefits Working Group of the Life Insurance (A) Committee adjourned at 11:15 a.m. to reconvene immediately in executive session for further consideration of issues relating to this regulation.

Section 1. The working group made a minor clarification to state that the purpose of this regulation is to provide "required standards" of disclosure rather than a "minimum level" of disclosure.

Section 2B(4)(c), (d) and (e). The working group concurred in the addition of Acquired Immune Deficiency Syndrome as another of the specific medical conditions which would drastically limit life spans. Mr. Smith suggested this amendment since AIDS was the original trigger for development of the accelerated benefit concept.

Section 6C(1). The working group made a minor stylistic change for clarity. There was no change in the intent of this paragraph.

Section 6C(3)(a). The working group concurred that the language in this paragraph should be amended to clearly reflect the financing options described in Section 10A(2) and (3) of this regulation which require disclosure to the policyowner of any premium or cost of insurance charge for the accelerated benefit.

Section 6C(3)(b). Rather than insurers providing a "written explanation" to state insurance departments if the benefit is offered without additional charge, insurers are now required to furnish an "actuarial demonstration." This language gives regulators the authority to require that a separate charge be identified for this benefit. The working group strongly supports identification of a specific dollar amount allocated to this benefit.

Section 10A(1). The working group added language to this paragraph to state that required premium or cost of insurance charges shall be based on sound actuarial principles and shall not be excessive.

Section 10C(1) and (2). Minor language changes were made in Paragraph (1) to state that payment of an accelerated benefit may not be applied toward repaying an amount greater than a pro rata portion of any outstanding policy loan. The working group deleted Paragraph (2) in its entirety because it was no longer necessary.

Having no further business, the Executive Session of the Accelerated Benefits Working Group of the Life Insurance (A) Committee adjourned at 3:45 p.m.

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ATTACHMENT NINE-C

## ACCELERATED BENEFITS-GUIDELINE MODEL REGULATION

EXPOSURE DRAFT 11/5/90

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### Section 1. Purpose

The purpose of this guideline regulation is to ~~assist the individual state insurance departments in addressing regulatory concerns associated with~~ regulate accelerated benefits ~~provisions of individual and group life insurance policies and to provide a minimum level required standards of disclosure.~~ This guideline regulation shall not apply to policies or riders subject to the Long-Term Care Insurance Model Act.

### Section 2. Definitions

A. "Accelerated benefits" covered under this guideline regulation are benefits payable under a life insurance contract:

- (1) To a policyowner or certificate holder, during the lifetime of the insured, in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider; and
- (2) Which reduce the death benefit otherwise payable under the life insurance contract (~~excluding accidental death and other ancillary benefits~~); and
- (3) Which are payable, ~~in a lump sum or in periodic payments, at the option of the insured upon the occurrence of a single qualifying event which results in the payment of a benefit amount fixed at the time of acceleration.~~

B. "Qualifying event" shall mean one or more of the following:

- (1) A medical condition which would result in a drastically limited life span as specified in the contract, for example, twenty-four (24) months or less; or
- (2) A medical condition which has required or requires extraordinary medical intervention, such as, but not limited to, major organ transplant or continuous artificial life support, without which the insured would die; or
- (3) Any condition which usually requires continuous confinement in an eligible institution as defined in the contract if the insured is expected to remain there for the rest of his or her life; or
- (3) (4) A medical condition which would, in the absence of extensive or extraordinary medical treatment, result in a drastically limited life span. Such conditions may include, BUT ARE NOT LIMITED TO, one or more of the following:
  - (a) Coronary artery disease resulting in an acute infarction or requiring surgery;
  - (b) Permanent neurological deficit resulting from cerebral vascular accident;
  - (c) End stage renal failure; or
  - (d) Acquired Immune Deficiency Syndrome; or
  - (d) (e) Other qualifying event medical conditions which the commissioner shall approve for any particular filing; or
- (5) Other qualifying events which the commissioner shall approve for any particular filing.

~~The necessity for a second medical opinion prior to payout is a decision left to the individual state insurance departments.~~

Section 3. Type of Product

~~Accelerated benefit riders and life insurance policies with accelerated benefit provisions do not represent morbidity risks are primarily mortality risks rather than morbidity risks. They are life insurance benefits and state insurance codes should be amended, if necessary, to permit the writing of this type of life insurance product subject to [insert sections referencing life insurance provisions].~~

Section 4. Assignee/Beneficiary

~~Prior to the payment of the accelerated benefit, the insurer shall receive~~ is required to obtain from any assignee or irrevocable beneficiary a signed acknowledgement of concurrence for payout.

Section 5. Criteria for Payment

A. Percentage of Payout of Face Amount of Policy Lump Sum Settlement Option Required.

~~The benefit shall be paid in a lump sum, or in periodic payments for a fixed period of time, or in a fixed amount for an indefinite period of time, at the option of the insured. Companies may set minimums on the face amount of contracts for which the benefit shall be offered. Contract payment options shall include the option to take the benefit as a lump sum. The benefit shall not be made available as an annuity contingent upon the life of the insured.~~

B. Restrictions on Use of Proceeds.

~~No recommendation is offered on proposed restrictions for~~ restrictions are permitted on the use of the proceeds.

C. Payment Provisions: Accidental Death Benefit Provision.

~~Decisions on payments shall be made according to the contract. The accidental death benefit provision, if any, in the policy or rider shall not be affected by the payment of the accelerated benefit.~~

Section 6. Disclosures

A. Descriptive Title.

~~The name given the coverage must be descriptive of the coverage provided, and the terminology "accelerated benefit" shall be included in the description descriptive title. Products regulated under this regulation shall not be described or marketed as long-term care insurance or as providing long-term care benefits.~~

## B. Tax Consequences.

~~Clear disclosure~~ A disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted of the potential tax implications of receiving this payout. ~~The disclosure statement shall indicate that receipt of these accelerated benefits may be taxable, and insureds should seek assistance from their and that assistance should be sought from a personal tax advisor. Each disclosure~~ The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.

## C. Solicitations.

(1) ~~Prior to or concurrently with the application, the applicant shall be given an illustration numerically. A written disclosure including, but not necessarily limited to, a brief description of the accelerated benefit and definitions of the conditions or occurrences triggering payment of the benefits shall be given to the applicant. The description shall include an explanation of any demonstrating the effect of the payment of a benefit on the policy's cash value, accumulation account, death benefit, premium, policy loans and policy liens. In the event of direct mail solicitations, the disclosure shall be made upon acceptance of the application.~~

(a) In the case of agent solicited insurance, the agent shall provide the disclosure form to the applicant prior to or concurrently with the application. Acknowledgment of the disclosure shall be signed by the applicant and writing agent.

(b) In the case of a solicitation by direct response methods, the insurer shall provide the disclosure form to the applicant at the time the policy is delivered, with a notice that a full premium refund shall be received if the policy is returned to the company within 30 days of initial receipt of the policy by the applicant.

(2) ~~Prior to or concurrently with the application, the applicant shall be given a written disclosure including, but not necessarily limited to, a brief description of the accelerated benefit and definitions of the conditions or occurrences triggering payment of the benefits. The disclosure shall be signed by the applicant, the policyowner and writing agent. If there is a premium or cost of insurance charge, the insurer shall give the applicant a generic illustration numerically demonstrating any effect of the payment of a benefit on the policy's cash value, accumulation account, death benefit, premium, policy loans and policy liens. In the event of direct mail solicitations, the disclosure shall be made upon acceptance of the application.~~

(a) In the case of agent solicited insurance, the agent shall provide the illustration to the applicant prior to or concurrently with the application.

(b) In the case of a solicitation by direct response methods, the insurer shall provide the illustration to the applicant at the time the policy is delivered.

### (3) Disclosure of Premium Charge.

(a) Insurers with financing options other than as described in Section 10 A(2) and (3) of this regulation shall disclose to the policyowner any premium or cost of insurance charge for the accelerated benefit. These insurers shall make a reasonable effort to assure that the certificate holder is aware of any additional premium or cost of insurance charge if the certificate holder is required to pay such charge.

(b) Insurers shall furnish an actuarial demonstration to the state insurance department when filing the product disclosing the method of arriving at their cost.

(4) Disclosure of Administrative Expense Charge. The insurer shall disclose to the policyowner any administrative expense charge. The insurer shall make a reasonable effort to assure that the certificate holder is aware of any administrative expense charge if the certificate holder is required to pay such charge.

## D. Marketing-Effect of the Benefit Payment.

This statement shall appear on the face of every policy or rider: "Cash values, loan values and the death benefit will be reduced if you receive an accelerated benefit." For policies which have no cash or loan values, this statement shall be appropriately modified. When a policyowner or certificate holder requests an acceleration, the insurer shall send a statement to the policyowner or certificate holder and irrevocable beneficiary showing any effect that the payment of the accelerated benefit will have on the policy's cash value, accumulation account, death benefit, premium, policy loans and policy liens. The statement shall disclose that actual or constructive receipt of accelerated benefit payments may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements. In addition, receipt of an accelerated benefit payment may be taxable and assistance should be sought from a personal tax advisor. When a previous disclosure statement becomes invalid as a result of an acceleration of the death benefit, the insurer shall send a revised disclosure statement to the policyowner or certificate holder and irrevocable beneficiary. When the insurer agrees to accelerate death benefits, the insurer shall issue a new or amended schedule page to the policy to reflect any new, reduced in-force face amount of the contract.

**E. Additional Premium Charge.**

See additional disclosure of premium charge under Section 10.

**Section 7. Effective Date of the Accelerated Benefits**

The accelerated benefit provision shall be effective for accidents on the effective date of the policy or rider. The accelerated benefit provision shall be effective for illness no more than thirty (30) days following the effective date of the policy or rider.

**Section 8. Waiver of Premiums**

The accelerated benefit provision The insurer may or may not provide for the offer a waiver of premium for the accelerated benefit provision in the absence of a regular waiver of premium provision being in effect. At the time the benefit is claimed, the company-insurer shall explain any continuing premium requirement to keep the policy in force.

**Section 9. Discrimination**

Insurers shall not unfairly discriminate among insureds with differing qualifying events covered under the policy or among insureds with similar qualifying events covered under the policy. Insurers shall not apply further conditions on the payment of the accelerated benefits other than those conditions specified in the policy or rider.

**Section 10. Premiums-Actuarial Standards****A. Disclosure of Additional Premium Charge.**

The company shall disclose to the consumer any separate identifiable premium for the accelerated benefit. Those companies indicating that this accelerated benefit is offered without additional premium shall furnish a written explanation to the state insurance department when filing the product.

**B. Effect on Death Benefit, Cash Values, Future Premiums and Loan Balance.****(1) Two options are available to finance the benefit:**

- (a) The insured may make an additional premium payment or cost of insurance charge; or
- (b) The insured may take a present value of the face amount. The calculation would be based on any applicable actuarial discount appropriate to the policy design.

**Drafting Note:** The Life Insurance (A) Committee has given a charge to industry to set the actuarial standards on which this calculation is based.

**(2) Illustration of effect on other values:**

Companies are required to illustrate, by numerical example, any effect the payment of the accelerated benefit has on the face amount, specified amount, accumulation account, cash values, loan balance, and future premiums. Each time an accelerated benefit payment is paid, the company is required to send a statement to the policyowner showing the numerical expression stated above. Upon the payment of an accelerated benefit amount, the company shall issue an endorsement to the policy to reflect any new, reduced, in-force face amount of the contract.

**(3) Effect on Cash Value:**

- (a) When an accelerated benefit is payable, the NAIC preference is for a pro-rata reduction in the cash value, not a reduction of the full amount.
- (b) Alternatively, the payment of accelerated benefits can be considered a non-interest bearing lien against the death benefit of the policy or rider and the access to the cash value shall be restricted to any excess of the cash value over the sum of other outstanding loans and the lien. If the lien approach is used, any accelerated death benefit payments shall first be applied toward repaying the portion of any other outstanding policy loans which would cause the sum of the accelerated death benefit and policy loans to exceed the cash value. Future access to the cash values and to policy loans would be limited to the difference between the cash value and the sum of the lien and any other outstanding policy loans.
- (c) In either case, the death benefit may not be reduced more than the amount of the accelerated benefits paid plus any applicable actuarial discount appropriate to the policy design for policies without additional premium payments. The accidental death benefit, if any, in the policy or rider shall not be affected by the payment of the accelerated benefit.

**A. Financing Options**

(1) The insurer may require a premium charge or cost of insurance charge. These charges shall be based on sound actuarial principles and shall not be excessive.

(2) The insurer may pay a present value of the face amount. The calculation shall be based on any applicable actuarial discount appropriate to the policy design. The interest rate or interest rate methodology used in the calculation shall be based on sound actuarial principles and disclosed in the contract or actuarial memorandum. The maximum interest rate used shall be no greater than the greater of:

- (a) The current yield on 90 day treasury bills; or
- (b) The current maximum policy loan interest rate.

(3) The insurer may accrue an interest charge on the amount of the accelerated benefits. The interest rate or interest rate methodology used in the calculation shall be based on sound actuarial principles and disclosed in the contract or actuarial memorandum. The maximum interest rate used shall be no greater than the greater of:

- (a) The current yield on 90 day treasury bills; or
- (b) the current maximum policy loan interest rate.

The interest rate accrued on the portion of the lien which is equal in amount to the cash value of the contract at the time of the benefit acceleration shall be no more than the policy loan interest rate stated in the contract.

**B. Effect on Cash Value**

(1) Except as provided in Section 10B(2), when an accelerated benefit is payable, there shall be no more than a pro-rata reduction in the cash value based on the percentage of benefits accelerated.

(2) Alternatively, the payment of accelerated benefits, any administrative expense charges, any future premiums and any accrued interest can be considered a lien against the death benefit of the policy or rider and the access to the cash value may be restricted to any excess of the cash value over the sum of any other outstanding loans and the lien. Future access to additional policy loans could also be limited to any excess of the cash value over the sum of the lien and any other outstanding policy loans.

**C. Effect of Any Outstanding Policy Loans on Accelerated Death Benefit Payment**

When payment of an accelerated benefit results in a pro-rata reduction in the cash value, the payment may not be applied toward repaying an amount greater than a pro-rata portion of any outstanding policy loans.

**Section 11. Reserves**

At the time of filing of the policy form, the valuation method and assumptions need to be filed with the state insurance department. The assumptions should reflect the statutory mortality and interest rate assumptions for life insurance policies and appropriate assumptions for the other provisions incorporated in the policy form.

**Section 11. Actuarial Disclosure and Reserves****A. Actuarial Memorandum**

A qualified actuary should describe the accelerated benefits, the risks, the expected costs and the calculation of statutory reserves in an actuarial memorandum accompanying each state filing. The insurer shall maintain in its files descriptions of the bases and procedures used to calculate benefits payable under these provisions. These descriptions shall be made available for examination by the commissioner upon request.

**B. Reserves**

(1) When benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves shall be determined in accordance with the Standard Valuation Law. All valuation assumptions used in constructing the reserves shall be determined as appropriate for statutory valuation purposes by a member in good standing of the American Academy of Actuaries. Mortality tables and interest currently recognized for life insurance reserves by the NAIC may be used as well as appropriate assumptions for the other provisions incorporated in the policy form. The actuary must follow both actuarial standards and certification for good and sufficient reserves. Reserves in the aggregate should be sufficient to cover

- (a) Policies upon which no claim has yet arisen.
- (b) Policies upon which an accelerated claim has arisen.

(2) For policies and certificates which provide actuarially equivalent benefits, no additional reserves need to be established.

(3) Policy liens and policy loans, including accrued interest, represent assets of the company for statutory reporting purposes. For any policy on which the policy lien exceeds the policy's statutory reserve liability such excess must be held as a non-admitted asset.

#### Section 12. Filing Requirement [Optional]

The filing [and prior approval] of forms containing an accelerated benefit is required.

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#### ATTACHMENT TEN

#### Life Insurance (A) Committee Kansas City, Missouri September 11, 1990

The Life Insurance (A) Committee met in the Roanoke Room of the Westin Crown Center Hotel in Kansas City, Mo., at 3 p.m. on Sept. 11, 1990. A quorum was present and Harold C. Yancey (Utah) chaired the meeting. The following committee members or their representatives were present: Mike Weaver, Vice Chair (Ala.); David J. Lyons (Iowa); Douglas D. Green (La.); George Fabe (Ohio); Gerald Grimes (Okla.); Theodore "Ted" Kulongoski (Ore.); and Steven T. Foster (Va.).

#### 1. Adopt Amendments to the Accelerated Benefits Guideline as an Exposure Draft

Commissioner Harold C. Yancey (Utah) announced that it is his intention to call a joint meeting of the Accelerated Benefits Working Group and Advisory Committee in October to turn the exposure draft of the Accelerated Benefits Guideline into a model act. He directed NAIC staff to prepare an initial working draft of the act and distribute it to members of the working group and advisory committee. The working group concurred with this direction.

Sheldon Summers (Calif.) presented two amendments to the draft of the Accelerated Benefits Guideline. He suggested that language be added to Section 3 of the guideline requiring accelerated benefit products to be subject to prior approval in those states which require prior approval of health insurance products. He said that in some states, including California, prior approval of health insurance products is required, but there is no requirement for prior approval of life insurance products. He said products containing accelerated benefits should have prior approval and it was necessary to add this language to the guideline to facilitate changes in state law. He pointed out that, as currently written, Section 3 does not reflect that there are no morbidity risks in accelerated benefit products, only that accelerated benefits are considered primarily mortality risks.

The second amendment offered by Mr. Summers was to add language to Section 6C(2) for consistency throughout the draft. Specifically, the words "or cost of insurance" should be added to clarify that an illustration was to be given to the policyholder if there is a premium or cost of insurance charge.

Merle Pederson (Principal Financial Group), advisory committee chair, said the advisory committee would like the opportunity to more fully consider the impact of the amendment to Section 3 offered by Mr. Summers. He stated that the advisory committee would fully support the amendment to Section 6C(2).

Barbara Lautzenheiser (Lautzenheiser & Associates) expressed her concern with the reference to the interest calculation in Section 10A(2). She said companies have both fixed and variable interest rates, causing ambiguity in the language as currently stated. She requested the opportunity to come up with additional language to more specifically address this issue.

Upon motion duly made and seconded, the committee tabled further discussion of the amendment to Section 3 to allow additional time for consideration of the impact of that amendment. Upon motion duly made and seconded, the committee adopted the technical amendment in Section 6C(2).

Upon motion duly made and seconded, the committee adopted the minutes of the Accelerated Benefits Working Group meeting of Sept. 8 in Kansas City, including the adoption of the Accelerated Benefits Guideline as an exposure draft (Attachment Ten-A).

#### 2. Adopt Amendments to the Rules Governing the Advertising of Life Insurance and Amendments to the Life Insurance Disclosure Model Regulation as Exposure Drafts

Commissioner David J. Lyons (Iowa) reviewed the original charge to the working group which was to review and make recommendations on insurance products marketed to the elderly. He said the group had looked for alternatives to addressing these concerns rather than recommending a ban of these products. He pointed out that the working group had been asked by the Executive Committee to conclude its discussions by the end of this year. He said the working group had developed, with advisory committee assistance, an individualized information form to be given to consumers to assist them in understanding the policy and comparing it to other policies.

Commissioner Lyons said that there were significant issues raised in the area of advertising these products and various amendments to the Rules Governing the Advertising of Life Insurance were considered. However, he pointed out that



because of the significant disclosure in the individualized information form, the working group had decided to remove from consideration at this time any amendments to the advertising rule.

Commissioner Lyons discussed three major concerns and the decision of the working group in each area.

- 1) **Direct Marketers.** The individualized information disclosure form entitled "Financial Review of This Policy," is required to be delivered to the consumer at the point of sale rather than the point of issuance of the policy. Commissioner Lyons said that while he believes the point of sale is the appropriate point of delivery, delivering the form at the point of sale requires an intermediate step for direct marketers. He reported that the working group has asked for a report from the direct marketers of the potential impact this intermediate step will have on their companies.
- 2) **The 10-Year Trigger.** Commissioner Lyons pointed out that within the Life Insurance Disclosure Model Regulation there is a requirement that the individualized disclosure form must be completed by the insurer and delivered to the insured for policies where the accumulated premiums exceed the death benefit within 10 years. He said this 10-year trigger may have brought in policies that were not originally intended to have been included. Specifically, he said the working group intent is to work with the advisory committee and the industry to find a method of avoiding this trigger where inclusion of those policies would be inappropriate.
- 3) **Comparison to Savings Accounts.** Commissioner Lyons discussed the appropriateness of comparing an insurance product to a savings account or other investment vehicle. He said the original disclosure form references to savings account accumulations have been removed, but this issue has not been fully addressed. He anticipates there will be additional input from the advisory committee at the next joint meeting.

Commissioner Lyons indicated that there had been joint working sessions between the working group and the advisory committee resulting in a strong work product. He said if a resolution to the concerns remaining to be addressed cannot be found, in December he would seek the advice of the Life Insurance (A) Committee as to whether or not to adopt a product that could have trouble being adopted in individual states.

Commissioner Lyons moved the adoption of the minutes of the Life Marketing Practices to Senior Citizens Working Group meeting of Sept. 8 (Attachment Ten-B), including the adoption as exposure drafts of the Amendments to the Life Insurance Disclosure Model Regulation and the "Financial Review of This Policy" form. Commissioner Mike Weaver (Ala.) seconded the motion to permit further discussion of these issues. Commissioner Weaver expressed concern that there appeared to be issues that needed further attention, and it would be his inclination to resolve those issues before proceeding with adoption of the exposure draft.

Robert M. Eubanks III (Mitchell, Williams, Selig & Tucker), advisory committee chair, pointed out that the alternative or intermediate step for direct marketers concerning the signature on the disclosure form which Commissioner Lyons had mentioned to the advisory committee in an informal meeting was not included as a part of the Sept. 8 minutes. Mr. Eubanks further commented that the disclosure forms bring a variety of information to the consumer. He said the advisory committee's concern is that these products are specifically intended to be marketed with less than high face values. He said the amendments as currently drafted apply to all life insurance policies and not just those with lower face values.

Mr. Eubanks added that the requirement that agents complete the form at point of sale and, that the direct marketer have this form signed by the applicant and returned to the insurer before the policy goes into effect, is too burdensome for the insurers. He said these requirements will have a dramatic impact on guaranteed issue products. He said in both cases the only reasonable, cost-effective way to get this information to the consumer is for the company to develop the disclosure and deliver it with the policy.

Mr. Eubanks requested that the committee table these work products and vote not to accept them as exposure drafts in order to give adequate time for further consideration of the issues. He added that the comparison to the savings account may be in violation of individual state laws and that the advisory committee would be reviewing this issue. Commissioner Lyons agreed that there is sufficient reason to believe that other products have inadvertently been included and the working group would endeavor to find a trigger to avoid this problem.

Edward J. Zimmerman (American Council of Life Insurance—ACLI) commented that the ACLI shares the advisory committee concerns that the regulation is overly broad and offered to assist in identifying an appropriate trigger to avoid the inadvertent inclusion of other insurers. He said the focus of the regulation appears to be cost disclosure and he would offer to discuss the cost disclosure aspects with the ACLI's Cost Disclosure Subcommittee and report back to this working group at its next meeting. He further offered to discuss the point of disclosure issue with the ACLI's Direct Response Committee to gather information. He said he would make every attempt to bring this input to the next meeting of the working group. Commissioner Lyons commented that the working group meeting would be scheduled when the industry input was prepared, preferably in October.

S. Roy Woodall Jr. (National Association of Life Companies—NALC) said members are small companies and the NALC is currently reviewing the impact of this regulation on its members.

Mr. Eubanks addressed the financial study which was part of the original charge to the working group but which has subsequently been postponed. He advised that a number of unaffiliated companies have decided to go forward with a prospective study. This group will be surveying identified companies, asking them to participate. He further added that this study is not sanctioned by the NAIC, nor is it a product of the advisory committee. Commissioner Lyons added that the

profitability study has been postponed until the NAIC has a life actuary on staff. He said it is anticipated that the NAIC staff actuary would make this study a high priority.

Commissioner Yancey commented he believed it would be appropriate to allow the working group further time to consider the issues rather than to adopt an exposure draft at this time. Commissioner Lyons assured the committee that if the exposure draft were adopted, the issues would still be considered and appropriately resolved. He further stated his preference that the work products be exposed at this time. After considerable discussion about the benefits of delaying the exposure draft, a roll call vote was taken and the committee voted 4 to 3 against the motion to adopt the minutes (Attachment Ten-B). The states of Iowa, Ohio and Oklahoma voted in favor of adopting the minutes and the exposure draft. The states of Utah, Alabama, Louisiana and Oregon voted against exposure.

Having no further business, the Life Insurance (A) Committee adjourned at 3:50 p.m.

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#### ATTACHMENT TEN-A

##### Accelerated Benefits Working Group of the Life Insurance (A) Committee Kansas City, Missouri September 8, 1990

The Accelerated Benefits Working Group met in the Pershing West Room of the Westin Crown Center Hotel in Kansas City, Mo., at 2 p.m. on Sept. 8, 1990. A quorum was present and Harold C. Yancey (Utah) chaired the meeting. The following working group members were present: Sheldon Summers (Calif.); Ann Jewel (Ohio); and Robert Wright III (Va.).

#### 1. Update on Aug. 3 Joint Accelerated Benefits Working Group Meeting in Phoenix.

Commissioner Yancey briefed the members on the Joint Accelerated Benefits Working Group meeting held Aug. 3 in Phoenix. He said that the working group had appointed a joint advisory committee and had assigned the following issues for their consideration. 1) Rigorously define the types of policies to be covered by the Long-Term Care Insurance Model Act and Regulation; 2) Consider redefining long-term care insurance and rewriting the scope of the Long-Term Care Insurance Model Act and Regulation; 3) Consider necessary technical revisions to the Long-Term Care Insurance Model Act and Regulation to appropriately address those life insurance policies regulated in whole or in part by the Long-Term Care Model Act and Regulation. 4) In considering the above topics, the issues of triggering devices, how premiums are calculated and benefits are paid, and whether certain products should be exempted from the Long-Term Care Model Act and Regulation should be considered. Commissioner Yancey reiterated that the Accelerated Benefits Working Group position is that accelerated benefits, when properly defined, are life insurance products and should not be regulated as long-term care insurance products.

#### 2. Adoption of July 12 Chicago Minutes.

Upon motion duly made and seconded, the minutes of the Accelerated Benefits Working Group and Advisory Committee meeting held in Chicago on July 12 were adopted (Attachment Ten-A4).

#### 3. Consideration of Amendments to the Accelerated Benefits Guideline.

Merle Pederson (Principal Financial Group), chair of the advisory committee, offered the following comments concerning the current Accelerated Benefits Guideline working draft.

Section 2A(2)—The advisory committee recommended removing the "accidental death and other ancillary benefits" language from the paragraph. They said removing this language would clarify that ancillary benefits in a contract which has accelerated benefits should be paid pursuant to the contract. Barbara Lautzenheiser (Lautzenheiser & Associates) emphasized that this recommendation would allow insurers maximum flexibility to accelerate ancillary benefits in a policy. The advisory committee further recommended that the accidental death provision also be excluded from the death benefit that is payable under the contract. The working group concurred in these recommendations.

Section 2A(3)—This language change clarifies that the benefit amount is not fixed under most contracts until the time of acceleration. The working group concurred in this recommendation.

Section 2B(1)—This is clarifying language only. After each subsection in Section 2B, the advisory committee recommended the addition of the word "or" to clarify that any one of these conditions is a qualifying condition. The working group concurred in this recommendation.

Section 2B(4)(d)—The advisory committee suggested the addition of language which allows state insurance departments flexibility in approving other medical conditions as qualifying triggers. The working group concurred in this recommendation.

The working group concurred with the advisory committee recommendation to remove language regarding the necessity for a second medical opinion. They suggested this should be a company decision rather than an insurance department decision.

Section 6A—This is a technical language change to allow disclosure that these products are not long-term care insurance and they do not provide long-term care benefits.

Section 6B—The advisory committee recommended the deletion of language requiring a disclosure statement regarding the tax consequences of an accelerated benefit payment request to be prominently displayed on the first page of the policy or rider and any other related documents. The working group did not concur in this recommendation and the language remains as written in the current draft. The advisory committee also recommended addition of language in a drafting note to alert state insurance departments that congressional action is expected in this area. The working group felt that message was implicit in Section B as currently stated.

Sections 6C(1) and (2)—These two sections contain clarifying language changes and the addition of the accumulation account to cover universal life insurance policies.

Sections 6C(3) and (4)—The advisory committee recommended deletion of language requiring the insurer to disclose to the certificate holder any premium or cost of insurance charge or administrative expense charge for the accelerated benefit. The working group instead clarified that the insurer shall make a reasonable effort to assure that the certificate holder is aware of any additional charge if the certificate holder is required to pay such charge.

Section 6D—The working group concurred in an editorial change in the order to standardize throughout this document the list of policy elements affected by payment of an accelerated benefit. They also concurred with the addition of language to clarify that it is the receipt of accelerated benefit payments which may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements.

Section 6E—The working group concurred with the deletion of a section in the draft under discussion which raised the question of medicaid eligibility. Letters have been received from the Health Care Financing Administration and the Social Security Administration which address the question of whether the law requires a spend down of accelerated benefits in order to qualify for Medicaid or supplemental security income. Both agencies state that accelerated benefit options will not effect qualification for assistance if they are not exercised (Attachment Ten-A1).

Section 10—The advisory committee recommended that the interest rate or interest rate methodology used in the calculation for a present value of the face amount be based on sound actuarial principles and disclosed in the contract or in actuarial memorandum. The working group did not concur in this recommendation, stating that the calculation should be tied to the maximum loan rate specified on currently issued policies. The working group made an identical language clarification in Subsection (3).

Section 10B(2)—The working group concurred in clarifying language changes.

Section 10C(1)—The working group concurred in clarifying language changes.

Section 10D—The working group concurred in a clarifying language change.

#### 4. Any Other Matters Brought Before the Working Group.

Mr. Pederson stated that the advisory committee had been requested to address the subject of tax treatment of accelerated death benefits and how these benefits would be taxed under current law if they are health as opposed to life insurance. He has addressed these subjects in a memorandum dated Sept. 7 (Attachment Ten-A2).

Mr. Pederson further explained that the advisory committee was asked for an explanation of why accelerated benefit products are not quantifiable by a single yield index. The advisory committee stated that because of the variety of policy designs, they have not been able to suggest a methodology beyond what is already in the proposed guidelines, i.e., that a description of the benefit be given to the policyholder or certificate holder at the time of application.

Having no further business, the Accelerated Benefits Working Group of the Life Insurance (A) Committee adjourned at 3:10 p.m. to reconvene immediately in executive session. The decisions reached by the working group in executive session have been reflected throughout the minutes.

Upon motion duly made and seconded, the amendments to the Accelerated Benefits Guideline draft of Sept. 8 were recommended to the Life Insurance (A) Committee for adoption as an exposure draft (Attachment Ten-A3).

Having no further business, the executive session of the Accelerated Benefits Working Group of the Life Insurance (A) Committee adjourned at 3:45 p.m.

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## ATTACHMENT TEN-A1

## Letters Regarding Qualification for Assistance

The Prudential

September 7, 1990

The Honorable Harold Yancey  
Chairman, Life Insurance Committee and Accelerated Benefits Working Group  
National Association of Insurance Commissioners  
120 West 12th Street, Suite 1100  
Kansas City, Missouri 64105

Re: Working Draft - Accelerated Benefit Guideline Revision

Dear Chairman Yancey:

Prudential objects to language in subsection 6E of the working draft Accelerated Benefits Guideline revision requiring a disclosure to policyholders that they may be required to receive and spend all available policy funds prior to becoming eligible for Medicaid or other governmental assistance programs. We have maintained that this misstates the law and is wholly inappropriate for our policyholders whose policies include accelerated benefits.

We have advised the Working Group that we have been in discussions with the federal authorities responsible for administering these programs and were encouraged by their initial reaction. We have now received letters from the Health Care Financing Administration and the Social Security Administration which address the question of whether the law requires a spend down of accelerated benefits in order to qualify for Medicaid or Supplemental Security Income. I am pleased to report that both agencies agree with our conclusion that accelerated benefits options provided under our policies do not have to be exercised in order to qualify for assistance. Copies of these letters are attached.

To make the proposed disclosure set forth in the current draft guideline revision to our policyholders would be inaccurate and misleading. Further, it would be very damaging to our efforts to provide this valuable option to our policyholders. We urge that this disclosure be removed from the draft.

Sincerely,

George T. Coleman

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Department of Health and Human Services  
Health Care Financing Administration  
6325 Security Boulevard  
Baltimore, MD 21207

August 16, 1990

Mr. Terry S. Coleman  
Fox, Bennett & Turner  
750 17th Street, N.W., Suite 100  
Washington, D.C., 20006

Dear Mr. Coleman:

I am responding to your letter dated June 15, 1990, to Rhoda Davis and myself concerning Prudential Insurance Company's accelerated death benefits option. I am responding to your questions about Medicaid. Ms. Davis will respond separately with regard to questions applicable to the Supplemental Security Income (SSI) program.

Briefly, Prudential has recently begun including a new provision in its life insurance policies which allows certain individuals to receive payments from the death benefit while the individual is still alive. The option is available to individuals who are terminally ill, or who are confined to a nursing home for six months and who are expected to remain institutionalized until death.

The basic issue raised in your letter is the treatment of this benefit under the Medicaid program. You recognize that, if an individual actually receives payments under this benefit, those payments will be counted as income or resources under the applicable statute and regulations. However, you are concerned about whether Medicaid will require individuals to apply for this benefit as a condition of eligibility, or will otherwise count the potential benefit as available to the individual even if he does not take advantage of it. Prudential does not want its accelerated death benefit to have adverse effects on beneficiaries by creating a situation where the individual is forced to convert death benefits to pre-death cash payments, which then affect Medicaid eligibility.

Your letter also includes a detailed analysis of the Medicaid statute and regulations as you believe they apply in this situation. Based on your analysis, you conclude, in general, that the applicable statute and regulations do not require that individuals who may be eligible for Prudential's benefit actually apply for it or accept the payments as a condition of eligibility. In addition, you reach four specific conclusions and ask that the Health Care Financing Administration (HCFA) make a determination agreeing with those conclusions. Those specific conclusions are:

1. The SSI and Medicaid law and regulations do not require the Prudential's policyowners to apply for the accelerated death benefits option as a condition of obtaining or retaining SSI or Medicaid eligibility.
2. The condition of eligibility in the Prudential's rider, under which a policyowner is not eligible for the benefit if the policyowner is being required to apply for it to obtain or keep a government benefit, is effective under SSI and Medicaid to preclude unreceived accelerated death benefits from being considered income or resources.
3. SSI and Medicaid would not consider an unexercised accelerated death benefits option as income or resources in determining eligibility.
4. Nothing in the SSI and Medicaid law and regulations prevents a policyowner from cancelling an accelerated death benefits rider, and such a cancellation would not adversely affect SSI or Medicaid eligibility.

As we noted earlier, we are responding only to the Medicaid-related issues raised in your letter. Ms. Davis will respond separately to the SSI-related issues. However, to the extent that it applies to Medicaid, we agree with your general analysis concerning how the potential for receipt of payments under Prudential's accelerated death benefit will be treated. Also, we agree with each of the four specific conclusions regarding such treatment under the Medicaid program listed above. We would note, however, that with regard to the consideration of an unexercised death benefits option as income or resources (item 3. above), Medicaid would ultimately follow SSI policy in this matter.

As an additional point, on page 11 of your letter you discuss Prudential's notice to policyowners concerning this benefit, and indicate that Prudential would consider additional forms of notice which would be more specific concerning the impact receipt of payments under this benefit might have on eligibility for Medicaid. We believe that such additional notice would be appropriate. Many of the beneficiaries of this benefit, because of the circumstances under which the benefit is available, are likely to be eligible for Medicaid already, or will be eligible in the near future. Because actually receiving payments under this benefit can affect eligibility for Medicaid, even if the potential for receiving them will not, we believe that potential recipients of these payments should be made aware that receiving payments can have an adverse effect on their eligibility for Medicaid. If Prudential chooses to develop a notice that is more specific to Medicaid, we would be willing to review that notice for the sole purpose of its technical accuracy with regard to Medicaid program requirements. Any such review, of course, would not constitute any endorsement or position with regard to the accelerated death benefits.

We appreciate the opportunity to clarify our policies concerning how Prudential's new benefit will affect eligibility for Medicaid.

Sincerely,

Rozann Abato  
Acting Director  
Medicaid Bureau

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Department of Health and Human Services  
Social Security Administration  
Baltimore, MD 21235

August 23, 1990

Terry S. Coleman, Esquire  
Fox, Bennett & Turner  
750 17th Street, N.W., Suite 1100  
Washington, D.C. 20006

Dear Mr. Coleman:

This is in reply to your letter dated June 13, 1990, regarding the accelerated death benefits option being offered by the Prudential Insurance Company of America. In your letter, you ask for a determination of Supplemental Security Income (SSI) issues related to the new benefits.

The following summarizes the treatment of accelerated death benefits in the SSI program:

1. The Social Security Administration will not require policyholders to apply for accelerated death benefits as a condition of obtaining or retaining SSI eligibility. We do not require an individual to file for a benefit if it would be useless for the individual to apply. Given the language of the rider, it cannot be activated if required by a governmental authority. Therefore, it would be useless for an SSI beneficiary to apply for it.

2. The presence of an accelerated death benefit rider in an individual's life insurance policy does not, in and of itself, represent income or resources for SSI purposes.
3. If a claimant or recipient cancels an accelerated death benefits rider, the cancellation will have no effect on SSI eligibility.
4. If the rider is activated, an accelerated benefit is income in the month received and a resource if retained into the following month and not otherwise excludable. This means that SSI eligibility could terminate once the accelerated benefits are received.

The above applies to the SSI program. The Health Care Financing Administration will provide information for the Medicaid program under separate cover.

We appreciate your cooperation and concern that individuals who receive governmental benefits be fully informed about your insurance option.

Rhoda M.G. Davis

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ATTACHMENT TEN-A2

September 7, 1990

Subject: Tax Treatment of Accelerated Death Benefits

This memorandum addresses two questions concerning the tax treatment of accelerated death benefits: (1) how are such benefits taxed under current law, and (2) how would such benefits be taxed "if they are considered as health insurance as opposed to if they are considered life insurance?"

A. How are accelerated death benefits taxed under current law?

The tax treatment of accelerated death benefits is not clear under current law. In part, the tax treatment may depend upon the event triggering the acceleration. This memorandum discusses three such events — terminal illness of the policyholder (defined as reasonably expected to die within 12 months), permanent confinement of the insured to a nursing home, and the contracting of a "dread disease."

1. Terminal Illness

There are several arguments that death benefits accelerated as a result of terminal illness are excludable from income under current law. These include: (1) such amounts may be considered paid by reason of death and thereby excludable under Code Section 101, because the risk of death has for all practical and substantive purposes matured; (2) the amounts may be viewed in substance the same as an advance against amounts that are payable upon death of the policyholder, and generally, the proceeds of loans are not taxable; and (3) the amounts may be viewed as a special benefit under a life insurance policy payable in the event of total and permanent disability, which is excludable under Code Section 104(a)(3) as amounts received through accident or health insurance for sickness. With respect to the third argument, it is not unusual for special benefits to be paid under life insurance policies upon the total and permanent disability of the policyholder, e.g., waiver of premium benefits.

It should also be noted that two bills have been introduced in the Congress (H.R. 3732 and S. 2222) that would clarify that accelerated death benefits for terminally ill individuals would be treated as amounts paid by reason of the death of the insured, excludable under Code Section 101. These bills have substantial support in the Congress and the prospects for their enactment are good.

Notwithstanding the above arguments (and if legislation were not enacted), it is possible that all or part of the accelerated death benefits triggered by terminal illness could, under current law, be considered amounts received under a life insurance contract subject to tax under Code Section 72(e). Such treatment is described further below in connection with the dread disease and nursing home confinement triggers.

2. Dread Disease and Permanent Confinement to Nursing Home

Whether accelerated death benefits triggered by dread disease or permanent confinement to a nursing home are subject to tax under current law is also unclear. Most of the arguments set forth above in support of tax-free treatment for accelerated death benefits triggered by terminal illness would also have application in the case of these triggers. Also, the industry has proposed legislation to clarify that such amounts are tax-free. However, under current law, the IRS may be more likely to consider these amounts as amounts received under a life insurance contract subject to tax under Section 72 of the Code. This is because, for example, in the case of nursing home confinement, it would be less clear that the policyholder was in need of medical care in contrast to custodial care. Also, in both cases, death would not be as imminent or certain.

The taxation of amounts received under a life insurance contract under Section 72 of the Code depends on the settlement option selected. Assuming periodic payments over a period of more than one year, the payments should be taxed as amounts received as an annuity under a life insurance contract. As such, Sections 72(a) and 72(b) of the Code treat each payment received as includable in gross income in part and excludable from gross income in part. The excludable portion is determined by applying an exclusion ratio, which is the investment in the contract divided by the expected return under the contract. IRC Sec. 72(b). If the benefits were payable over a period shorter than one year, the payments would be taxed as amounts not received as an annuity under Code Section 72(e). Generally, such payments would be includable in income to the extent they exceed the policyholder's investment in the contract. IRC Sec. 72(e)(1)(A) and Treas. Reg. Sec. 1.72-11.

Exceptions apply in the cases of (1) a policy issued after 1984 where the recapture ceiling of Code Section 7702(f)(7)(B) may apply to cause a portion of the payment to be treated as income first, and (2) modified endowment contracts.

**B. How are the benefits taxed under current law if they are health as opposed to life insurance?**

Generally, amounts received through accident or health insurance policies for sickness are excludable under Code Section 104(a)(3) where premiums for the contract have been paid by the individual policyholder. As explained above, accelerated death benefits may be viewed as special benefits under life insurance policies that become payable in the event of total and permanent disability and, as a result, may be excludable under Code Section 104(a)(3). This does not mean, however, that the policy is a health insurance contract as opposed to a life insurance contract for federal income tax purposes.

If the benefits are health insurance "as opposed to" life insurance, several serious tax questions arise. First, the IRS has refused to rule that health insurance policies with cash values qualify for the "inside buildup." PLR 8908019 (Nov. 22, 1998). Second, if the benefits are health insurance "as opposed to" life insurance, a question may be raised regarding qualification of the contracts as life insurance for tax purposes. Generally, in order to qualify as life insurance, the policy must be a life insurance contract under state law. IRC Sec. 7702(a). Moreover, the contract's premiums or cash value cannot exceed prescribed limitations determined by reference to death benefits and endowment benefits under the contracts. Thus, it is important to treat the contract as providing death benefits until the maturity date of the contract. Life insurance policies with accelerated death benefit features do provide death protection for life and only in very limited circumstances (which may be defined by reference to the health of the insured) may pay those death benefits early.

Finally, labeling accelerated death benefits as health insurance instead of life insurance would not eliminate the uncertainty with respect to the tax treatment of these benefits. For example, government officials have informally expressed concern with respect to health insurance policies that provide benefits not tied to the incurring of medical expenses or that cover primarily custodial-type care. In the government's view, such benefits may not constitute tax-favored health benefits.

In sum, labeling life contracts that provide for accelerated death benefits as "health insurance" creates additional tax issues, without resolving those that now exist.

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ATTACHMENT TEN-A3

**ACCELERATED BENEFITS GUIDELINE  
EXPOSURE DRAFT 9/10/90**

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**Section 1. Purpose**

The purpose of this guideline is to assist the individual state insurance departments in addressing regulatory concerns associated with accelerated benefits of individual and group life insurance policies and to provide a minimum level of disclosure. This guideline shall not apply to policies or riders subject to the Long-Term Care Insurance Model Act.

**Section 2. Definitions**

- A. "Accelerated benefits" covered under this guideline are benefits payable under a life insurance contract:

- (1) To a policyowner or certificate holder, during the lifetime of the insured, in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider; and
- (2) Which reduce the death benefit otherwise payable under the life insurance contract (~~excluding accidental death and other ancillary benefits~~); and
- (3) Which are payable, in a lump sum or in periodic payments, at the option of the insured upon the occurrence of a single qualifying event which results in the payment of a benefit amount fixed at the time of acceleration.

B. "Qualifying event" shall mean one or more of the following:

- (1) A medical condition which would result in a drastically limited life span, ~~for example, twenty-four (24) months or less as specified in the contract (for example, twenty-four (24) months or less); or~~
- (2) A medical condition which has required or requires extraordinary medical intervention, such as, but not limited to, major organ transplant or continuous artificial life support, without which the insured would die; or
- (3) Any condition which usually requires continuous confinement in an eligible institution as defined in the contract if the insured is expected to remain there for the rest of his or her life; or
- ~~(4)~~ (4) A medical condition which would, in the absence of extensive or extraordinary medical treatment, result in a drastically limited life span. Such conditions may include, BUT ARE NOT LIMITED TO, one or more of the following:
  - (a) Coronary artery disease resulting in an acute infarction or requiring surgery;
  - (b) Permanent neurological deficit resulting from cerebral vascular accident;
  - (c) End stage renal failure; or
  - (d) ~~Other qualifying event~~ medical conditions which the commissioner shall approve for any particular filing; or
- (5) Other qualifying events which the commissioner shall approve for any particular filing.

~~The necessity for a second medical opinion prior to payout is a decision left to the individual state insurance departments.~~

### Section 3. Type of Product

Accelerated benefit riders and life insurance policies with accelerated benefit provisions ~~do not represent morbidity risks shall be considered primarily mortality risks rather than morbidity risks.~~ They are considered life insurance benefits and state insurance codes should be amended, if necessary, to permit the writing of this type of life insurance product.

Drafting Note: State insurance codes should be amended, if necessary, to permit the writing of this type of life insurance product.

### Section 4. Assignee/Beneficiary

Prior to the payment of the accelerated benefit, the insurer shall receive from any assignee or irrevocable beneficiary a signed acknowledgement of concurrence for payout.

### Section 5. Criteria for Payment

A. Percentage of Payout of Face Amount of Policy-Lump Sum Settlement Option Required.

The benefit shall be paid in a lump sum, or in periodic payments for a fixed period of time, or in a fixed amount for an indefinite period of time, at the option of the insured. Companies may set minimums on the face amount of contracts for which the benefit shall be offered. Decisions on payments shall be made according to the contract provisions. In addition to any other payment options, the benefit shall be made available as a lump sum. The benefit shall not be made available as an annuity contingent upon the life of the insured.

B. Restrictions on Use of Proceeds.

~~No recommendation is offered on proposed restrictions for restrictions shall be permitted on the use of the proceeds.~~

C. Payment Provisions:

~~Decisions on payments shall be made according to the contract.~~



## Section 6. Disclosures

## A. Descriptive Title.

The name given the coverage must be descriptive of the coverage provided, and the terminology "accelerated benefit" shall be included in the description. Products regulated under this guideline shall not be described or marketed as long-term care insurance or as providing long-term care benefits.

## B. Tax Consequences.

Clear disclosure A disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted of the potential tax implications of receiving this payout. The disclosure statement shall indicate that receipt of these accelerated benefits may be taxable, and insureds should seek assistance from their and that assistance should be sought from a personal tax advisor. Such disclosure. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.

## C. Solicitations.

(1) Prior to or concurrently with the application, the applicant shall be given an illustration numerically a written disclosure including, but not necessarily limited to, a brief description of the accelerated benefit and definitions of the conditions or occurrences triggering payment of the benefits and an explanation of any demonstrating the effect of the payment of a benefit on the policy's cash value, accumulation account, death benefit, premium, policy loans and policy liens. Acknowledgment of the disclosure shall be signed by the applicant and writing agent. In the event of direct mail solicitations, the disclosure shall be made upon acceptance of the application.

(2) Prior to or concurrently with the application, the applicant shall be given a written disclosure including, but not necessarily limited to, a brief description of the accelerated benefit and definitions of the conditions or occurrences triggering payment of the benefits. The disclosure shall be signed by the applicant, the policyowner and writing agent. In addition, if there is a premium or cost of insurance charge, the applicant shall also be given a generic illustration numerically demonstrating any effect of the payment of a benefit on the policy's cash value, accumulation account, death benefit, premium, policy loans and policy liens. In the event of direct mail solicitations, the disclosure shall be made at time of solicitation or upon acceptance of the application.

(3) Disclosure of Premium Charge. The insurer shall disclose to the policyowner any premium or cost of insurance charge for the accelerated benefit. The insurer shall make a reasonable effort to assure that the certificate holder is aware of any additional premium or cost of insurance charge if the certificate holder is required to pay such charge. Those insurers indicating that this accelerated benefit is offered without additional charge shall furnish a written explanation to the state insurance department when filing the product.

(4) Disclosure of Administrative Expense Charge. The insurer shall disclose to the policyowner any administrative expense charge. The insurer shall make a reasonable effort to assure that the certificate holder is aware of any administrative expense charge if the certificate holder is required to pay such charge.

## D. Marketing - Effect of the Benefit Payment.

This statement shall appear on the face of every policy or rider: "Cash values, loan values and the death benefit will be reduced if you receive an accelerated benefit." For policies which have no cash or loan values, this statement shall be appropriately modified. When a policyowner or certificate holder requests an acceleration, the insurer shall send a statement to the policyowner or certificate holder and irrevocable beneficiary showing any effect that the payment of the accelerated benefit will have on the policy's cash value, accumulation account, death benefit, premium, policy loans and policy liens. The statement shall disclose that actual or constructive receipt of accelerated benefit payments may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements. When a previous disclosure statement becomes invalid as a result of an acceleration of the death benefit, the insurer shall send a revised disclosure statement to the policyowner or certificate holder and irrevocable beneficiary. When the insurer agrees to accelerate death benefits, the insurer shall issue a new or amended schedule page to the policy to reflect any new, reduced in-force face amount of the contract.

## E. Additional Premium Charge.

See additional disclosure of premium charge under Section 10.

## Section 7. Effective Date of the Accelerated Benefits

The accelerated benefit provision for accidents shall be effective on the effective date of the policy or rider. The accelerated benefit provision in the case of illness shall be effective no more than thirty (30) days following the effective date of the policy or rider.

## Section 8. Waiver of Premiums

The accelerated benefit provision may or may not provide for the waiver of premium in the absence of a regular waiver of premium provision being in effect. At the time the benefit is claimed, the company insurer shall explain any continuing premium requirement to keep the policy in force.

## Section 9. Discrimination

Insurers shall not unfairly discriminate among insureds with differing qualifying events or among insureds with similar qualifying events. Insurers shall not apply further conditions on the payment of the accelerated benefits other than those conditions specified in the policy or rider.

## Section 10. Premiums-Actuarial Standards

### A. Disclosure of Additional Premium Charge:

The company shall disclose to the consumer any separate identifiable premium for the accelerated benefit. Those companies indicating that this accelerated benefit is offered without additional premium shall furnish a written explanation to the state insurance department when filing the product.

### B. Effect on Death Benefit, Cash Values, Future Premiums and Loan Balance:

#### (1) Two options are available to finance the benefit:

(a) The insured may make an additional premium payment or cost of insurance charge; or

(b) The insured may take a present value of the face amount. The calculation would be based on any applicable actuarial discount appropriate to the policy design.

Drafting Note: The Life Insurance (A) Committee has given a charge to industry to set the actuarial standards on which this calculation is based:

#### (2) Illustration of effect on other values:

Companies are required to illustrate, by numerical example, any effect the payment of the accelerated benefit has on the face amount, specified amount, accumulation account, cash values, loan balance, and future premiums. Each time an accelerated benefit payment is paid, the company is required to send a statement to the policyowner showing the numerical expression stated above. Upon the payment of an accelerated benefit amount, the company shall issue an endorsement to the policy to reflect any new, reduced, in-force face amount of the contract.

#### (3) Effect on Cash Value:

(a) When an accelerated benefit is payable, the NAIC preference is for a pro-rata reduction in the cash value, not a reduction of the full amount.

(b) Alternatively, the payment of accelerated benefits can be considered a non-interest bearing lien against the death benefit of the policy or rider and the access to the cash value shall be restricted to any excess of the cash value over the sum of other outstanding loans and the lien. If the lien approach is used, any accelerated death benefit payments shall first be applied toward repaying the portion of any other outstanding policy loans which would cause the sum of the accelerated death benefit and policy loans to exceed the cash value. Future access to the cash values and to policy loans would be limited to the difference between the cash value and the sum of the lien and any other outstanding policy loans.

(c) In either case, the death benefit may not be reduced more than the amount of the accelerated benefits paid plus any applicable actuarial discount appropriate to the policy design for policies without additional premium payments. The accidental death benefit, if any, in the policy or rider shall not be affected by the payment of the accelerated benefit.

### A. Financing Options

(1) The insurer may require a premium charge or cost of insurance charge; or

(2) The insurer may pay a present value of the face amount. The calculation shall be based on any applicable actuarial discount appropriate to the policy design. The interest calculation shall be no greater than the maximum loan rate specified on currently issued policies; or

(3) The insurer may accrue an interest charge on the amount of the accelerated benefits at an interest rate no greater than the loan rate on currently issued policies.

**B. Effect on Cash Value.**

(1) Except as provided in Section 10B(2), when an accelerated benefit is payable, there shall be no more than a pro-rata reduction in the cash value based on the percentage of benefits accelerated.

(2) Alternatively, the payment of accelerated benefits, any administrative expense charges, any future premiums and any accrued interest can be considered a lien against the death benefit of the policy or rider and the access to the cash value may be restricted to any excess of the cash value over the sum of any other outstanding loans and the lien. Future access to additional policy loans would also be limited to the excess of the cash value over the sum of the lien and any other outstanding policy loans.

**C. Effect of Any Outstanding Policy Loans on Accelerated Death Benefit Payment.**

(1) When payment of an accelerated benefit results in a pro-rata reduction in the cash value, the payment may first be applied toward repaying a pro-rata portion of any outstanding policy loan.

(2) If the lien approach is used, any accelerated death benefit payment may first be applied toward repaying the portion of any other outstanding policy loans which cause the sum of the accelerated death benefit and policy loans to exceed the cash value.

D. The death benefit may not be reduced more than the amount of the accelerated benefits adjusted for any applicable actuarial discount or accrued interest appropriate to the policy design plus any administrative expense charge for policies without additional payments. The accidental death benefit provision, if any, in the policy or rider shall not be affected by the payment of the accelerated benefit.

**Section 11. Reserves**

At the time of filing of the policy form, the valuation method and assumptions need to be filed with the state insurance department. The assumptions should reflect the statutory mortality and interest rate assumptions for life insurance policies and appropriate assumptions for the other provisions incorporated in the policy form.

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ATTACHMENT TEN-A4

Accelerated Benefits (A) Working Group and  
Advisory Committee Meeting  
Chicago, Ill.  
July 12, 1990

The Accelerated Benefits (A) Working Group met in the O'Hare Hilton Hotel in Chicago, Ill., at 9 a.m. on July 12, 1990. A quorum was present and Harold C. Yancey (Utah) chaired the meeting. The following working group members were present: Sheldon Summers (Calif.) and Bob Wright (Va.). Other regulators in attendance were David V. Smith (Fla.); Richard G. Gomsrud (Minn.); and Ann Jewel (Ohio). Advisory Committee members in attendance were: Merle T. Pederson (Principal Mutual Life Insurance Company), chair; Donna R. Claire (The Equitable); Carolyn Cobb (American Council of Life Insurance); George T. Coleman (Prudential); Barbara J. Lautzenheiser (Lautzenheiser and Associates); Tom Meyer (Jackson National); Jim O'Connor (Prudential) and Jane Rouse (Time Insurance Company). Also present was Judy Lee (NAIC/SSO).

Commissioner Harold C. Yancey (Utah) called the meeting to order and thanked those present for their willingness to participate in a discussion of the issues pertaining to accelerated benefits. He stated that the revised Accelerated Benefits Guideline would likely be available as an exposure draft after the Midwestern Zone Meeting in September and that ultimately the group would turn this guideline into a model act. Commissioner Yancey asked Merle Pederson, chair of the advisory committee, to comment on the committee's proposed revisions to the guideline.

Merle Pederson (Principal Mutual Life Insurance Company) expressed the advisory committee's appreciation for the opportunity to provide assistance on the guideline. He stated that they had used the working draft dated May 21, 1990, furnished to them by the working group in preparing their revisions to the guideline.

The Advisory Committee comments and Working Group recommendations are as follows:

Section 1: Wording was inserted to clarify that this guideline applies to regulatory concerns associated with accelerated benefits of both individual and group life insurance policies.

Section 2 A(1): The wording "or certificate holder" was added to clarify that the guideline will apply to both individual policyowners and group certificate holders.

Section 2 A(3): The advisory committee recommended language which would refer to Section 5 of the guideline where policyholder rights are described. However, the working group decided to rewrite this subsection in its entirety to further clarify that the accelerated benefits covered under this guideline are those which are payable upon the occurrence of a single

qualifying event which results in the payment of a fixed benefit amount. The working group expressed its intention that this additional language was to assist in differentiating between life insurance and health insurance.

Section 2 B(1): The working group added language to clarify that the time frame associated with a drastically limited life span is that time frame which is specified in the contract.

Section 2 B(3): The advisory committee recommended and the working group accepted a new subsection (3) which resulted in renumbering the current subsection (3) to subsection (4). The new subsection (3) further defines qualifying event as "any condition which usually requires continuous confinement in an eligible institution as defined in the contract if the insured is expected to remain there for the rest of his or her life."

Commissioner Yancey questioned the definition of an eligible institution. Mr. Pederson responded that the advisory committee had not defined this term since it could be broader than just a nursing home and they wanted to leave the guideline as flexible as possible. Commissioner Yancey reiterated that he believed "eligible institution" needed to be defined. In executive session the working group inserted language in subsection (3) stating that an eligible institution was as defined in the contract.

Carolyn Cobb (ACLI) said several of ACLI's member companies had inquired whether it was the sentiment of the working group to permit a company to require a second medical opinion, referring to the statement at the end of Section 2 B(4). Sheldon Summers (Calif.) responded that this statement had been in the guideline for some time and that the working group wanted to leave the guideline flexible. Bob Wright (Va.) stated that he would be uncomfortable reducing this statement to a drafting note and that it was written in this way to give latitude to the states on this point.

Section 3: The working group accepted the advisory committee recommendation to reinsert language to clarify that accelerated benefit riders and life insurance policies with accelerated benefits provisions are considered primarily mortality risks rather than morbidity risks. The statement that state insurance codes should be amended if necessary to permit the writing of this type of life insurance product was made a drafting note following this section. Barbara Lautzenheiser (Lautzenheiser & Associates) clarified the definition of life insurance products versus health insurance products as the trigger for payment of the accelerated benefit. Mr. Summers commented that similar language was deleted at the working group's last meeting. He further stated that the group realizes there are some issues that overlap with long-term care and these issues will be addressed in a joint meeting of the Life Insurance (A) Committee and the Long-Term Care Insurance (B) Task Force.

Mr. Summers commented that the California Insurance Department wants to have approval authority over contracts offering accelerated benefits. Ms. Lautzenheiser responded that the type of regulation in each state should not affect the determination of these products being life or health; rather, this should be determined on the product characteristics alone.

Mr. Wright commented that Virginia believes there are morbidity risks associated with this benefit and could not support a proposal that says the provision is only a mortality risk. He said the Virginia position is that the trigger is clearly a health event and not a life event and these two considerations may merge at some point.

Commissioner Yancey reiterated that a joint group comprised of members of the Life Insurance (A) Committee and the Long-Term Care Insurance (B) Task Force have already begun identifying the overlapping life insurance and long-term care insurance issues which must be addressed. He noted for the benefit of this guideline, the group needs to keep focused on the life insurance aspect where there is a known premium paid for a known event. On this basis, he said the discussion could logically be limited to life insurance.

Section 5 A: The working group changed the title of this section to "Lump Sum Settlement Option Required." Mr. Pederson pointed out that this section deals with policyholder options and payments and recommended adding language to make it clear that the choice for the option on the method of payment is one left to the policyholder. Richard Gomsrud (Minn.) felt strongly that the lump sum payment should always be the primary payment option, but that policies may also offer other payment alternatives. If the policy offers alternatives, the policyholder or certificate holder has the option to choose either form of payment.

The working group decided to reword this section to require the lump sum settlement option be the primary option. Additionally, language was added that the benefit shall not be made available as an annuity contingent upon the life of the insured. The working group removed language stating payments could be made in periodic payments for a fixed period of time. Language was also removed from this section allowing companies to set percentage and dollar minimums and maximums on the face amount of contracts for which the benefit is offered.

Section 5 B: This section was slightly reworded to state that no restrictions shall be permitted on the use of the proceeds.

Section 6 B: The advisory committee suggested a minor stylistic change in the wording of this section which the working group accepted.

The other change recommended by the advisory committee was the deletion of the requirement that the disclosure statement be prominently displayed on the first page of the policy or rider and any other related documents. George Coleman (Prudential) stated he felt there was no precedent for disclosure on the face page of the policy similar to the one included in this guideline. He suggested a separate disclosure statement. Mr. Wright responded that Virginia requires a similar disclosure for annuities. Commissioner Yancey stated that separate disclosure statements are sometimes not understood by

the policyholder and there is no way to ensure that the policyholder receives a separate statement. The consensus of the working group was to leave Section 5 B as currently written.

Section 6 C(1): The advisory committee recommended deletion of subsection (1) in its entirety. Mr. Pederson stated that the numerical illustration is purely a hypothetical example that has no real meaning to the individual receiving the benefit. He said to be accurate for the individual receiving the illustration, it would need to contain more detailed information than would be available at the time of application. He further commented that when the acceleration is requested, the information could then be provided to the individual. Donna Claire (The Equitable) commented that any numerical illustration given at the time of application might not be accurate in the future. Mr. Gomsrud asked how, without this illustration, the insurers plan to tell a person what they are buying; Mr. Summers expressed concern that where the insured is being asked to pay an extra charge, they should be informed on what they are buying. Ms. Lautzenheiser commented that a numerical illustration at time of application could ultimately lead to misrepresentation. She further commented that policyholders rely on the numbers they are given rather than understanding that the information is only a hypothetical example. Jim O'Connor (Prudential) stated that Prudential does not currently use an illustration. Prudential uses a written description of how the benefit works and tells the individual, generally, what percent of the death benefit he can expect to receive. Tom Meyer (Jackson National) recommended the elimination of the numerical illustration, substituting a statement clearly demonstrating the effect of a payment of the benefit. Mr. Summers responded that policyholders need a qualitative description. Jane Rouse (Time Insurance Company) stated that her company provides both a numerical illustration and a written description. After considerable discussion on this point, the working group decided to leave subsection (1) as currently written, making only a minor stylistic change in the opening phrase to clarify that the requirement for a numerical illustration applies only if there is a premium charged for the benefit.

Section 6 C(2): Mr. Pederson commented that the advisory committee was recommending two minor changes in this subsection. The first change was stylistic in nature; the second deleted the policyowner as one of the individuals who would have to sign a disclosure statement. He said the reason for this was that at the time of application there is no policyowner. Mr. Summers commented that the wording in subsection (2) indicates that disclosure is required only if there is a separate premium and that was not the intent of the working group. In executive session the working group decided to add language to this subsection clarifying that the written disclosure would not only include a brief description of the accelerated benefit and definitions of the conditions or occurrences triggering payment, but also demonstrating the effect of the payment of the benefit on the policy's cash value, death benefit, premium, policy loans and policy liens.

Section 6 C: In executive session, the working group reversed the order of subsections (1) and (2) in the May 21 working draft.

Section 6 C(3): The advisory committee recommended adding the words "or certificate holder" to this subsection. The working group deleted the words "separate identifiable" and rewrote the sentence to require the insured to disclose to the policyowner or certificate holder any premium or cost of insurance charge for the accelerated benefit. In the second sentence, the word "premium" was deleted and changed to the word "charge."

Section 6 C(4): The working group approved the minor change of adding "or certificate holder" in this subsection.

Section 6 D: The advisory committee recommended deletion of this entire section after concluding that disclosure under this section may not be accurate and appropriate for all accelerated benefit designs. The advisory committee expressed a preference that the wording in this section appear on a separate statement rather than on the face of a policy or rider. Mr. Meyer said this information was already required under the solicitation section and Section D was duplicative. In executive session, the working group agreed to delete the existing Subsection D.

Section 6 E: After deleting the existing Subsection D, this subsection was relettered to Subsection D. The advisory committee recommended adding "or certificate holder" twice in this section. They suggested a stylistic change to state that "each time policy values change" rather than "each time a benefit payment is made" since policy values do not change each time a payment is made. Mr. Pederson clarified that what could change is if you accelerate an additional percentage of your policy. Mr. Summers recommended that notice be sent when the value is not the same as what the individual was told originally. Commissioner Yancey further clarified that at the time the accelerated benefit is claimed, the individual will receive an illustration of the result of claiming that benefit. Further, he said the original disclosure is not changed by a periodic payment. Mr. Wright stated that an interest rate change would change the policy values and that change should be communicated to the policyowner.

In executive session the working group changed Subsection D to require the insurer to send a statement to the policyowner or certificate holder and irrevocable beneficiary when an acceleration is requested. Language was rewritten to state "when a previous disclosure statement becomes invalid as a result of an acceleration of the death benefit, the insurer shall send a revised disclosure statement to the policyowner or certificate holder and irrevocable beneficiary." Additional language was approved to allow the insurer to issue either a new or amended schedule page to reflect the change.

Section 6 E: This is the previous Section F which has been relettered to Subsection E. The advisory committee requested deletion of the entire section stating that this paragraph is not factual and that only Ohio was of the opinion that this benefit may affect Medicaid eligibility. Mr. Coleman stated that Prudential notifies its policyholders that there is no way they can be forced to accelerate their benefits and there is no impact on Medicaid eligibility. Mr. O'Connor added that Prudential does not believe the law allows Medicaid to get anything beyond the cash value of a life policy. Ann Jewel (Ohio) stated that until the Ohio Department determines that the facts are as stated by Prudential, they will continue to support this disclosure. She said the Ohio Department views this disclosure in the same light as the disclosure of possible tax consequences. Mr. Coleman

commented further that Prudential has obtained a legal opinion that these funds are not subject to Medicaid. Mr. Meyer added that the bill by Representative Barbara B. Kennelly (D-Conn.) currently before Congress will codify this position.

In executive session the working group decided to reword the section on the effect on Medicaid payment to state that the following disclosure shall be prominently displayed on the first page of any solicitation: "This benefit may affect Medicaid eligibility. While federal government rulings are pending at this time, you may be required to receive and spend all the available funds in your policy prior to becoming eligible for Medicaid or other governmental assistance programs." Further, a drafting note was added to remind states that when a final determination is made by the federal government, the state should determine whether this disclosure is still appropriate.

Section 7: The advisory committee requested that the effective date of the accelerated benefits be no more than 60 days following the effective date of the policy or rider. Mr. Pederson stated that there is a potential for fraud with accelerated benefits and this language gives insurers a window of opportunity to investigate claims they receive. Mr. Meyer added that Jackson National based their decision to add a waiting period on experience figures from their reinsurer. He reiterated that without the waiting period there is more of an incentive for fraud. The working group differentiated between waiting periods for accidents and illness by requiring that for accidents this provision is effective on the effective date of the policy or rider. For illness, the effective date is no more than 30 days following the effective date of the policy or rider.

Section 10 A(2): The advisory committee suggested a minor stylistic change which was adopted by the working group. Further, the advisory committee strongly suggested the deletion of the sentence requiring that the interest calculation be no greater than 1% above the amount paid by the company on funds left on deposit with the company at interest. Ms. Cobb commented that "funds left on deposit" is unclear. She further commented that the low interest rates on these policies are fairly stable and that the working group should consider an interest rate which fluctuates with market conditions. Ms. Claire commented that because of the work being done currently by the American Academy of Actuaries Task Force, discussions on the contents of Sections 10 and 11 of the guideline were premature. She suggested that consideration of these sections be delayed until review and approval of recommendations by the NAIC's Life and Health Actuarial (Technical) Task Force.

In executive session the working group amended the final sentence of subsection (2) to state that the interest calculation shall be no greater than the maximum loan rate specified on currently issued policies. The working group further deleted the drafting note which had stated that industry had been given a charge to set the actuarial standards on these calculations.

Section 10 A(3): The advisory committee suggested a language change which would state that the insurer may accrue an interest charge on the amount of the accelerated benefits. Mr. Pederson commented that this would be consistent with the reference to the lien approach under Section 10 C(2).

In executive session the working group added additional language to state that the interest charge would accrue on the amount of the accelerated benefits at an interest rate no greater than the loan rate on that policy.

Section 10 B(1): The advisory committee recommended a language change to clarify that except as provided in subsection (2), when an accelerated benefit is payable, there shall be no more than a pro-rata reduction in the cash value based on the percentage of benefits accelerated. The working group accepted this change.

Section 10 B(2): The working group made a wording change from "shall" to "may" to make the section more permissive.

Section 10 C(1) and (2): The working group made the same permissive language changes in these two subsections as in 10 B(2).

Section 10 D: The advisory committee suggested a language change to indicate that the death benefit is reduced by the amount accelerated not the amount paid. Further, they suggested that the amount of the accelerated benefits be "adjusted for" any applicable actuarial discount "or accrued interest" appropriate to the policy design "plus any administrative expense charge" for policies without additional premium payments. The working group accepted these changes.

Upon conclusion of the executive session, the advisory committee rejoined the working group for further direction of their efforts. Mr. Summers requested that they prepare language for Section 10 A(2) for policies that do not have a loan rate. Further, the advisory committee was asked to address the impact on insureds under the current tax laws if this is a life insurance product versus a health insurance product. Mr. Wright requested that a letter detailing these assignments be sent to Mr. Pederson.

Having no further business, the meeting adjourned at 3:50 p.m.

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## ATTACHMENT TEN-B

Life Marketing Practices to Senior Citizens Working Group  
of the Life Insurance (A) Committee  
Kansas City, Missouri  
September 8, 1990

The Life Marketing Practices to Senior Citizens Working Group of the Life Insurance (A) Committee met in the Pershing West Room of the Westin Crown Center Hotel, at 3:30 p.m., on Sept. 8, 1990. A quorum of the working group was present and David J. Lyons (Iowa) chaired the meeting. The following working group members were present: Jim Swenson (Ore.) and Robert Wright III (Va.).

1. Adopt August 13 Kansas City Minutes

Upon motion duly made and seconded, the minutes of the August 13 Kansas City meeting were adopted (Attachment Ten-B1).

2. Consider Amendments to Resolutions

Upon motion duly made and seconded, the resolution to encourage adoption and enforcement of the Rules Governing Advertising of Life Insurance was approved for presentation to the Life Insurance (A) Committee.

3. Consider Comments From the Advisory Committee

Robin Talbert, Counsel, American Association of Retired Persons, agreed that the disclosure proposed in the draft documents was appropriate and the forms entitled "Financial Review of This Policy" are easy for consumers to understand. She suggested one addition to strengthen the disclosure provision and increase the benefits to consumers would be a strict penalty for non-compliance, including a private right of action and the payment of attorney fees. Regarding the signatures required on the individualized information forms for consumers, she stated that it is not clear that consumers benefit from having their signatures required. Ms. Talbert also discussed the point of delivery of the disclosure form. She said she believes the earlier the delivery to the consumer, the more opportunity the consumer has to use the disclosure form for comparison shopping. She strongly supports delivery at point of sale. She stated that she would not be opposed to a more generic form being given at point of sale if individualization is a problem. She raised the question of whether the disclosure form would be required for policies with increasing values. She supported the use of boxes on the disclosure form to indicate the type of policy and stressed a need for simplification of language used within these boxes.

Glenn Joppa, Vice President, Senior Counsel, Union Fidelity Life Insurance Co., addressed the concerns of direct response marketers. He said the direct response firms do not have individualized information to give to consumers at the point of sale. He suggested that the first time the individualized information should be required to be provided was when the company could give accurate, individualized information. He further stated the signature requirement on the disclosure form is not meaningful in a direct response situation, especially if receipt of the signature impedes the ability of the insurer to place the coverage in force.

John Yanko, FSA, Vice President and Chief Actuary, The Forethought Group, Inc., said the completion of the disclosure form at the point of sale raises an issue of cost and accuracy because of the variety of policies. He recommended that disclosure be done at the point of delivery of the policy, allowing a 10-30 day free-look period. Mr. Yanko said his company has no substandard premiums. They do have limited underwriting. He expressed concern with the portion of the definition of limited benefit life policies which includes any insurance policy where the accumulated premium exceeds the death benefit within 10 years. He also raised the point that the comparison between accumulation in a policy and accumulation in a savings account is inappropriate. He added that his company supports full disclosure.

Ed Zimmerman, American Council of Life Insurers, expressed his concern about meaningful disclosures stating that the ACLI did not believe the proposed amendments to the Rules Governing the Advertising of Life Insurance and the Life Insurance Disclosure Model Regulation provide meaningful disclosure. Specifically regarding the advertising rule, Mr. Zimmerman said it would not be possible to determine which policies fall within the parameters of this proposed language. He questioned how institutional advertising should be dealt with. Mr. Zimmerman offered to have the ACLI subcommittee focus on cost disclosure issues to find an appropriate way of addressing them. He expressed a need for the working group to more clearly define the objectives of its work product.

Robert Myers, Counsel, ENSUR Group and the Torchmark Group of Companies, stated that the original charge to the working group was to study the value to consumers of limited benefit products. He said the study has now been postponed, but the issues that would have been defined by that study are being addressed. He requested that the draft not be exposed as currently amended. Specifically, Mr. Myers said the disclosure requirements as currently constituted are onerous, and it could be difficult or impossible to produce a product under these circumstances. He said the comparison to premiums accumulating at 5% interest in a savings account is not an accurate comparison since it does not address tax issues and the value of the death benefit. Mr. Myers further stated that he believed the group would benefit from the study as originally conceived.

Commissioner David Lyons (Iowa) commented that the study was originally intended to address concerns about limited benefit or graded death benefit products. He said the choice the working group faced was either to ban the products or to

provide for adequate disclosure to consumers. He reminded the members that the point of the study was an actuarial review, both prospective and retrospective in nature, to determine if sufficient value was being returned to consumers by these products. He emphasized that disclosure is appropriate even without the anticipated study. He said the study will be conducted by the NAIC when a life actuary is retained on staff. The working group reached this decision after complaints from industry about the burden of the cost of the study.

Commissioner Lyons reconfirmed with Ms. Talbert that she believes that the disclosure to consumers at the point of sale is a more important issue than the signature issue. He said the issues of a private right of action and attorney fees are not before this group. He added that in Iowa a violation of these requirements would carry the same penalty as any other misrepresentation. Ms. Talbert expressed a concern that policies with growth factors tied to the consumer price index or gross national product would not be included in the requirements for disclosure. Commissioner Lyons assured her that there is no exclusion for those types of policies in the work product of this group.

Mr. Myers reemphasized that without the benefit of the originally anticipated study to determine the problem, a regulation would be produced before the problem is clearly defined. He said a much broader segment of the life insurance industry is being affected than was originally intended. Robert M. Eubanks, advisory committee chair, said that the advertising rule applies to every policy issued, but the working group's charge was only to address products marketed to seniors. He further said the 10-year accumulated premium test would have to be run on every policy. Mr. Myers concurred, stating that as currently drafted this regulation applies to a larger universe than the charge intended. Commissioner Lyons questioned whether the generic language on the individual information form as proposed was sufficient to clearly identify to the consumers the type of policy they are purchasing. Ms. Talbert responded that an example might be easier for a consumer to understand.

Jim Swenson (Ore.) asked Mr. Myers to reiterate the most important of the concerns he raised. Mr. Myers responded that the point of sale requirement is onerous and cannot be supported and that the comparison to a savings account is misleading and inaccurate. Mr. Eubanks added that the signature issue needs further consideration. He said from the industry's perspective, if a signature is required, the delivery would have to be at point of sale. Barbara Lautzenheiser (Lautzenheiser & Associates) requested that the comparison to a savings account be reconsidered.

Having no further business, the Life Marketing Practices to Senior Citizens (A) Working Group adjourned at 4:55 p.m. to reconvene immediately in executive session.

In executive session the following consensus was reached by the working group:

1. Delete the requirement for the agent and applicant to sign the Financial Review of This Policy Form (Form A) used by the agent marketing force for limited benefit life insurance. Form B, for use by direct marketers for limited benefit life insurance, would still require an applicant's signature to be affixed before the form is returned to the insurer.
2. There was considerable discussion of the issue of the delivery requirement for point of sale versus point of delivery issue. A compromise was proposed that when a direct marketed policy is returned, a statement should be included that the information form has been individualized and, if the policy owner wishes to compare to other policies, he may do so within a specified time period. That compromise was ultimately rejected by the working group. The consensus of the group was that for direct marketers the individualized information form must be signed and returned with the completed application and a policy could not be issued until the signed form was returned. For agent marketing companies, the form would be completed at point of sale.

Commissioner Lyons emphasized to the working group that he intended to hold an extended working session with the advisory committee prior to the formal adoption of this work product. He emphasized that the working group is looking for the most appropriate and least intrusive method of assuring consumer disclosure. He further stated that the group would attempt to determine if additional language or examples can be provided on the disclosure form to clarify existing insurance "terms of art."

3. Commissioner Lyons stated that this working group will discuss, in conjunction with the advisory committee and other members of the insurance industry potentially affected, the potential for inclusion of other types of policies and market practices and whether options exist to avoid inclusion (based on age or other triggering or screening techniques).
4. The working group consensus was to delete the proposal to amend the Rules Governing the Advertising of Life Insurance. These issues will be reconsidered at a later meeting.

Upon motion duly made and seconded, the Life Insurance Disclosure Model Regulation and individualized policy information forms entitled "Financial Review of This Policy" were recommended to the Life Insurance (A) Committee for adoption as exposure drafts.

Having no further business, the Working Group executive session adjourned at 5:50 p.m.

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## ATTACHMENT TEN-B1

Life Marketing Practices to Senior Citizens (A) Working Group  
of the Life Insurance (A) Committee  
August 13, 1990  
Kansas City, Mo.

The Life Marketing Practices to Senior Citizens (A) Working Group of the Life Insurance (A) Committee met at the NAIC/SSO offices in Kansas City on Aug. 13 at 9 a.m. A quorum of the working group was present and David J. Lyons (Iowa) chaired the meeting. The following working group members were present: Roger Strauss (Iowa); Dean Gallaher (Okla.); Jim Swenson (Ore.); and David Rodgers (Wash.). Also present were Sam Bolinger and Judy Lee (NAIC/SSO).

Commissioner David Lyons (Iowa) gave a status report on the profitability study which was to be produced by the advisory committee this year. He reminded working group members that the study was to have been retrospective in nature, providing a review of each major product line marketed to persons over age 58 and providing actual experience for the past three years in the following areas: the amount of premium income, the allocated amount of investment income earned, dividend paid or credited, death benefit paid out, cash surrender value paid out, sales-related expenses, other expenses, reserves at the beginning of the year, reserves at the end of the year, pre-tax profit, and after-tax profit. He said that in view of the concern expressed by the advisory committee regarding the cost to the insurers of funding such a study, and the fact that the NAIC/SSO is in the process of hiring a staff life actuary, this study has been postponed. He further stated that he anticipated the NAIC staff actuary would assign a high priority to development and completion of this study. Upon motion duly made and seconded, the working group concurred that the retrospective data analysis previously requested by the working group would be postponed until the NAIC has employed a staff actuary to conduct this study.

Commissioner Lyons further informed the working group that he had received a letter dated Aug. 9 from Robert M. Eubanks III stating that several insurers, representing substantial portions of the preneed and direct marketing areas in the seniors market, have decided to go forward with a prospective data study. Mr. Eubanks' letter stated that it is anticipated that Milliman and Robertson will be retained to collect and summarize the data and further stated his hope that this ad hoc work product would be of value to the working group. Upon motion duly made and seconded, the working group expressed its consensus that the prospective data study contemplated by several competing insurance companies is not condoned nor accepted by this working group and that the ultimate work product may or may not be of any assistance to the working group.

Commissioner Lyons discussed the need to encourage states which have not adopted the NAIC Rules Governing the Advertising of Life Insurance to do so and encouraging those states which have adopted that rule to adopt the subsequent amendments and enforce the provisions of that rule. He referred to the resolution as drafted by the working group, saying that he anticipated that the Life Insurance (A) Committee would present the resolution to the Executive Committee and Plenary Session for adoption at the NAIC meeting in December 1990. Upon motion duly made and seconded, the working group voted to recommend the resolution to the Life Insurance (A) Committee for further action.

The original Individualized Policy Information form was reviewed and substantially amended by the working group. The form was retitled "Financial Review of This Policy" and two separate forms were drafted: Form A for use by agents and Form B for use by direct marketers. Language was added by the working group to alert an applicant that the insurer has not performed any review to determine if the applicant might be eligible for a policy with other than substandard rates. Additional space was provided for an agent to list other personal applicant information used in determining the premium for the policy. On the death benefits, a note was added to the agent or company to require that if they use any method to explain the death benefits other than this form, a copy of the illustration signed by the applicant and the agent must be attached. Space was provided for the agent and/or applicant to sign the financial review form certifying that the applicant has reviewed the information presented on this form and that the applicant information shown is correct. A note to the states was also added to suggest that they may want to require the applicant's signature.

Form B, which is designed for use by direct marketers, requires the applicant to sign the form certifying that it is a true and correct copy of the individualized chart shown to the applicant and that the applicant understands the figures shown on the chart and the cost of the death benefit. Form B must be returned to the direct marketer with the completed application or the insurer must notify the applicant the form must be signed and returned before the application will be processed.

The working group concurred that direct marketers should make this individualized information page a part of their application and stated that it must be given to the applicant with the application. The application would not be valid until the individualized information form signed by the applicant is received by the company. Upon motion duly made and seconded, the working group concurred in the changes to the individualized information forms A and B.

The advisory committee had previously suggested a change to the individualized information form showing the net premiums accumulated at 5%. They suggested that the amount in that column should be the amount of interest the premium minus the cost of insurance could earn if left in a savings account. Upon motion duly made and seconded, the working group rejected that suggestion.

Roger Strauss (Iowa) discussed amendments to the NAIC Rules Governing the Advertising of Life Insurance. Mr. Strauss referred the working group to Section V7 which speaks to advertising for policies containing graded or modified benefits. Language was added to require that if the accumulated premium exceeds the death benefit within 10 years such fact shall be prominently displayed. Wording was added to identify the language which shall be used to describe substandard rates and

face value. Upon motion duly made and seconded, the above stated changes to the NAIC Rules Governing the Advertising of Life Insurance were approved by the working group.

Commissioner Lyons directed the working group's attention to the NAIC Life Insurance Disclosure Model Regulation and the new Section 4K added to define limited benefit life policies. He suggested that the language describing substandard rates and face value should be made a new subsection E under Section 6 of the disclosure regulation. Wording was also added to identify the elements which must be included within the individualized policy information form entitled "Financial Review of This Policy." Mr. Strauss recommended that language be added to require that if an insurer uses a form other than the one referenced here, that form shall have been approved for use by the state insurance department. In the case of a direct marketing insurer, the form shall be sent to the applicant with the application. If the signed form is not returned to the insurer with the completed application, the insurer must notify the applicant that the form must be signed and returned before the application will be processed. Language was also included to require that if other than guaranteed death benefits are presented in the policy, advertising, marketing materials, or verbally explained to the consumer, the agent (or company if a direct marketer) shall attach all such materials or representations to the required form before issuance of the policy. Upon motion duly made and seconded, the working group concurred in the changes referenced above to the NAIC Life Insurance Disclosure Model Regulation.

Having no further business, the working group adjourned at 11:25 a.m.

## PRODUCT DEVELOPMENT (A) TASK FORCE

**Reference:**

1990 Proc. I p. 450  
1990 Proc. II p. 581

Margurite C. Stokes, Chair—D.C.  
Roxani Gillespie, Vice Chair—Calif.

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### AGENDA

1. Discuss Corporate Owned Life Insurance
2. Report of Life & Health Actuarial (Technical) Task Force
3. Consider Continuation of Task Force
4. Any Other Matters Brought Before the Task Force

### REPORT

The Product Development (A) Task Force met in the Court Room of the Galt House Hotel in Louisville, Ky., at 3 p.m. on Dec. 3, 1990. John Montgomery (Calif.) chaired the meeting. The following task force members or their representatives were present: David J. Lyons (Iowa) and Theodore "Ted" Kulongoski (Ore.).

John Montgomery (Calif.) stated that since a quorum of this task force was not in attendance, the group would receive informational reports only.

#### 1. Discuss Corporate Owned Life Insurance

Action on this item was deferred to a future meeting.

#### 2. Report of Life & Health Actuarial (Technical) Task Force

Ted Becker (Texas) presented the report of the Nov. 30 and Dec. 1, 1990, meetings of the Life and Health Actuarial (Technical) Task Force. He reviewed the projects currently under consideration by the Actuarial Task Force:

Project No. 4l - Whole Life Policies Without Cash Values or Paid-Up Benefits

Project No. 4m - Reserves for Certain Life Plans with Guaranteed Increasing Death Benefits

Project No. 4n - Update of Actuarial Guideline No. IV

Project No. 4o - Special Plans - Leveraged Corporate-Owned Life Insurance

Project No. 4p - Use of Life Insurance Contracts to Provide for Long-Term Care Benefits

Project No. 4q - Reverse Mortgages

Project No. 4r - Joint Life Last Survivor Policy - Nonforfeiture and Valuation

Project No. 4s - Accelerated Death Benefits

Project No. 4t - Special Plans - Two-Tier Deferred Annuities

Project No. 4u - Special Plans - Update of Actuarial Guideline XVII

Project No. 4v - Special Plans - Two-Tier Universal Life Insurance

Project No. 4w - Special Plans - Interest Indexed Annuities

The actuarial task force made the following recommendations:

1. Recommend to the Life Insurance (A) Committee that the Report of Joint ACLI-NALC Task Force on Reserves for Certain Life Insurance Contracts with Non-Level Premiums or Benefits and Comments Concerning the Updating of Actuarial Guideline IV from William M. Buchanan be exposed for comments.
2. Recommend to the Life Insurance (A) Committee that it approve the actuarial task force's request to downgrade Project No. 4o Leveraged Corporate-Owned Life Insurance to a priority 3 project. Mr. Becker reported that no actuarial matters have been referred to the task force for its attention, so the task force is recommending this downgrade in priority.
3. Recommend to the Life Insurance (A) Committee that the Proposed Actuarial Guideline - Accelerated Benefits be exposed for comment. This document was developed for the American Academy of Actuaries by Donna Claire, chair.
4. Recommend to the Life Insurance (A) Committee that it approve the actuarial task force's request to add Project No. 4w - Interest Indexed Annuities to its agenda as a priority 2 project.

Mr. Montgomery inquired as to the status of the two-tier annuity project. Mr. Becker responded that the task force was not far enough along to make a recommendation at this time.

Mr. Montgomery said the task force would receive the actuarial task force report.

### 3. Consider Continuation of Task Force

Mr. Montgomery commented that since there was no quorum of the Product Development (A) Task Force present, the discussion of the continuation of this task force would be brought up for consideration at the Life Insurance (A) Committee.

Having no further business, the Product Development (A) Task Force adjourned at 3:25 p.m.

Margurite C. Stokes, Chair, D.C.; Roxani Gillespie, Vice Chair, Calif.; Zack Stamp, Ill.; David J. Lyons, Iowa; Timothy H. Gailey, Mass.; Thomas H. Borman, Minn.; Theodore "Ted" Kulongoski, Ore.