

LIFE INSURANCE (A) COMMITTEE

Reference:

1991 Proc. I p. 538
1991 Proc. II p. 563

Harold C. Yancey, Chair—Utah
David J. Lyons, Vice Chair—Iowa

CONTENTS

December 11, 1991 Minutes	859
Annuities Working Group December 7, 1991 Minutes (Attachment One)	862
Two-Tier Annuity Model Regulation and Disclosure Form (Attachment One-A)	863
November 1, 1991 Minutes (Attachment One-B)	865
September 14, 1991 Minutes (Attachment One-C)	866
July 8, 1991 Minutes (Attachment One-C1)	867
Senior Marketing Working Group December 9, 1991 Minutes (Attachment Two)	868
Life Insurance Disclosure Model Regulation and Financial Review of This Policy Disclosure Form (Attachment Two-A)	869
October 31, 1991 Minutes (Attachment Two-B)	879
September 17, 1991 Minutes (Attachment Two-C)	881
Life Insurance Disclosure Model Regulation (Attachment Two-C1)	882
August 21, 1991 Minutes (Attachment Two-C2)	892
Insurable Interest Working Group December 10, 1991 Minutes (Attachment Three)	892
November 27, 1991 Minutes (Attachment Three-A)	893
November 1, 1991 Minutes (Attachment Three-B)	894
September 16, 1991 Minutes (Attachment Three-C)	895
State Survey of Insurable Interest of Charities in Life Insurance (Attachment Three-C1)	896
Briefing Paper on Group Corporate-Owned Life Insurance (Attachment Three-C2)	901
NAIC Survey of State Statutes Pertaining to Insurable Interest in Corporate-Owned Life Insurance (Attachment Three-C3)	903
September 5, 1991 Minutes (Attachment Three-C4)	907
July 16, 1991 Minutes (Attachment Three-C5)	908
September 17, 1991 Minutes (Attachment Four)	910

AGENDA

1. Adopt September 17 Pittsburgh Minutes
2. Report of Annuities Working Group
3. Report of Senior Marketing Working Group
4. Report of Insurable Interest Working Group
5. Report of Life and Health Actuarial (Technical) Task Force
6. Any Other Matters Brought Before the Committee

REPORT

The Life Insurance (A) Committee met in Galleria II of the Westin Hotel in Houston, Texas, at 2 p.m. on Dec. 11, 1991. A quorum was present and Harold C. Yancey (Utah) chaired the meeting. The following committee members or their representatives were present: David J. Lyons, Vice Chair (Iowa); Mike Weaver (Ala.); John Garamendi (Calif.); Harold T. Duryee (Ohio); Gary Weeks (Ore.); Georgia D. Flint (Texas); Steven T. Foster (Va.); and Richard "Dick" Marquardt (Wash.).

1. Adopt September 17 Pittsburgh Minutes

Upon motion duly made and seconded, the minutes of the Life Insurance (A) Committee meeting of Sept. 17 were adopted (Attachment Four).

2. Report of Annuities Working Group

Commissioner David Lyons (Iowa) reported that the Annuities Working Group had completed its work on the Two-Tier Annuity Model Regulation and the Two-Tier Annuity Disclosure Form. He thanked the advisory committee for its input and support of the regulation and disclosure form.

Commissioner Lyons said the Two-Tier Annuity Disclosure Form simplifies for the consumer a comparison of the different levels of payout in a two-tier annuity. Upon motion duly made and seconded, the Dec. 7 minutes of the Annuities Working Group, including the Two-Tier Annuity Model Regulation and Two-Tier Annuity Disclosure Form, were adopted (Attachment One).

3. Report of Senior Marketing Working Group

Commissioner Lyons reported that the Senior Marketing Working Group had approved amendments to the Life Insurance Disclosure Model Regulation and the Financial Review of This Policy disclosure form which is Appendix E to the model. He said the disclosure form compares the premiums and benefits of a policy over a 10-year period. Additionally, the free look period on limited benefit life insurance policies has been extended to 30 days.

Commissioner Lyons reported that Lee Norgaard (American Association of Retired Persons) had been charged by the working group to draft a buyer's guide for use with limited benefit life insurance policies. He requested that the Life Insurance (A) Committee request continuation of this project as one of its 1992 charges. The regulators and the advisory committee will need to offer comments on the guide's contents. Commissioner Lyons thanked the advisory committee for its input on the model and disclosure form.

Advisory committee chair Glenn Joppa (Union Fidelity Life Insurance Company) expressed the advisory committee's appreciation for the opportunity to work with the Senior Marketing Working Group. He agreed that the buyer's guide would benefit from industry input since the products to be addressed are varied and technical.

Upon motion duly made and seconded, the Dec. 9 minutes of the Senior Marketing Working Group, including the amendments to the Life Insurance Disclosure Model Regulation and Financial Review of This Policy form, were adopted (Attachment Two).

4. Report of Insurable Interest Working Group

Commissioner Yancey commented on the three projects under consideration by the working group: 1) a guideline for use by insurance departments in advising consumers concerning gifts of insurance to charitable organizations; 2) regulatory guidelines on group corporate-owned life insurance; and 3) model language for the regulation of companies providing living benefits. He said plans are to complete all three projects in 1992.

Upon motion duly made and seconded, the December 10 minutes of the Insurable Interest Working Group were adopted (Attachment Three).

5. Report of Life and Health Actuarial (Technical) Task Force

John Montgomery (Calif.) reviewed briefly the list of projects before the Life and Health Actuarial (Technical) Task Force and highlighted the following projects, which are attached to the actuarial task force's minutes in this volume of the *NAIC Proceedings* as indicated:

A proposed change in the current (December 1990) version of the model Standard Valuation Law proposed for adoption (Attachment One-A).

A proposed change in the model Actuarial Opinion and Memorandum Regulation proposed for adoption (Attachment One-B).

A revised draft of the proposed model Second Standard Nonforfeiture Law for Life Insurance recommended for exposure (Attachment One-E).

Report of the Actuarial Advisory Committee on revision of annuity nonforfeiture laws recommended for exposure (Attachment One-F).

A draft of the proposed new actuarial guideline entitled "Guideline for the Application of Plan Type to Guaranteed Investment Contracts (GICs) with Benefit Responsive Payment Provisions" recommended for exposure (Attachment One-L).

A synopsis of the projects before the Life and Health Actuarial (Technical) Task Force is contained in the Dec. 11 minutes of the Life and Health Actuarial (Technical) Task Force.

Mr. Montgomery presented the following recommendations for approval, which are attached to the actuarial task force's minutes in this volume of the *NAIC Proceedings* as indicated:

- a. Recommend adoption of amendments to the current (December 1990) version of the model Standard Valuation Law (Attachment One-A).
- b. Recommend adoption of amendments to the model Actuarial Opinion and Memorandum Regulation (Attachment One-B)
- c. Recommend exposure of a new draft of a model law, the Second Standard Nonforfeiture Law for Life Insurance" for comments (Attachment One-E).
- d. Recommend exposure of the report of the Actuarial Advisory Committee on Revision of Annuity Nonforfeiture Law, which was presented at the October 1991 actuarial task force meeting, for comments (Attachment One-F).
- e. Recommend exposure of a proposed actuarial guideline entitled "Guideline for the Application of Plan Type to Guaranteed Investment Contracts (GICs) with Benefit Responsive Payment Provisions," for comments (Attachment One-L).
- f. Recommend approval of the addition of three projects to the actuarial task force's agenda for the Life Insurance (A) Committee as follows: 2n "Valuation - Annuities," 2o "Valuation - Reserves for Group Annuities Exempt from CARVM," and 14 "Disclosure and Sales Illustration Practices." Projects 2n and 2o are recommended to be Priority 2 Projects. Project 14 is recommended to be a Priority 1 Project.
- g. Recommend approval of the actuarial task force's request that Project 3g "Nonforfeiture - Revision of Standard Nonforfeiture Laws" be retitled as "Nonforfeiture - Revision of Standard Nonforfeiture Law for Life Insurance."
- h. Recommend reprioritization of Project 4u "Special Plans - Update of Actuarial Guideline XVII" downward from a Priority 2 Project to a Priority 3 Project.
- i. Recommend approval of the deletion of two projects from the actuarial task force's agenda for the Life Insurance (A) Committee. These two projects are 4r "Special Plans - Leveraged Corporate-Owned Life Insurance" and 4s "Special Plans - Accelerated Death Benefits."

Upon motion duly made and seconded, the recommendations as presented by the Life and Health Actuarial (Technical) Task Force were adopted.

6. Any Other Matters Brought Before the Committee

Commissioner Yancey recognized George T. Coleman (Prudential) and the advisory committee to the Insurable Interest Working Group for their exceptional efforts to be of assistance this year.

Having no further business, the Life Insurance (A) Committee adjourned at 2:30 p.m.

Harold C. Yancey, Chair, Utah; David J. Lyons, Vice Chair, Iowa; Mike Weaver, Ala.; John Garamendi, Calif.; Harold T. Duryee, Ohio; Gary Weeks, Ore.; Georgia D. Flint, Texas; Steven T. Foster, Va.; Richard "Dick" Marquardt, Wash.

ATTACHMENT ONE

Annuities Working Group
of the Life Insurance (A) Committee
Houston, Texas
December 7, 1991

The Annuities Working Group of the Life Insurance (A) Committee met in the San Felipe Room of the Westin Hotel in Houston, Texas, at 4 p.m. on Dec. 7, 1991. Aquorum was present and David J. Lyons (Iowa) chaired the meeting. The following working group members or their representatives were present: Tom Gallagher (Fla.); Harold T. Duryee (Ohio); Georgia D. Flint (Texas); and Steven T. Foster (Va.).

1. Adopt Minutes of Nov. 1 and Sept. 14 Meetings

Upon motion duly made and seconded, the Nov. 1 and Sept. 14 minutes of the working group were adopted (Attachments One-B and One-C).

2. Finalize Two-Tier Annuity Model Regulation and Two-Tier Annuity Disclosure Form

Jack Blaine (LeBoeuf, Lamb, Leiby and MacRae) suggested several amendments to the Two-Tier Annuity Disclosure Model Regulation and Two-Tier Annuity Disclosure Form. Mr. Blaine's suggestions and the action taken by the working group are summarized below:

Section 3.A.: A typographical error was corrected in the second sentence of this section changing the word "insurer" to "issuer." The advisory committee supported the amendment and the working group concurred.

Section 3.A.: The recommendation was to include language in the last sentence of this section to read "annuity riders to life insurance policies." After discussion, it was determined this language would not be required and the recommendation was withdrawn.

Section 4: To conform with the language in Section 3.A., the word "issuer" was substituted for the word "provider" in the first sentence. The working group concurred with this recommendation.

Section 5: The recommendation was to add language to clarify that the disclosure requirement applies also to riders to two-tier annuity contracts. The advisory committee and the working group concurred in this recommendation.

Section 5: The recommendation was to alter the language requiring delivery of the disclosure document prior to "accepting the applicant's initial consideration." Debra Newby (The Principal Financial Group) pointed out that the last sentence in Section 3.A. states that for the purpose of this regulation, annuity contracts include riders to life insurance policies. The suggestion was withdrawn since the agent is required to have obtained a disclosure form signed by the prospective purchaser prior to issuance of the annuity contract. After considerable discussion, Mr. Blaine withdrew this recommendation and the advisory committee and working group concurred in this action.

The following suggestions were made to the Two-Tier Annuity Disclosure Form:

The second line of the second paragraph on the disclosure form was amended by adding the word "value" after "cash surrender." The working group concurred in this recommendation.

A change was suggested in the parenthetical comment under the columns headed "Cash Surrender Tier Value" to remove the word "is" and substitute "has been." The working group concurred in this change.

A typographical omission was corrected by adding a blank in the parenthetical comment after the word maturity to read "Maturity (at age ____)." The working group concurred in this correction.

Paul Facey (The Variable Annuity Life Insurance Company—VALIC) read a letter dated Dec. 5, 1991 from Gregory C. Carney, vice president and chief actuary of VALIC. Mr. Carney expressed his appreciation for the opportunity to work with the Annuities Working Group on disclosure requirements for two-tier annuities. He said VALIC supports the adoption of the proposed regulation by the Life Insurance (A) Committee. He further stated that VALIC would support a continuation of the working group to review other annuity products that could be abusive, specifically focusing on "bonus" annuities in 1992.

Mr. Carney's letter also expressed opposition for an expansion of the Two-Tier Annuity Disclosure Model Regulation to all annuities since disclosure for traditional annuities would need to reflect different comparisons and the form would need to be modified significantly. Additionally, Mr. Carney's letter pointed out that the NAIC has previously adopted disclosure requirements for all annuities and that regulation is available for the states to enact.

Howard Kayton (Security First Life Insurance Company) pointed out that the regulation singles out two-tier annuities despite the fact that there are many single-tier annuities on the market that produce wider divergences between account value and surrender value without disclosing such differences. He recommended the expansion of the disclosure requirement to apply not only to policies having a difference in the two values at maturity, but also to any policy having a difference between the two values. Roger Strauss (Iowa) responded that the working group believes it had appropriately addressed its

charge for 1991. Bob Wright (Va.) agreed that the initial charge to the working group was to address two-tier annuities and that the charge for the next year might be to expand its review into annuity marketing abuses. Mr. Kayton disagreed that the charge to the working group was limited to two-tier annuities. Advisory committee chair, Jack Burbidge (IDS Life Insurance Company) said he supports adoption of the model regulation in its current form.

Upon motion duly made and seconded, the working group adopted the Two-Tier Annuity Disclosure Model Regulation and Two-Tier Annuity Disclosure Form as amended (Attachment One-A).

The working group and advisory committee discussed potential areas for review by the working group in 1992. Those areas included bonus annuities and other annuity issues that would be identified as regulatory concerns through a survey of NAIC members.

Having no further business, the Annuities Working Group of the Life Insurance (A) Committee adjourned at 5:05 p.m.

ATTACHMENT ONE-A

TWO-TIER ANNUITY DISCLOSURE MODEL REGULATION

Table of Contents

Section 1.	Authority
Section 2.	Purpose
Section 3.	Scope
Section 4.	Definition
Section 5.	Disclosure Requirements
Section 6.	Failure to Comply
Section 7.	Effective Date
Appendix A.	Two-Tier Annuity Disclosure Form

Section 1. Authority

This regulation is adopted and promulgated by [title of supervising authority] pursuant to sections [insert appropriate sections] of the Insurance Code.

Section 2. Purpose

- A. The purpose of this regulation is to require insurers to deliver to prospects for two-tier annuity contracts a disclosure form which explains what the annuitant must do to receive the upper-tier value.
- B. This regulation does not prohibit the use of additional material which is not in violation of this regulation or any other [state] statute or regulation.

Section 3. Scope

- A. To the extent hereinafter provided, this regulation shall apply to any solicitation, negotiation or procurement of annuity contracts, which are subject to this regulation, occurring within this state. The regulation shall apply to any issuer of life insurance policies or annuity contracts, including fraternal benefit societies. For the purpose of this regulation, annuity contracts include annuity riders to life insurance policies.
- B. This regulation shall apply to deferred annuities.
- C. This regulation shall not apply to:
 - (1) Deferred annuities which are:
 - (a) Variable annuities;
 - (b) Contracts registered with the federal Securities and Exchange Commission;
 - (2) Immediate annuity contracts;
 - (3) A single advance payment of specific premiums equal to the discounted value of such premiums.

Section 4. Definition

For the purpose of this regulation, a two-tier annuity is any annuity that has different values available at maturity depending on whether the value is taken from the contract in a lump sum or left with the issuer for periodic payments. These different values may be available at issue or later. Maturity date is the latest date permitted by the contract, but not later than age seventy (70) or the tenth anniversary of the contract, whichever is later.

Section 5. Disclosure Requirements

The insurer shall provide all prospective purchasers of a two-tier annuity contract or rider a Two-Tier Annuity Disclosure Form (attached as Appendix A) prior to accepting the applicant's initial consideration for a two-tier annuity contract or rider. The insurer shall maintain a copy of this form in its permanent records.

Section 6. Failure to Comply

Failure of an insurer to provide the disclosure form shall constitute a violation of [insert state's statutory reference to the Unfair Trade Practices Act].

Section 7. Effective Date

This regulation shall apply to all solicitations which commence on or after [insert an appropriate date following adoption by the regulatory authority].

APPENDIX A

TWO-TIER ANNUITY DISCLOSURE FORM

The contract you are considering is of a type commonly referred to as a "two-tier" annuity. To receive the upper-tier value of \$_____ at maturity, you must satisfy the following contractual requirements:

(Insert contractual requirements including age at maturity, and define annuitization)

In the event all of the above requirements are not satisfied, you will receive a cash surrender value based on the lower tier value of \$_____ at maturity.

The minimum disclosure must show values for years 5, 10, 20, and at maturity. Companies may include values for additional years. The following table shows the upper and lower tier values on both a guaranteed and illustrated basis.

Year	Annuitization Tier Value	Cash Surrender Tier Value	Annuitization Tier Value	Cash Surrender Tier Value
	(The lower tier value has been reduced by any applic- able surrender charge.)	(The lower tier value has been reduced by any applic- able surrender charge.)	(The lower tier value has been reduced by any applic- able surrender charge.)	(The lower tier value has been reduced by any applic- able surrender charge.)
	Guaranteed	Guaranteed	Illustrated*	Illustrated*
5				
10				
20				
Maturity (at age_____)				

* Illustrated values are based upon current rates only and are not guaranteed. These values are not an estimate or projection of future results.

For [year] the company's current rate per thousand for a life annuity with a ten year certain period for a [sex] age 65 is \$_____. For [year] the company's guaranteed rate per thousand for a life annuity with a ten year certain period for a [sex] age 65 is \$_____.

Insurance regulations require that you be provided with the above statement and indicate below that you have received it before we can deliver the contract to you.

I have received the information set forth above.

Prospective Purchaser

Agent

Date

ATTACHMENT ONE-B

Annuities Working Group
of the Life Insurance (A) Committee
Washington, D.C.
November 1, 1991

The Annuities Working Group of the Life Insurance (A) Committee met in the Chinese Room of the Stouffer Mayflower Hotel in Washington, D.C., at 1 p.m. on Nov. 1, 1991. A quorum was present and Roger Strauss (Iowa) chaired the meeting. The following working group members were present: Robert Katz (Ohio) and Bob Wright (Va.). Also participating were Carol Ostapchuk (Fla.); Rochelle Bergin (Minn.); Sarah Collier (Texas); and Judy Lee (NAIC/SSO).

Roger Strauss (Iowa) asked Jack Burbidge (IDS Life Insurance Company), advisory committee chair, to comment on the Sept. 14 draft of the Two-Tier Annuity Disclosure Model Regulation and Disclosure Form. The advisory committee recommended the following changes:

Section 4 - The advisory committee recommended inclusion of a definition of "maturity date." The definition is the same as contained in the standard non-forfeiture law. This will have the effect of clarifying that the regulation is not intended to sweep in conventional annuities with surrender charges which disappear before maturity as defined.

The working group accepted the recommendation to include a definition of maturity date in Section 4 of the model.

Robert Katz (Ohio) pointed out that this amendment limits the types of annuities that come under the model. Greg Carney (Variable Annuity Life Insurance Company) agreed and mentioned that one member of the advisory committee believes the model should apply to all annuities. Roger Strauss (Iowa) said the working group had discussed this issue several times and concurred that the charge to the Annuities Working Group is to consider two-tier annuities. He said if the charge is expanded, other products would be included, but that was not the charge to the working group this year. Mr. Burbidge commented that the appropriate vehicle for expanding the scope of annuities covered would be the Annuity Disclosure Regulation. Mr. Carney pointed out that the disclosure requirements are very similar in that model, but it has not been adopted in many states.

Mr. Strauss commented on a letter recently received from Howard H. Kayton (Security First Life Insurance Company) in which Mr. Kayton suggested the Annuity Working Group augment its advisory committee to include more providers of two-tier annuity products. Mr. Strauss stated that any individual is welcome to serve on the advisory committee and comment on the work product of the working group. Mr. Burbidge confirmed that everyone who has asked to serve has been accepted.

Section 5 - The advisory committee believes that in most cases it will be preferable to deliver the disclosure form with the contract. This will permit the company to complete the form, which will result in greater accuracy of the numbers provided, especially those for the settlement rate. The suggested revisions to Section 5 would provide all prospective purchasers of a two-tier annuity with the disclosure form prior to acceptance of the applicant's initial consideration unless the two-tier annuity contract provides for a free look period of 10 days. In that event, the disclosure form would be delivered with or prior to the delivery of the two-tier annuity contract. Mr. Burbidge reiterated that this language follows that of the Life Insurance Disclosure Model Regulation and the Annuity Disclosure Regulation.

Mr. Katz questioned whether a 10-day, free look period was long enough; Mr. Burbidge responded that the advisory committee believed a 30-day free look would be too long. Bob Wright (Va.) said that for disclosure to be meaningful, it must be made at the point of sale. Bill Albus (National Association of Life Underwriters) said the disclosure information must also be accurate and, at the point of sale, the agent does not know which policy will be accepted. Mr. Wright stated that the consumer should have the opportunity to review accurate disclosure information before the buying decision is made. That is not possible if they do not receive the disclosure form until the policy is issued. Mr. Carney pointed out that these products are single premium deferred annuities. He said that in every company the agents have access to proposal systems before they meet with a client and they take a standard proposal with them. Sarah Collier (Texas) pointed out this is a unique product and people need disclosure information at point of sale. Mr. Burbidge said that it could be argued that the buying decision is made after the delivery of the policy with the free look period. Mr. Katz pointed out that this is a sophisticated agent and a sophisticated buyer. There should be a greater needs analysis done up front. Mr. Strauss concurred that this is a unique market and the company should be able to present the disclosure information at point of sale.

The working group consensus was to leave Section 5 as drafted in its Sept. 14, 1991, draft adding language that the disclosure form must be provided prior to accepting the applicant's initial consideration for a two-tier annuity contract.

Section 6 - The advisory committee recommended deleting language in the prior draft beginning with "an omission" through and including "deemed." At the Pittsburgh meeting (September 1991), it was suggested that the sanctions for failure to comply should be tied to the Unfair Trade Practices Act, and should not create a private right of action. The advisory committee believes that the working group agreed with that suggestion. Deletion of the referenced language helps to make that clear. The working group concurred in this recommendation.

The following advisory committee recommendations refer to Appendix A, Two-Tier Annuity Disclosure Form.

The advisory committee stated that it is unnecessary and possibly confusing to include blanks for upper-tier and lower-tier values in the first and second paragraphs of the disclosure form since those numbers are included in the table immediately following the paragraphs. Mr. Strauss agreed that the material is repetitious; however, he stated the thrust of the disclosure

form is to clearly disclose the worst case scenario and the blanks at the top of the page accomplish this purpose. Mr. Wright agreed that the repetition was necessary in this instance. Carol Ostapchuk (Fla.) stated that the information cannot be repeated often enough. It is essential that the consumer understand the information on this form. The working group consensus was to leave the first two paragraphs of the disclosure form as currently drafted.

The advisory committee recommended adding the words "a cash surrender based on" to the second paragraph since the lower tier value could be further reduced by a surrender charge. Mr. Carney said Mr. Kayton had pointed out in the recent advisory committee conference call that in some circumstances the lower tier could be further reduced by a surrender charge. He said the working group disclosure form as currently drafted points out that a cash surrender charge would be included. The working group consensus was to add the following language under both sections of the cash surrender tier value: "(The lower tier value is reduced by any applicable surrender charge.)"

The consensus of the advisory committee was that a better comparison could be made if the two top columns for guaranteed values are paired and the two columns for projected values are paired. The working group concurred in this revision to the disclosure form format.

The advisory committee recommended changing the column headings to upper and lower tier values to be consistent with the language of the regulation. The working group consensus was to use annuitization and cash surrender tier values as column headings.

The advisory committee recommended the use of the term "illustrated" rather than "current" or "projected" to be less confusing. The term "illustrated" would be clarified in a footnote following the table. The working group concurred in this recommendation and the addition of a footnote following the table to read, "**Illustrated values are based upon current rates only and are not guaranteed. These values are not an estimate or projection of future results."

The advisory committee recommended adding the annuitant's age at maturity provided in the contract to clarify the disclosure of these values. The working group concurred in this recommendation.

The advisory committee recommended revising the sentence showing the company's rate per thousand for a life annuity with a 10-year certain period to include blanks to show the year and the annuitant's sex, without which the dollar rate would not be known. The working group concurred in this recommendation and, additionally, added a similar sentence with a blank for the guaranteed rate.

The advisory committee recommended changing the label on the signature line from "potential annuitant" to "potential purchaser." The potential purchaser is the person making the purchasing decision and may or may not be the annuitant. This change is also consistent with the language of the proposed regulation. The working group changed the signature line to read "prospective purchaser."

Mr. Burbidge commented that one member of the advisory committee continues to express the position that the regulation and form should not be limited to two-tier annuities. However, he said this was not the position of the majority of the committee. Mr. Strauss responded that he believed that subject had previously received a full hearing by the working group.

Section 4 - Ms. Collier recommended an amendment to reflect that a two-tier annuity is any annuity that has different values available at maturity depending on whether the value is taken "from the contract in a lump sum or left with the provider for periodic payments." The working group concurred in this amendment.

Section 7 - Ms. Collier recommended that a date six months following adoption was too long a period to wait for this regulation to apply to solicitations for two-tier annuity products. The working group concurred in the recommendation to amend the bracketed language to read "[insert an appropriate date following adoption by the regulatory authority]."

Having no further business, the Annuities (A) Working Group meeting adjourned at 2:30 p.m.

ATTACHMENT ONE-C

Annuities Working Group
of the Life Insurance (A) Committee
Pittsburgh, Pennsylvania
September 14, 1991

The Annuities Working Group of the Life Insurance (A) Committee met in the Brigade Room of the Hilton Hotel in Pittsburgh, Pa., at 2 p.m. on Sept. 14, 1991. A quorum was present and David J. Lyons (Iowa) chaired the meeting. The following working group members or their representatives were present: Harold T. Duryee (Ohio) and Steven T. Foster (Va.).

Upon motion duly made and seconded, the Annuities Working Group conference call minutes of July 8, 1991, were adopted (Attachment One-C1).

Roger Strauss (Iowa) commented that the goal of the working group is to adopt a Two-Tier Annuity Disclosure Model Regulation and Disclosure Form at the December meeting. He encouraged the advisory committee to review the regulation

and disclosure form and provide comments to the working group through the advisory committee chair. Mr. Strauss said a draft of the model regulation and disclosure form would be attached to the Pittsburgh minutes. Mr. Strauss announced the next meeting of the working group and advisory committee is scheduled for Nov. 1, 1991, in Washington, D.C.

(Editor's Note: Only the adopted model regulation and disclosure form, which is Attachment One-A, are published in the NAIC Proceedings.)

John L. Burbidge (IDS Life Insurance Company), advisory committee chair, commented on an Aug. 9, 1991, letter from Anthony T. Spano (American Council of Life Insurance) suggesting changes in the definition section of the Two-Tier Annuity Disclosure Model Regulation to avoid the implication that annuitization values may be taken or received in cash.

Gregory J. Carney (Variable Annuity Life Insurance Company) responded that the problem with the ACLI definition is that it encompasses every deferred annuity contract in the disclosure requirement. He was concerned that the definition be as clear as possible so no misinterpretations result, broadening the scope of the regulation more than intended. He recommended that the words "at maturity" be inserted in the definition to clarify when the different values in the two-tier annuity are available. Mr. Carney discussed Actuarial Guideline Three which permits different annuity values at maturity. He said Guideline Three is being proposed to the Life and Health Actuarial (Technical) Task Force for elimination. He said that it provides for grading of nonforfeiture values which needs to be considered in the model regulation definition. Mr. Strauss responded that Howard Kayton (Security First Life Insurance Company) had previously reported that Actuarial Guideline Three is being proposed for elimination and changes would be made in the Standard Nonforfeiture Law. He said Mr. Kayton had said that there was a proposal for up to a 10% difference in the annuity value between cash surrender and annuitization.

With regard to the disclosure form, Mr. Carney stated that the form as currently drafted deals only with maturity values and the difference between upper tier and lower tier values will be diluted by the use of similar guaranteed rates for both tiers over a long period of time. He suggested that the disclosure form be redrafted to add to the form the values at durations five and 10 as well as maturity. Linda Marshall (John Alden Life Insurance Company) suggested that duration 20 also be included in the disclosure form.

Mr. Carney said that another requirement missing from the disclosure form is the annuitization rate factor at maturity. He suggested inclusion of details of the development of those rates, i.e., mortality table and interest rate. He said that current factors might be most appropriate since the customer could then see the assumptions used in today's market as a comparison.

Mr. Carney also commented that many contracts now use a "bonus" interest provision. He said usually the bonus is not available until the 10th or 15th year; however, the companies are inflating the advertised first-year interest rate by the full bonus amount. He suggested the working group discuss whether this design is meant to be covered by the Two-Tier Annuity Disclosure Model Regulation. William N. Albus (National Association of Life Underwriters) commented that the addition of a variety of other information overburdens the agent and gets lost on the consumer. Mr. Carney stated the regulation needs to focus on the annuity rate the company is providing and that the only way to get the higher value is to annuitize. He further commented that the current annuity rates the company is paying can range significantly, meaning that on two-tier annuities, the annuitant is forced to use the company's payout rate to get the higher value. The consumer cannot choose the higher rate. Bob Katz (Ohio) asked if companies have two sets of values depending on the type of contract. Mr. Carney responded that the majority of deferred annuity contracts are life annuities with a 10-year certain period. Mr. Albus suggested avoiding a display of the variety of ranges in order not to further confuse the consumer.

Edward J. Zimmerman (American Council of Life Insurance) suggested that Section 6 use more specific language to state that failure to comply violates the states' Unfair Trade Practices Act.

In Section 3 of the Two-Tier Annuity Disclosure Model Regulation, the advisory committee made several suggestions for deleting existing language. The working group concurred in those recommendations since the effect of deleting the language broadens the scope of deferred annuities subject to this regulation.

Having no further business, the Annuities Working Group of the Life Insurance (A) Committee adjourned at 3 p.m. to reconvene immediately in Executive Session to consider changes to the Two-Tier Annuity Disclosure Model Regulation and Disclosure Form.

In Executive Session, the Annuities Working Group concurred in the amendments to the Two-Tier Annuity Disclosure Model Regulation and Two-Tier Annuity Disclosure Form.

Having no further business, the Executive Session of the Annuities (A) Working Group was adjourned at 3:40 p.m.

ATTACHMENT ONE-C1

Annuities Working Group of the
Life Insurance (A) Committee
Telephone Conference Call
July 8, 1991

The Annuities Working Group of the Life Insurance (A) Committee held a telephone conference call on July 8, 1991, at 10:30 a.m. CDT. A quorum participated in the call and David J. Lyons (Iowa) chaired the meeting. The following working group

Life Insurance Committee

members participated: Ellen Andrews (Fla.); Roger Strauss (Iowa); Vance Magnuson (N.D.); Bob Katz (Ohio); Woody Pogue (Texas); Bob Wright (Va.); and David Rodgers (Wash.). Also participating were Mark D. Peavy and Judy Lee (NAIC/SSO).

Commissioner David Lyons (Iowa) discussed the proposed Two-Tier Annuity Disclosure Model Regulation and Two-Tier Disclosure Form drafted by the working group in June. He also discussed written comments received by the working group regarding the appropriateness of restricting the regulation to two-tier annuities. The working group concurred that its focus would be narrowed to two-tier annuities. Commissioner Lyons suggested that a recommendation be made to the parent committee regarding the appropriate method of addressing other life insurance products where the amounts available in the form of a single sum cash value might be different from the amount available for annuitization and where the same potential for misrepresentation exists.

The working group expanded the model's original definition of a two-tier annuity to state that "for the purposes of the model regulation, a two-tier annuity is any annuity that has different values available depending on whether the value is taken as a cash surrender or by way of annuitization." The original Two-Tier Annuity Disclosure Form was amended to require the insertion of age at maturity and a definition of annuitization to the contractual requirements.

Commissioner Lyons instructed that the draft of the model disclosure regulation and disclosure form be provided to the Annuities (A) Advisory Committee for review and comment by Aug. 12, 1991. Commissioner Lyons requested working group members to provide their input on other sections of the disclosure model regulation by Aug. 12.

The working group discussed the potential that some policies have for different assumptions incorporated into the value of the annuity payment, but was unable to develop a standard format for presentation.

Having no further business, the Annuities Working Group of the Life Insurance (A) Committee adjourned at 11:05 a.m.

ATTACHMENT TWO

Senior Marketing Working Group of the Life Insurance (A) Committee Houston, Texas December 9, 1991

The Senior Marketing Working Group of the Life Insurance (A) Committee met in the Tanglewood Room of the Westin Hotel in Houston, Texas, at 2 p.m. on Dec. 9, 1991. Aquorum was present and John A. Garamendi (Calif.) chaired the meeting. The following working group members were present: David J. Lyons (Iowa); Harold T. Duryee (Ohio); and Steven T. Foster (Va.).

Upon motion duly made and seconded, the minutes of the Washington, D.C., meeting of Oct. 31, 1991, and the Pittsburgh, Pa., meeting of Sept. 17, 1991, were adopted (Attachments Two-B and Two-C).

Commissioner David J. Lyons (Iowa) outlined the changes made to the Life Insurance Disclosure Model Regulation and the Financial Review of This Policy disclosure form at the working group's Oct. 31, 1991, meeting.

Sheldon Summers (Calif.) asked for a clarification as to whether interest at 5% is intended to be included with accumulated premiums to determine when the Financial Review of this Policy form, (hereinafter "disclosure form") needs to be completed. It was the consensus of the working group that interest was intended to be included and Glenn Joppa (Union Fidelity Life), chair of the advisory committee, concurred with this opinion. Mr. Summers felt that the language of the model was ambiguous on this issue and asked the advisory committee to provide amendatory language for adoption by the Life Insurance (A) Committee to reflect this intent.

A motion was made to adopt the changes made to the Life Insurance Disclosure Model Regulation and disclosure form.

Robert Katz (Ohio) offered a substitute motion to include the alternative disclosure form which Ohio drafted for consideration as an additional appendix to the model. Mr. Katz said that the alternative disclosure form was significantly more readable while still providing the same data and information conveyed in the current disclosure form. After further discussion, it was determined that the alternative disclosure form needed additional revisions. It was pointed out that the current draft of the model gives the commissioner authority to approve alternative forms containing substantially similar information as the disclosure form appended to the model. Mr. Katz withdrew his substitute motion after agreeing to work with other interested parties to further refine the alternative disclosure form and to make it available for consideration by other states as an alternative.

Upon motion duly made and seconded, the amendments to the Life Insurance Disclosure Model Regulation and Financial Review of This Policy disclosure forms were adopted (Attachment Two-A).

Having no further business, the Senior Marketing Working Group of the Life Insurance (A) Committee adjourned at 3:25 p.m. to reconvene immediately in Executive Session.

Upon motion duly made, seconded and unanimously approved, the group decided to open the Executive Session to consumer representatives to receive their input concerning the development of a buyer's guide or "consumer primer" relating to limited benefit life insurance policies.

John Cutler (American Association of Retired Persons) discussed a letter submitted by Lee Norgaard (AARP) and indicated that AARP was in favor of having the development of a buyer's guide for use with limited benefit life insurance policies be a 1992 charge of the Life Insurance (A) Committee or a working group thereof. Mary Griffin (Consumers Union) also spoke in favor of making the development of a buyer's guide for limited benefit life policies a charge for 1992.

Having received the comments, the Executive Session was closed. In the closed session, the members of the group engaged in considerable review and discussion of the actions which should be taken in connection with the limited benefit life policies. It was the consensus of the working group that the enhanced disclosures provided by the amendments made to the Life Insurance Disclosure Model Regulation respond to the concerns and charges of the Life Insurance (A) Committee regarding limited benefit life insurance policies.

Upon motion duly made, seconded and unanimously approved, the working group amended the Oct. 31, 1991, minutes of the Washington, D.C., meeting to delete those paragraphs numbered 2, 3 and 4 to reflect the determination of the working group not to engage or recommend engaging in any activity related to the development of policy parameters.

In connection with these modifications, the working group decided to amend paragraph number 5 of the Oct. 31, 1991, minutes to change the number from 5 to 2. This change reflects the working group's determination that the only ongoing action recommended to be taken by the Life Insurance (A) Committee, or a working group thereof, is the development of a buyer's guide relating to limited benefit life insurance policies.

Having no further business, the Senior Marketing Working Group of the Life Insurance (A) Committee adjourned at 3:55 p.m.

ATTACHMENT TWO-A

LIFE INSURANCE DISCLOSURE MODEL REGULATION

Draft: Oct. 31, 1991

Table of Contents

Section 1.	Authority
Section 2.	Purpose
Section 3.	Scope
Section 4.	Definitions
Section 5.	Duties of Insurers
Section 6.	Special Plans
Section 7.	Preneed Funeral Contracts or Prearrangements
Section 8.	General Rules
Section 9.	Failure to Comply
Section 10.	Separability
Section 11.	Effective Date
Appendix A.	Life Insurance Buyer's Guide
Appendix B.	Examples of Calculations of the Discontinuity Index
Appendix C.	Test Limits for Discontinuity
Appendix D.	Statement of Policy Information for Applicant
Appendix E.	Financial Review of this Policy

(Editor's Note: Appendices A - D were not amended at this time and are not reprinted in the NAIC Proceedings.)

Section 1. Authority

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

Drafting Note: Insert title of chief insurance regulatory official wherever the term commissioner appears.

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. **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 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 years, the factor is 13.207 and if the period is twenty 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 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 4(G)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.

E. 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.

F. 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.

G. 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.

H. 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 and twenty years at five percent 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 years, the factor is 13.207 and if the period is twenty years, the factor is 34.719.

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

J. 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.

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 through sixty-five 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 and twenty 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 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:

$$YP = (P - Dv - (CVCv - CVP)) / (F(.001))$$

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 preceeding 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 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 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 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 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, 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, 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 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 \$[insert amount], 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 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 (2) 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.

F. 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 unless otherwise provided by this regulation.
- 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 of insurance shall be completed by the insurer and delivered simultaneously with the policy and the free look period shall be extended to thirty (30) days.

J. Prior to taking an application for a policy which is subject to the disclosure requirements of Section 8I, the insurer must provide the applicant with a prominent notice in the following form, or in a form containing substantially similar information approved by the [title of supervisory authority]:

NOTICE TO APPLICANTS AGE SIXTY (60) OR OVER

With your policy, you may receive a "Financial Review of This Policy" form showing premiums and benefits for a ten (10) year period. You should review the form and your policy, and decide if the policy is suitable for you. If you are not entirely satisfied, please review the cancellation provision on the form for directions on obtaining a full refund of any premiums paid.

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 (6) months following adoption by the regulatory authority].

(Editor's Note: The Optional Form of the Life Insurance Disclosure Model Regulation with Yield Index is amended as published here by virtue of previous decision to add all amendments to the Life Insurance Disclosure Model Regulation to this optional version also.)

APPENDIX E

FINANCIAL REVIEW OF THIS POLICY

NOTICE: You have thirty (30) days to review your policy and, if not entirely satisfied, to return it for a full refund of any premium paid.

[] 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.]

ATTACHMENT TWO-B

Senior Marketing Working Group
of the Life Insurance (A) Committee
Washington, D.C.
October 31, 1991

The Senior Marketing Working Group of the Life Insurance (A) Committee met in the New Hampshire Room of the Stouffer Mayflower Hotel in Washington, D.C., at 2 p.m. on Oct. 31, 1991. A quorum was present and David J. Lyons (Iowa) chaired the meeting. The following working group members were present: W. Harold Phillips (Calif.) and Robert Katz (Ohio). Also participating were: Roger Strauss (Iowa); Dick Rogers (Ill.); and Judy Lee (NAIC/SSO).

Commissioner David Lyons (Iowa) asked Glenn Joppa (Union Fidelity Life Insurance Company), advisory committee chair, to give an update on advisory committee activities. Mr. Joppa reported that the advisory committee had considered the proposed amendments to the Life Insurance Disclosure Model Regulation which require presentation of the Financial Review of This Policy disclosure form at point of solicitation rather than at point of policy issue. He pointed out that the advisory committee membership is representative of all interests on this issue and, after several meetings, the advisory committee was proposing an alternative to delivery of the disclosure form at point of solicitation.

Mark Willoughby (Forethought Life Insurance Company) spoke from the perspective of the agent marketers. He reported that the agent marketers of life insurance products impacted by the proposed amendments are strongly opposed to the required delivery of the disclosure form at the point of solicitation. They support the recommendations of the advisory committee requiring adequate notice at point of sale, an enhanced disclosure form and delivery of the disclosure form with the policy, coupled with a 30-day free look period. Mr. Willoughby said that one of the purposes of the disclosure form is to permit consumers to make informed decisions relative to their purchase of a life insurance policy, as compared to other investment options. He said the complexity of the financial data precludes making an informed decision in the short period of time provided and the pressures associated with a sale. The adoption of a 30-day, free look period allows the consumer to reflect on the purchase decision and they can cancel with no pressure from an agent. He added that from the company's perspective, it takes time to make a presentation, requiring agents to complete the disclosure form for every product being considered for purchase by the consumer.

Mr. Willoughby said accuracy is also a concern for the complex computations required by the disclosure form. Presentation of the disclosure form at point of solicitation imposes an unknown liability on the agent and company. If the disclosure form is presented with the policy, the life insurance companies complete the disclosure form in-house, accuracy can be assured and costs can be minimized. He said that providing notice to senior consumers at the time of solicitation when coupled with an enhanced disclosure form and a 30-day cancellation period provides consumers with an opportunity to understand the policy information presented to them. It gives life insurance companies the ability to limit liability and to assure that accurate information is provided to policyowners.

Graham Cook (Homesteaders Life Insurance Company) demonstrated for the working group what is involved in providing the information required on the Financial Review of This Policy disclosure form, demonstrating the number of calculations required to complete the disclosure form. He said the numerous calculations take too much time at the point of solicitation. The Homesteaders' agents are counselors from funeral homes who would not be able to comply with a requirement for delivery of the disclosure form at point of solicitation.

Ron Souders (National Home Life Insurance Company) addressed the problems involved with delivery of the disclosure form by direct response marketers at the point of solicitation for certain life insurance products. He reminded the working group that this matter was discussed at length prior to the adoption of the 1990 amendments to the Life Insurance Disclosure Model Regulation and that the NAIC decided at that time that the appropriate time of delivery was at point of policy issue. He said in the direct response market the true purchase decision is made after the policy is received and reviewed. The vast majority of these policies are paid by monthly payments and the decision to purchase is reconsidered and made when the individual pays the premium each month.

In many instances, Mr. Souders said, direct response marketers use newspaper supplements and full page magazine ads to advertise low face amount policies. These supplements and ads contain an application and interested parties can apply directly to the company without the need for an agent. He pointed out that since the company does not know who will apply, the ad will contain a chart showing premiums by age, sex and the face amount of the policy available. If the insurer were required to prepare the disclosure form for all applicants age 60 and over, Mr. Souders said it would require the company to include 120 disclosure forms to cover all applicants over age 60 for both sexes with three or more policy options. He said that this requirement would be physically and financially prohibitive for the company and the proposed amendments act as a ban against such advertising methods. This would create a disservice to a significant number of people who currently purchase low face amount life insurance policies by direct response and are afforded the opportunity to purchase without the need for medical underwriting.

Mr. Souders said in some instances, age and sex data are contained in company listings, but are often incorrect. If the disclosure form were prepared at the time of mailing with the application, the potential applicant would receive incorrect data contrary to the full and accurate disclosure goal of the regulation. Also, the insurer could be held liable for the erroneous disclosure information. He said since direct response solicitations are sent out to hundreds of thousands of persons at a time, with response rates of less than 1%, that to provide a personalized disclosure form in each solicitation would add significantly to the cost of such solicitation. The additional costs could be avoided and full disclosure still provided if disclosure remains

at time of policy issue. Mr. Souders said he believed that the objectives of the regulator and the industry can both best be accomplished by the delivery of the disclosure form at the time the policy is issued.

Commissioner Lyons pointed out that it was never assumed the direct writers would have to send out information at point of solicitation. He said that an earlier time for delivery of the disclosure form was sought for marketers other than the direct writers.

Mr. Joppa presented the advisory committee's alternative proposal amending the Sept. 23 draft of the Life Insurance Disclosure Model Regulation as follows:

1. Section 6E(3) - Maintain the previous language, "before issuance of the policy if not previously provided."
2. Section 6E(5) - Maintain the previous language, "the point of issue of the policy."
3. Section 6E(6) - Maintain the previous language, "simultaneously with the policy at issue."
4. Section 8I - Maintain the previous language and add the following language at the end of the last sentence, "and the free look period shall be extended to thirty (30) days."
5. Section 8J - Add a new section to read: "Prior to taking an application for a policy which is subject to the disclosure requirements of Section 8I, the insurer must provide the applicant with a prominent notice in the following form, or in a form containing substantially similar information approved by the [title of supervisory authority]:"

NOTICE TO APPLICANTS AGE 60 OR OVER

With your policy, you may receive a 'Financial Review of this Policy' form showing premiums and benefits for a ten (10) year period. You should review the form and your policy, and decide if the policy is suitable for you. If you are not entirely satisfied, please review the cancellation provision on the form for directions on obtaining a full refund of any premiums paid."

6. Appendix E - Modify the Financial Review of This Policy form by adding the following language immediately below the captioned FINANCIAL REVIEW OF THIS POLICY: "NOTICE: You have thirty (30) days to review your policy, and if not entirely satisfied, to return it for a full refund of any premium paid."

Mr. Joppa commented that the advisory committee proposal does not reflect the point of view of Consumers Union since its representative joined the advisory committee too late for input to this proposal.

Lee Norrgard (American Association of Retired Persons) commented that there is a great deal of confusion about life insurance, but that seniors understand savings accounts. He said the disclosure form served a useful purpose in making the comparison between premiums and premiums accumulating interest at 5%. He said he disagreed with providing the disclosure information to consumers at the point of sale, but understood that it might be difficult for consumers to receive accurate information at the point of solicitation.

Mary Griffin (Consumers Union) said Consumers Union believes that it is inappropriate for consumers over the age of 60 to purchase limited benefit life insurance. She said if purchasers are over 60, otherwise uninsurable, and medical exams are not usually required, it is likely that a claim will arise within 10 years of policy purchase. If the policy's accumulated premiums exceed the death benefit at any point during the first 10 years or the death benefit is limited during an initial period after the policy has been issued, then the value of these policies is limited. She said it is unclear to Consumers Union what protection these policies offer if the premiums exceed the death benefits.

Ms. Griffin added that Consumers Union believes that retirement is the time to cash in policies, not invest in new ones. In addition, limited benefit policies are marketed to persons over age 60 where the choice is being made between a life insurance policy and an annuity, and Consumers Union believes that the consumer is better off taking the annuity unless his or her spouse is terminally ill. Ms. Griffin said that Consumers Union strongly urges adoption of the provision mandating point of solicitation disclosure to ensure consumers understand the value of the product they are purchasing. She said once a decision to purchase a particular policy is made, the consumers are typically out of the mode to research and inquire about policies. She said the argument that point of issuance disclosure is adequate because consumers have the opportunity to cancel the policy during the free look period is flawed. She said the onus should not be placed upon consumers to have to return the policy rather than rejecting the sale. She said the proposed amendment requiring the disclosure form to be provided at the point of solicitation is the only alternative presented which assures consumers access to relevant information during the time they are shopping for their policy.

Commissioner Lyons commented that there are two questions relative to these policies. One is when the disclosure information will be provided to the consumer; the second question is the value of limited benefit life insurance policies. He said Consumers Union is not convinced that there is a value in these products. He pointed out that only six companies had responded to the working group's request for policy information. This number is much lower than the level which would be desirable for a thorough survey of the policies' value.

Mr. Norrgard pointed out that many of these limited benefit policies are preneed funeral policies and once the decision is made, the consumer does not want to have to readdress the validity of that decision. Harold Phillips (Calif.) stated that he

believes the Washington state approach setting standards for this type of product is preferable. He said he believes the industry has a responsibility to design a product that returns the consumer's premium plus the death benefit. Commissioner Lyons suggested that disclosure was an effective interim step while discussing appropriate parameters for these policies. Mr. Norrgard said that AARP would support a guideline on value and supports disclosure as well. Ms. Griffin questioned how quickly the process of setting policy parameters could be undertaken.

After considerable discussion, the working group concurred in the following actions:

1. Accept the advisory committee's alternative amendments to the Life Insurance Disclosure Model Regulation and Financial Review of This Policy form.
2. Ask David Rogers (Wash.) to discuss at the working group's next meeting the Washington state approach to limited benefit life insurance policies. Hal Phillips and Sheldon Summers (Calif.) will prepare product parameters different from Washington's for consideration by the working group.
3. The advisory committee will remain in effect to react to policy parameters under consideration by the working group.
4. In March 1992, the working group will consider limited benefit life insurance policy parameters for possible adoption in June 1992.
5. Lee Norrgard and Mary Griffin will prepare with NAIC staff support a "consumer primer" to assist the consumer in understanding what they purchase in a limited benefit life insurance policy. Lee Norrgard will chair the effort to produce the consumer primer.

(Editor's Note: At its Dec. 9, 1991, meeting the Senior Marketing Working Group discussed these minutes of its Oct. 31 meeting and considered the numbered paragraphs above. At that time, the working group expressed that the paragraphs above numbered 2, 3 and 4 should be deleted to reflect the working group's determination that the only ongoing action recommended to be taken by the Life Insurance (A) Committee, or a working group thereof, is the development of a buyer's guide relating to limited benefit life insurance policies.)

Upon motion duly made and seconded, the working group concurred in the advisory committee's amendments to the Life Insurance Disclosure Model Regulation. Commissioner Lyons encouraged representatives of AARP and Consumers Union to remain involved with the Senior Marketing Advisory Committee and expressed the working group's appreciation for their input at this meeting.

Having no further business, the Senior Marketing Working Group adjourned at 3:55 p.m.

ATTACHMENT TWO-C

Senior Marketing Working Group
of the Life Insurance (A) Committee
Pittsburgh, Pennsylvania
September 17, 1991

The Senior Marketing Working Group of the Life Insurance (A) Committee met in the Allegheny room of the Hilton Hotel in Pittsburgh, Pa., at 8:30 a.m. on Sept. 17, 1991. Aquorum was present and John A. Garamendi (Calif.) chaired the meeting. The following working group members or their representatives were present: David J. Lyons (Iowa); Harold T. Duryee (Ohio); Gary Weeks (Ore.); and Steven T. Foster (Va.).

Upon motion duly made and seconded, the Senior Marketing Working Group conference call minutes of Aug. 21, 1991, were adopted (Attachment Two-C2).

Edward J. Zimmerman (American Council of Life Insurance) presented comments on the suitability of small face amount life insurance policies marketed to seniors. He said these policies are used by consumers for last medical expenses, burial expenses; by people of modest budgets, people who are otherwise uninsurable, people who do not want to subject themselves to the inconvenience of a medical examination or who have a medical condition that they believe would make it impossible to obtain insurance. Mr. Zimmerman pointed out that these same considerations compel insurers toward liberal underwriting requirements and streamlined application procedures. He highlighted several aspects of these products which address their suitability. The products are accessible to the public and typically do not require a physical examination. Underwriting simplicity makes available small face amount policies to a segment of the population not otherwise reached by agents. He said the costs are reasonable in relation to the coverage provided and customer receptivity to the product has been overwhelming because the policies are easy to understand. He said there is strong public policy in favor of life insurance coverage for persons age 60 and older. Mr. Zimmerman commented that while it is true that life insurance needs may diminish over time and the cost of the insurance protection may increase, there are still numerous reasons why small face amount insurance policies are suitable for seniors.

Jon Ogg (National Association of Life Companies) agreed with the points Mr. Zimmerman presented. He said these products are not suitable for everyone, but there is a market for them. He agreed that relaxed underwriting contributes to the high cost of the product, but knew of no specific concerns articulated to date by the consumers of these products. Murray McColloch (J.C. Penney Life Insurance Company) commented that this insurance is provided on a guaranteed issue basis to seniors and his company's market research shows that there are consumers who find this product suitable to help pay funeral and last expenses as well as other needs. Mr. McColloch urged the working group to let the marketplace determine which products are suitable and that the advertising regulations be enforced to make sure products are adequately described. Glenn Joppa (Union Fidelity Life Insurance Company) commented that he understood the informational filing notice from the California Insurance Department is being amended to remove the exemptions and more closely parallel the product disclosure form. He agreed that these changes would provide an adequate review of what is available in the marketplace. Commissioner David Lyons (Iowa) commented that regulators have received complaint letters on these products and that was why the working group was established with a charge to review limited benefit life products.

Noel Morgan (Ohio) inquired if insurers had a customer profile for these products. Mr. Zimmerman offered to check with the Life Office Management Association (LOMA) and Life Insurance Marketing and Research Association (LIMRA) to see if they can provide an analysis of this market. Ronald L. Souders (National Home Life Insurance Company) offered to provide a profile of a purchaser by income, by state and age of issue. Mr. Ogg raised the concern that there might be antitrust implications with sharing profile information and would prefer to furnish such information directly to the NAIC. Mr. Zimmerman responded that he would provide any information he received to the NAIC in aggregate form.

Having no further business, the Senior Marketing Working Group of the Life Insurance (A) Committee adjourned at 8:50 a.m. to reconvene immediately in Executive Session.

In Executive Session, the working group discussed the California notice to insurers for informational filings on limited benefit life products and the appropriate use of this information. Commissioner Lyons commented that release of specific company data would not be appropriate. The working group requested that Mark Peavy, NAIC Actuary, review the collected data and provide his observations to the working group. The working group consensus was for California not to send an amended notice at this time.

Upon motion duly made and seconded, the working group directed that the Life Insurance Disclosure Model Regulation be amended to address disclosure at point of solicitation (Attachment Two-C1). Bob Katz (Ohio) clarified that the working group is revisiting the subject of disclosure with the understanding that the change from delivery of the disclosure form at point of policy issuance to time of solicitation seems to be indicated unless other information is provided that might change that decision. Upon motion duly made and seconded, the working group decided to establish an advisory committee to react to the proposed amendment in the Life Insurance Disclosure Model Regulation. Advisory committee members would have an opportunity to comment on this amendment at an interim meeting to be held in Washington, D.C., on Oct. 31, 1991.

Having no further business, the Senior Marketing Working Group of the Life Insurance (A) Committee adjourned at 10:20 a.m.

ATTACHMENT TWO-C1

LIFE INSURANCE DISCLOSURE MODEL REGULATION Draft: 9/23/91

Table of Contents

Section 1.	Authority
Section 2.	Purpose
Section 3.	Scope
Section 4.	Definitions
Section 5.	Duties of Insurers
Section 6.	Special Plans
Section 7.	Preneed Funeral Contracts or Prearrangements
Section 8.	General Rules
Section 9.	Failure to Comply
Section 10.	Separability
Section 11.	Effective Date
Appendix A.	Life Insurance Buyer's Guide
Appendix B.	Examples of Calculations of the Discontinuity Index
Appendix C.	Test Limits for Discontinuity
Appendix D.	Statement of Policy Information for Applicant
Appendix E.	Financial Review of this Policy

(Editor's Note: Appendices A - D were not redrafted at this time and are not reprinted in the NAIC Proceedings.)

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. **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 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 years, the factor is 13.207 and if the period is twenty 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 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 4(G)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.

E. 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.

F. 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.

G. 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.

H. 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 and twenty years at five percent 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 years, the factor is 13.207 and if the period is twenty years, the factor is 34.719.

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

J. 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.

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 through sixty-five 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 and twenty 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 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:

$$YP = (P - Dv - (CVCv - CVP)) / (F(1.001))$$

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 preceeding 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 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 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 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 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, 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, 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 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 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~~ at point of solicitation.

(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~~ at point of solicitation.

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~~ at point of solicitation and a copy shall be retained by the insurer as long as the policy remains in force, plus two (2) 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.

F. 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 unless otherwise provided by this regulation.

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~~ at the point of solicitation for 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].

APPENDIX E

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.)

ATTACHMENT TWO-C2

Senior Marketing Working Group
of the Life Insurance (A) Committee
Telephone Conference Call
August 21, 1991

The Senior Marketing Working Group of the Life Insurance (A) Committee held a telephone conference call on Aug. 21, 1991, at noon (CDT). A quorum participated in the call and Sheldon Summers (Calif.) chaired the meeting. The following working group members participated: Roger Strauss (Iowa); Bob Katz (Ohio); Charlie Nicoloff (Ore.) and Bob Wright (Va.). Also participating were Mark Peavy and Judy Lee (NAIC/SSO).

Sheldon Summers (Calif.) said the conference call was scheduled to discuss the Aug. 7 notice from the California Department of Insurance to all companies licensed to write life insurance in California and other interested parties regarding life insurance marketed to seniors. He said the parameters contained in the notice defining the policies on which "Financial Review of This Policy" reporting forms are required to be filed, inadvertently excluded some policies intended for inclusion. Mr. Summers said that he had received several filings from companies stating they are exempt from notice requirements because of the age or policy face amount parameters.

After considerable discussion, Mr. Summers agreed to draft an amended notice for review by the working group at its September meeting.

Having no further business, the Senior Marketing Working Group of the Life Insurance (A) Committee adjourned at 12:25 p.m.

ATTACHMENT THREE

Insurable Interest Working Group
of the Life Insurance (A) Committee
Houston, Texas
December 10, 1991

The Insurable Interest Working Group of the Life Insurance (A) Committee met in the Bellaire Room of the Westin Hotel in Houston, Texas, at 10 a.m. on Dec. 10, 1991. A quorum was present and Harold C. Yancey (Utah) chaired the meeting. The following working group members were present: Mike Weaver (Ala.); John Garamendi (Calif.); and Steven T. Foster (Va.).

1. Adopt Nov. 27, Nov. 1, and Sept. 16 Minutes

Upon motion duly made and seconded, the Nov. 27, Nov. 1 and Sept. 16 minutes of the Insurable Interest (A) Working Group were adopted (Attachments Three-A, Three-B and Three-C).

2. Review Advisory Committee Documents

Commissioner Harold Yancey (Utah) noted that the advisory committee had submitted a draft guideline for use by insurance departments in advising consumers concerning gifts of insurance to charitable organizations. George T. Coleman (Prudential), chair of the Advisory Committee, provided an overview of the task assigned to the advisory committee. Diana M. Marchesi (Transamerica Occidental) presented a detailed explanation of the information contained in the guideline which previously had been distributed to members of the working group.

Upon receiving the comments, Commissioner Yancey asked Mr. Coleman if he felt it would be advisable to distribute the draft guideline to other regulators and interested parties for review and comment. Mr. Coleman concurred with the suggestion. Commissioner Yancey indicated that he would have the draft circulated to other regulators who had not had an opportunity to review it and that the comments received from regulators or other parties would be considered at an interim meeting to be held prior to the March 1992 NAIC Western Zone Meeting. Commissioner Yancey noted that he anticipates finalizing the draft at the March 1992 meeting and making the guideline available to the various states shortly after its adoption in June.

Commissioner Yancey noted that the advisory committee had submitted recommendations on group corporate-owned life insurance. Mr. Coleman provided an overview of the task assigned to the advisory committee. Michael J. Bartholomew (American Council of Life Insurance) reviewed the recommendations which had been distributed to members of the working group. Mr. Bartholomew reviewed the legal research that had been undertaken and noted that the analysis did not include individual policies. The advisory committee concluded that there currently is no need for a model bill on the subject of group corporate-owned life insurance. He indicated that if the working group felt some guidance was necessary for those states where an ambiguity exists, that the advisory committee would recommend that the guidelines contain (1) a provision enabling persons who are to be insured to opt out of the program within a stated period of time such as 30 days after becoming eligible and (2) participation requirements that are the same as, or similar to those regularly imposed in other group benefit programs. He also noted that the advisory committee was of the opinion that the use of a trust would be unnecessary as a general requirement.

Commissioner Yancey commented that the activities of the working group were currently limited to group insurance and that there was no current intent to expand into individual insurance.

David Rogers (Wash.) commented that there is some pressure to legislatively address insurable interest issues relating to charitable and business uses of life insurance on both a group and individual basis.

Commissioner Yancey agreed that there are important issues to be addressed but that he felt it would be prudent to proceed cautiously. He said that the development of guidelines would be beneficial to insurance departments in the evaluation of corporate-owned life insurance programs. Commissioner Yancey took the recommendations under advisement for further evaluation.

Commissioner Yancey then summarized the minutes of the working group's telephone conference call of Nov. 27, 1991 regarding living benefit companies. He noted that the consensus of the working group was to develop a model regulation for the regulation of companies involved in providing living benefits and that the working group planned to use the California legislation on this subject as the foundation for developing a model. Mr. Coleman reviewed the proposed model law the advisory committee had drafted which also was based on the California act. Mr. Coleman noted that the advisory committee felt the entities and individuals marketing their services should be subject to regulation in a manner consistent with the law and regulations applicable to insurance companies and insurance agents, particularly those laws and regulations dealing with accelerated benefits and licensing.

Commissioner Yancey noted that it had been difficult to determine the extent of the problem associated with living benefits. He noted that this is one area the Life Insurance (A) Committee will most likely continue to evaluate in 1992 and encouraged regulators and interested parties to share information they have on living benefit activities with the NAIC along with any other suggested areas which should be addressed by the Life Insurance (A) Committee in 1992.

Tony Higgins (N.C.) said the concerns in North Carolina center on a charitable organization purchasing the policy on the life of an individual. In the group corporate-owned life insurance area, they are concerned when group corporate-owned life insurance is purchased on retirees rather than active employees. Commissioner Yancey agreed to include those points in the further deliberations of the Life Insurance (A) Committee.

Having no further business, the Insurable Interest Working Group of the Life Insurance (A) Committee adjourned at 10:40 a.m.

ATTACHMENT THREE-A

Insurable Interest Working Group of the Life Insurance (A) Committee Telephone Conference Call November 27, 1991

The Insurable Interest Working Group of the Life Insurance (A) Committee held a telephone conference call on Nov. 27, 1991, at 3 p.m. CST. A quorum was present and Harold C. Yancey (Utah) chaired the meeting. The following working group members participated: Sheldon Summers and Harold Phillips (Calif.); and Dick Rogers and Lloyd Rice (Ill.). Also participating were Bob Corn and Judy Lee (NAIC/SSO).

Dick Rogers (Ill.) suggested that states may want to mandate the offer of accelerated benefits by life insurance companies. Mr. Rogers indicated that because of budget constraints and personnel shortages, he was concerned that Illinois would not be able to enforce another model regulation. He said that the mandatory offer is a better regulatory tool. Lloyd Rice (Ill.) said that Illinois is drafting a regulation that would require life insurance companies to offer accelerated benefits within a period of three years for terminal illness. The alternative to that proposal would be a model regulation on living benefits companies. After considerable discussion by the working group, the consensus was to proceed to offer states the two alternatives as discussed.

Commissioner Yancey (Utah) said that a model regulation on living benefits companies would need to encompass provisions for licensing, control of discounted interest rates, disclosure of potential tax consequences and disclosure of consumer options. He further said that he was concerned that the mandated offer would not take effect for three years and thought the model regulation would give states an alternative method of dealing with these issues in the interim. Commissioner Yancey pointed out that only six living benefit companies have been identified to date, but that there may be many more. Harold Phillips (Calif.) clarified that it is the presumption of this working group that living benefit companies should be regulated by state insurance departments rather than other state agencies.

Commissioner Yancey suggested that the California Insurance Code language be used as a starting point for a draft model regulation and that the working group consider meeting prior to the March 1992 NAIC Western Zone Meeting in a drafting session. He reminded working group members that the consumer group that opts for a living benefit company product is different from the typical consumer who would take advantage of a life insurance policy's accelerated benefits provision.

Having no further business, the Insurable Interest Working Group of the Life Insurance (A) Committee adjourned at 3:30 p.m.

ATTACHMENT THREE-B

Insurable Interest Working Group
of the Life Insurance (A) Committee
Washington, D.C.
November 1, 1991

The Insurable Interest Working Group of the Life Insurance (A) Committee met in the Chinese Room of the Stouffer Mayflower Hotel in Washington, D.C., at 8:30 a.m. on Nov. 1, 1991. A quorum was present and Harold C. Yancey (Utah) chaired the meeting. The following working group members were present: Dick Rogers (Ill.) and Bob Wright (Va.). Also participating were Harold Phillips (Calif.); Sarah Collier (Texas); and Judy Lee (NAIC/SSO).

1. Charitable Organizations

Commissioner Harold Yancey (Utah) discussed the development of a policy statement or guideline for regulators on a charitable organization's insurable interest. He said that individual states could best develop their own legislation or rules in this area, but that there is enough confusion on insurable interest issues that a guideline could be helpful. Harold Phillips (Calif.) said that California law permits a charity to own an insurance policy, in spite of the lack of any insurable interest. He said an insurable interest must exist at the time of policy purchase and, in most cases, the charity is assigned the policies by the purchaser. He said the problem arises when the charity is purchasing the policy since the purchaser must have an insurable interest in the life of the insured. Mr. Phillips said that he was not aware of any states that require proof of insurable interest at assignment. He said he had tried to get that requirement into California law, but was unsuccessful. He said California defines insurable interest and does not include charities. Commissioner Yancey said that the working group is trying to accommodate a market for people who want to use their life insurance policy as a donation to a charity. He suggested that any policy statement should initially mention the traditional definition of insurable interest and then list options for how states might deal with charitable organizations.

Bill Albus (National Association of Life Underwriters) said traditionally the insured wants to donate the policy to a charity and the charity becomes the beneficiary and policyowner. George Coleman (Prudential Insurance Company), advisory committee chair, said that industry interprets state statutes to allow charities to have an insurable interest. Roger Strauss (Iowa) asked if the majority of this business is written as individual or group policies. Mr. Albus responded that it is probably individual but that research has not been done. Mr. Coleman cautioned that the NAIC should not do anything which would indicate that any of these arrangements are in peril.

Dick Rogers (Ill.) expressed the concern that no one is guaranteeing that just because an entity is an Internal Revenue Code Section 501(c)(3) organization, it is a bona fide charitable organization. He said that to the degree regulators see abuses against seniors, this is a serious problem. Commissioner Yancey asked whether it was possible in a guideline to spell out clearly any regulatory concerns. Mr. Rogers said Illinois changed its law this year to allow an insurable interest for charities. Commissioner Yancey suggested that the working group alert insurance departments to potential abuses which could be monitored through market conduct examinations. He asked that the advisory committee come up with language for a policy statement for the purchase of life insurance policies by charitable organizations. John Ogg (National Association of Life Companies) pointed out the need to coordinate this language with agents licensing laws. Mr. Coleman suggested that the policy statement be in the form of consumer service guidelines, drawing attention to Section 501(c)(3) organizations. Mr. Phillips said California law references the IRS code section, but suggested the guideline not be restricted just to charities. Commissioner Yancey asked that a draft of the policy statement or guideline be available to working group members prior to the December NAIC meeting.

2. Corporate-Owned Life Insurance (COLI)/Trust-Owned Life Insurance (TOLI)

Mr. Coleman responded to a question raised by Harold Phillips as to why the advisory committee paper was directed solely at group corporate-owned life insurance. He said the reason is that the appropriateness of individual life insurance products in this context is well settled. He further stated that interest in the corporate-owned life insurance issue was sparked by a letter from an actuary to the Life and Health Actuarial (Technical) Task Force which focused exclusively on group COLI. Mr. Coleman reiterated the background of COLI/TOLI products for the working group. He said life insurance is frequently purchased by employers to fund deferred compensation or supplemental retirement plans for certain highly compensated employees. The policies are usually sold on an individual basis, insure the lives of those employees covered under the deferred compensation plan, and the employer is the owner and beneficiary of the policies.

Mr. Coleman said a group life product design is also suitable for prefunding retiree health benefits and can provide the same degree of security to plan participants as individual COLI. A group product might be selected for the following reasons: minimization of mortality charges through group underwriting and experience ratings, minimization of expenses through group administration and compensation structure, and maximization of employer understanding through use of familiar group concepts and arrangements. He added that most state insurance laws follow the NAIC model and require that a group life contract benefit persons other than the employer. If a COLI approach does not satisfy state group law requirements, a trust can be named the irrevocable beneficiary of the group policy. This means that any amount contributed to the contract must be used for the benefits promised to employees. A trust qualified under the IRC Section 501(c)(9), also known as a Voluntary Employee Beneficiary Association (VEBA) is preferred. The product enhances the security of employees' retirement health benefits since the money is irrevocably committed to providing the promised benefits once the employer contributes it to the trust for payment of premiums. Withdrawals and policy loans must be used under the trust to provide retiree benefits. Death benefits paid under the contract must be used to provide retiree benefits. Employees do not receive

any direct individual benefit from the group life insurance; the proceeds from the death of an insured are used primarily to pay the benefits of other employees or retirees who survive that insured. All insureds directly benefit in the aggregate from the coverage. And the collective group of insureds derive improved benefit security from the aggregate coverage. Satisfaction of the "benefit" requirement would in most instances satisfy the public policy underlying the insurable interest laws. This is often augmented by consent and notice requirements built into the policy design.

Mr. Coleman pointed out that California, Maryland, Virginia and Texas have specific laws recognizing group trust-owned life insurance to support employee benefits. He added that Prudential has its product approved in 47 states. Additional discussion ensued on COLI and trusts. Commissioner Yancey said employees need total disclosure. They must give consent and receive a copy of whatever is done on their behalf. Mr. Phillips agreed and said consent is now part of the California law.

Mr. Albus referred to a bill in Congress which is currently inactive that would require establishment of a trust and would require that the individual be made aware and be a participant in anything done in his behalf. The bill does not, however, require consent. Mr. Phillips said another issue is the employer's insurable interest in the employee. California code now says that the employer has an insurable interest in its employees and there is no limit on the amount of insurance. Mr. Coleman responded that in group contracts, the policy must benefit other than the employer and that is how insurable interest is translated into group COLI.

Commissioner Yancey summarized that the primary focus of working group activities should be on disclosure and employee consent. He said the advantages of a trust should be enumerated. Mr. Coleman said there are a number of different trusts, but Section 501(c)(9) trust has the most advantages. He reported that the American Council of Life Insurers has a group that has looked at the advantages of trusts. Commissioner Yancey asked the advisory committee to review existing laws governing group corporate-owned life insurance and prepare recommendations for working group consideration.

3. Living Benefits Companies

Mr. Phillips said the California code gives the basis for regulation of living benefits companies. He said the department is discussing the implementation procedure of that code requirement. Mr. Phillips offered to share his memo regarding the proper implementation of the California requirements with the working group. The California statute requires licensing of the organizations and requires a discount interest rate. Mr. Coleman said that the California provisions tie in with the Accelerated Benefit Model Regulation which has a discounted interest rate. Commissioner Yancey identified six companies which currently market living benefits products. Mr. Rogers expressed the opinion that in spite of the good service living benefits companies are providing, there is a potential for abuse. He would prefer a regulation requiring life insurance companies to make a mandated offer of accelerated benefits. Mr. Coleman expressed reservations about mandating companies into a market they do not currently write; Commissioner Yancey agreed. Mr. Rogers reiterated that he would prefer the mandated offer as an alternative to regulating living benefits companies. Commissioner Yancey responded that Mr. Rogers' proposal would be a long range solution. He said the working group needs to set guidelines for these companies because of the potential for abuse of consumers. Mr. Phillips said that the living benefits companies in California claim that their market is different from the traditional insurance companies. He said that these companies need to be more conservative and currently have the potential to lose a lot of money. If regulated properly, he said they would fill a niche that life insurance companies are not currently filling. He has asked the companies for data on the last 100 death claims, periods and discounts.

Commissioner Yancey asked Mr. Phillips to send a copy of his memo regarding implementation of the California code to the working group members for comment. The working group members should identify what regulatory concerns should be in a regulation and a conference call of the working group members will be scheduled before its December meeting. The advisory committee was asked to send its preliminary recommendations to the working group and to use the California statute as a starting point for a model, drawing from the Accelerated Benefit Regulation.

Having no further business, the Insurable Interest Working Group of the Life Insurance (A) Committee adjourned at 11 a.m.

ATTACHMENT THREE-C

Insurable Interest Working Group
of the Life Insurance (A) Committee
Pittsburgh, Pennsylvania
September 16, 1991

The Insurable Interest Working Group of the Life Insurance (A) Committee met in Kings Plaza of the Hilton Hotel in Pittsburgh, Pa., at 2:30 p.m. on Sept. 16, 1991. A quorum was present and Harold C. Yancey (Utah) chaired the meeting. The following working group members or their representatives were present: Steven T. Foster (Va.). Also present were Dick Rogers (Ill.) and Roger Strauss (Iowa).

1. Adopt Sept. 5 and July 16, 1991, Minutes

Upon motion duly made and seconded, the Sept. 5 and July 16, 1991, minutes of the Insurable Interest (A) Working Group were adopted (Attachments Three-C4 and Three-C5).

2. Review Advisory Committee Documents

Commissioner Harold Yancey (Utah) reviewed the purpose of the Insurable Interest (A) Working Group and introduced documents for working group and advisory committee review. Those documents included a state survey of the insurable interest of charities in life insurance policies conducted by the American Council of Life Insurance (ACLI) and annotated by the NAIC Legal Staff to include comments from state statutes (Attachment Three-C1); an Advisory Committee briefing paper on group corporate-owned life insurance (Attachment Three-C2); and an NAIC survey of state statutes pertaining to insurable interest in corporate-owned life insurance (COLI) (Attachment Three-C3). Commissioner Yancey commented that the working group had prepared a report on the status of its various projects for the Life Insurance (A) Committee.

George T. Coleman (Prudential), chair of the Advisory Committee, commented on the NAIC COLI survey, suggesting that to fully understand the implications of state statutes, a review of state caselaw would need to be made.

Mr. Coleman gave a progress report on the activities of the advisory committee. He said that the advisory committee had prepared a brief on group corporate-owned life insurance. The ACLI chronicled state laws bearing on gifts of life insurance to charities. He said that the NAIC had annotated the ACLI survey.

Mr. Coleman reported that the third charge to the advisory committee was to consider the question of the appropriate regulation of entities in the business of purchasing life insurance policies from the terminally ill for a discounted percentage of the death benefit payable. He expressed concern that such entities are, with a few exceptions, completely unregulated in their dealings with the terminally ill. Mr. Coleman said members of the advisory committee researched the laws of several states for precedence for regulation or these entities under the insurance codes. He reported they identified entities regulated under insurance codes whose roles are ancillary or supplementary to the insurance process, including automobile body shops, claims adjusters, premium finance companies, certain managed care entities, third-party administrators, and funeral directors. The advisory committee expressed that regulation of these entities provides ample precedence for the regulation of entities accelerating benefits. Mr. Coleman pointed out that two states to date have adopted regulations, New Mexico and California and said that regulation was in process in Michigan. The New Mexico statute originally provided regulation of these entities, but was subsequently modified as a disclosure requirement. The California regulation is much more rigorous and requires licensing, disclosure and forms filing. The California regulation has a provision allowing the commissioner to approve or disapprove the formula for determining the purchase price of the policy.

Mr. Coleman said the advisory committee recommends a review of the California regulation to determine the key elements for inclusion in an NAIC model regulation if that is the direction of the working group. He said those key elements might include: (1) recognition that these arrangements perform a useful social purpose; (2) that any regulation be narrowly defined so only those entities are regulated and any such regulation would not limit collateral assignments; (3) that to the extent possible this regulation should follow the format of the Accelerated Benefits Model Regulation; and (4) that the overall objective should be to protect the insurance policyholders from abusive and unconscionable discounts and other financial costs involved in the transaction.

Sheldon Summers (Calif.) commented that California is currently working on a regulation to accompany its law. He said living benefits companies service a different market than insurance companies with accelerated benefit provisions which often do not extend to persons with AIDS or who have tested HIV positive. Mr. Coleman responded that Prudential provides accelerated benefits to all in-force policies with no limitation on who can apply, but agreed that most policies do not include that provision. Commissioner Yancey asked NAIC staff to compile a list of living benefit companies.

Having no further business, the Insurable Interest Working Group of the Life Insurance (A) Committee adjourned at 3:10 p.m.

ATTACHMENT THREE-C1

NAIC STATE SURVEY INSURABLE INTEREST OF CHARITIES IN LIFE INSURANCE POLICIES

STATE	CITATION	CHARITIES INCLUDED AS INSURABLE INTEREST TO PURCHASE POLICY	COMMENTS
Alabama	§ 27-14-3	No	Insurable interest must exist at time contract made. Definition of insurable interest does not mention charities.
Alaska	§ 21.42.020	No	Insurable interest must exist at time contract made. Definition of insurable interest does not mention charities.

STATE	CITATION	CHARITIES INCLUDED AS INSURABLE INTEREST TO PURCHASE POLICY	COMMENTS
Arizona	§ 20-1104(4)	Yes	Insurable interest specifically includes charitable organization which joins with proposed insured in applying for a life insurance policy naming the charitable organization as owner and irrevocable beneficiary.
Arkansas	§ 23-79-103	No	Insurable interest must exist at time contract made. Definition of insurable interest does not mention charities.
California	§ 10110.1(f)	Yes	Irregardless of insurable interest requirement, a charitable organization may effectuate insurance with the consent of the insured.
Colorado	No Provision		No definition of or requirement for insurable interest.
Connecticut	§ 38a-450	Yes	Any life insurer may issue policies payable to educational, religious or charitable corporation irrespective of a financial interest in the life of the person insured.
Delaware	tit. 18 § 2705	Yes	Life insurance contracts are permitted where person paying consideration has no insurable interest if charitable, benevolent, educational or religious institution designated irrevocable beneficiary.
District of Columbia	§ 35-521	No	Insurable interest required.
Florida	§ 627.404(2) (Eff. 10/1/91)	Yes	Charitable organization may own or purchase life insurance on an insured who consents.
Georgia	§ 33-24-3(f)	Yes	Charitable organization has insurable interest in life of any donor.
Hawaii	§ 431:10-202	Yes	Charitable organization has insurable interest in life of proposed insured who joins with organization in applying for life insurance policy as owner and irrevocable beneficiary.
Idaho	§ 41-1805	Yes	Contracts may be entered into in which person paying consideration has no insurable interest where charitable, benevolent, educational or religious institution is designated irrevocably as the beneficiary.

STATE	CITATION	CHARITIES INCLUDED AS INSURABLE INTEREST TO PURCHASE POLICY	COMMENTS
Illinois	No Provision		No definition of or requirement for insurable interest. Pending HB1604 would provide for charitable interest.
Indiana	No Provision		No definition of or requirement for insurable interest.
Iowa	No Provision		No definition of or requirement for insurable interest.
Kansas	SB 115 (1991)	Yes	Charitable, benevolent, educational or religious institution deemed to have insurable interest in life of an individual who has signed application for policy where charity is irrevocable beneficiary.
Kentucky	§ 304-14.050	Yes	Person paying premium shall designate charitable, benevolent, educational or religious institution as irrevocable beneficiary. Application must also be signed by person insured.
Louisiana	§ 22:614.1	Yes	Permits charities to maintain an insurable interest in life insurance policy.
Maine	24-A § 2405	Yes	Person paying premium shall designate charitable, benevolent, educational or religious institution as irrevocable beneficiary. Application must also be signed by person insured.
Maryland	48A § 366	No	Requirement for insurable interest. Definition doesn't include charitable organizations.
Massachusetts	ch. 175 § 125	No	Requirement for insurable interest.
Michigan	§ 500.2207	No	No provision beyond interest of spouse and family.
Minnesota	No Provision		No definition of or requirement for insurable interest.
Mississippi	No Provision		No definition of or requirement for insurable interest.
Missouri	No Provision		No definition of or requirement for insurable interest.

STATE	CITATION	CHARITIES INCLUDED AS INSURABLE INTEREST TO PURCHASE POLICY	COMMENTS
Montana	HB 790 (1991)	Yes	Charitable institution has insurable interest if individual authorizes charity to purchase and coverage is purchased with contributions made by individual.
Nebraska	§ 44-704	No	Benefits must be payable to person with insurable interest.
Nevada	§ 687B.050	Yes	Person paying premiums may have no insurable interest if charitable, benevolent educational or religious institution is beneficiary.
New Hampshire	§ 408:2	No	Lawful beneficiary entitled to proceeds if has an insurable interest.
New Jersey	Sec. 178: 24-1	No	Benefits payable only to one with insurable interest. Applies to individual life, not group.
New Mexico	§ 59A-18-5	Yes	Contracts may be entered into when person paying premium has no insurable interest if charitable, benevolent, educational or religious institution is irrevocable beneficiary.
New York	N.Y. Ins. Law § 3205	No	Benefits must be payable to person who, at the time contract was made, had an insurable interest.
North Carolina	§ 58-58-86	Yes	Charitable organization purchasing or receiving insurance policy deemed to have an insurable interest.
North Dakota	§ 26.1-29-09.1	Yes	Charitable organization deemed to have insurable interest if insured individual has consented to the contract.
Ohio	§ 3911.09	No	Policy for sole benefit of spouse, children or other relatives dependent upon insured.
Oklahoma	36 § 3604	Yes	Contracts may be entered into where person paying premium has no insurable interest where charitable, benevolent, educational or religious institutions are beneficiaries.
Oregon	§ 743.030	Yes	Policy may be effected even though person paying consideration has no insurable interest in life of person insured if charitable, benevolent, educational or religious institution designated irrevocably as beneficiary.

STATE	CITATION	CHARITIES INCLUDED AS INSURABLE INTEREST TO PURCHASE POLICY	COMMENTS
Pennsylvania	40 K 512 (Purden) § 40-37-121 (NILS)	No	No person may insure the life of another unless he has an insurable interest.
Puerto Rico	T.26 § 1104	No	May not procure insurance contract on life of another unless beneficiary has an insurable interest.
Rhode Island	§ 27-4-27	No	No person may procure insurance on life of another without having an insurable interest.
South Carolina	No Provision		No definition of or requirement for insurable interest.
South Dakota	§ 58-10-3	No	Proceeds payable only to a person having an insurable interest.
Tennessee	No Provision		No definition of or requirement for insurable interest.
Texas	Art. 3.49 Art. 14.28	Yes	Charitable organization may be named beneficiary of any policy issued on life of any individual.
Utah	§ 31A-21-104(6)	Yes	Charitable organization may procure, by assignment or designation as beneficiary, interest in life insurance or life of donee.
Vermont	No Provision		No definition of or requirement for insurable interest.
Virginia	§ 38.2-301	No	Beneficiary shall be a person with an insurable interest.
Washington	§ 48.18.030	No	Benefits may be paid only to a person having an insurable interest.
West Virginia	§ 33-6-2	No	Benefits may be paid only to a person having an insurable interest.
Wisconsin	§ 631.07	Yes	Individual policy may be issued to a person other than the one whose life is at risk if he has given written consent to the issuance of the policy.
Wyoming	§ 26-15-103	Yes	Contracts may be entered into in which person paying consideration has no insurable interest in person insured if charitable, benevolent, educational or religious institution is irrevocable beneficiary.

Life Insurance Committee

ATTACHMENT THREE-C2

Advisory Committee Briefing Paper on Group COLI-TOLI

The Prudential Insurance Company of America
751 Broad Street
Newark, NJ 07102-3777
(201) 802-7181

August 28, 1991

The Honorable Harold C. Yancey, CPCU
Commissioner of Insurance
Utah Insurance Department
3110 State Office Building
Salt Lake City, UT 84114

Dear Commissioner Yancey:

Enclosed is the briefing paper prepared by the Advisory Committee to the NAIC Insurable Interest Working Group on the subject of group corporate-owned life insurance (COLI)/trust-owned life insurance (TOLI). We hope that it addresses your immediate needs. We look forward to seeing you in Pittsburgh.

Best Regards,
George T. Coleman
Vice President, Government Relations

Group Corporate-Owned Life Insurance

The NAIC Insurable Interest (A) Working Group has asked its Advisory Committee to brief it on the subject of group corporate-owned life insurance, the need, the industry response, insurable interest issues and other areas of appropriate regulatory concerns. The discussion which follows is directed solely at group insurance and references to individual contract forms are for illustrative purposes only. Comments on the issues addressed are not intended as comments on individual COLI contract forms.

History and Purpose - The uses of corporate-owned life insurance in business planning and deferred compensation arrangements are universally recognized and long established. Its use in the funding of post-retirement health benefits is a relatively new development.

A few years ago the Financial Accounting Standards Board (FASB) became concerned about the growing cost to business of providing health benefits to retirees. These are the health benefits paid retired employees before they qualify for Medicare at age 65, and additional coverage for the Medicare eligible. The cost of these benefits was growing at an alarming rate and few companies were setting aside funds to cover their future obligations. In order to recognize these looming future obligations, the FASB proposed an accounting standard.

The standard, which has now been promulgated, requires, beginning in 1993, that corporations accrue liabilities for anticipated post-retirement health benefits rather than just account for them on a pay as you go basis. This is a very expensive change. The estimate of the unfunded liabilities of U.S. corporations ranges from \$100 billion to \$500 billion. Further, money set aside for retiree health benefits is not afforded the same favorable tax treatment as pension funds (except in the case of union plans).

The negative impact to the bottom line caused by the FASB standard, and the unfavorable tax treatment of prefunding, could cause companies to discontinue, or substantially reduce, their coverage of retiree health costs. This is so because unlike pensions, corporations are under no compulsion to continue employee health plans (or fully fund terminated plans). While employee welfare plans (life, health, disability, etc.) must comply with Employee Retirement Income Security Act (ERISA) reporting and disclosure requirements, and fiduciary standards, they are not subject to ERISA's participants, vesting and funding standards.

Solutions - There are no simple solutions to the problems of funding the growing future liabilities of employers for retiree health plans. However, the insurance industry has developed an approach using life insurance which should help encourage employers to continue these plans.

One of the primary concerns of employers is that pre-funded retiree health benefits are not afforded the same favorable tax treatment as pension funds. corporate-owned life insurance and a variation of that theme called trust-owned life insurance provide a tax favored means to assist employers in funding these health care needs.

Corporate-owned life insurance on the lives of employees can be advantageously used to fund post-retirement health benefits. While the employer's premium contribution cannot be deducted from income, the life insurance policy values (inside buildup) develop without recognition of taxable gain and proceeds are received by the beneficiary tax free. The proceeds of insurance are then used to fund the retiree health benefits. This concept is particularly attractive to corporations

with large numbers of employees whose mortality is highly predictable and generate a more or less regular stream of proceeds to fund these benefits.

A variation of this theme with even greater attractiveness than COLI to many employers is trust-owned life insurance (TOLI). Typically the trust is one qualified under Internal Revenue Code 501(c)(9), also known as a Voluntary Employee Beneficiary Association (VEBA). Use of a VEBA trust allows a participating employer the additional benefit of a current tax deduction for monies paid to the trust. The law requires that assets in a VEBA trust be used exclusively for life, health or accident benefits provided employees. The trust pays the premium and is the beneficiary for insurance proceeds. Like COLI, insurance purchased by the TOLI VEBA trust increases in value without tax recognition of the gain. The trustee must use the proceeds for the employee benefits. If it does not, a 100% federal excise tax is imposed. The excise tax provides further assurance that the policy values and proceeds will be used exclusively for the benefit of the employees.

Insurable Interest Rules - Insurable interest laws evolved centuries ago because of concerns that life insurance contracts might encourage wagering and even murder. Consequently, most states have laws limiting the circumstances under which a person can purchase insurance on the life of another. While state laws differ, they generally prohibit the purchase of life insurance unless the purchaser has an "insurable interest" in the life of the person being insured.

An insurable interest generally exists only where there is a certain familial relationship or a substantial economic interest in the continued life of the insured. The insured obviously has a strong incentive to continue living and always has an insurable interest in his own life. This extends, of course, to family members and to employers and others who would incur a significant loss upon death of the individual. Unlike property insurance where insurable interest is a key element required for coverage throughout the life of the contract, insurable interest in life insurance is either satisfied or not at the time of application for coverage. Therefore, where the insured procures the individual insurance coverage, the insurable interest requirement is usually satisfied, no matter who is ultimately designated to be owner or beneficiary.

The insurable interest laws evolved primarily in the context of individual insurance. Some state laws, such as New Jersey's, specifically provide that insurable interest requirements applicable to individual insurance contracts do not apply to group life insurance contracts. Group statutes do however generally require that group life insurance purchased by an employee be maintained for the benefit of the insured employees. Some states, such as Georgia, Texas and Maryland, have specific provisions recognizing an employer's insurable interest in its employees' lives for the purpose of funding employee benefits.

The group insurance laws were drafted in the context of the more traditional roles of life and health insurance in employee benefit plans. Certain companies operating in the COLI market who have examined the issue believe that most states' group insurance laws will accommodate group COLI arrangements to fund retiree health benefits. However, there are some members of industry who disagree. It is the position of those who have used the group COLI approach that the requirement that group insurance issued to an employer be maintained for the benefit of employees and not the employer is satisfied by the underlying plan of employee benefits. While the coverage on any particular insured life does not inure directly to that person's benefit, the coverage on all the other employees does. The typical group COLI contract contains a provision restricting the employer's use of contract values and benefits to the provision of benefits under the employer's benefit plan.

Trust-owned life insurance arrangements using VEBA trusts qualified under Section 501(c)(9) of the Internal Revenue Code provide an even more definitive answer to insurable interest concerns. First of all, the group life insurance contract itself, as in the COLI arrangement, is drafted to conform with the general group insurance requirements that the contract be maintained for the benefit of the insured employees and not for the benefit of the employer. All amounts paid under the contract must be paid to the trust which by its terms and by virtue of federal law is maintained solely for the provision of benefits under the employer benefit plans maintained for employees, qualified dependents and beneficiaries. The plan must be one which provides medical, surgical, or hospital care, or benefits in the event of sickness, accident, disability, prepaid legal services, retirement income, or deferred income for employees for periods extending to the end of covered employment and beyond.

IRS concerns - Concern has been expressed about the implications for COLI of a recent IRS Private Letter ruling involving the gift of a life insurance policy to a charity. The IRS disallowed certain deductions involving the gift of a policy to a charity on the grounds that the charity didn't have an insurable interest under state law (New York) and might therefore never be entitled to the proceeds.

The IRS ruling was based on what knowledgeable observers believe to be a flawed interpretation of New York's unique insurance law provision regarding insurance procured by a charity. We understand that the New York Insurance Department has criticized the ruling. The ruling in no way involved an employer or a trust's insurable interest in life contacts under COLI or TOLI arrangements and there is just no basis for extending it to them. Furthermore, while there is no benefit to the insured in having a charity own insurance on his life, or on others similarly situated, there is substantial benefit to the insured in a group COLI-TOLI arrangement since coverage is part of a larger plan of insurance providing employee benefits to him as well as all other retired employees.

Key features in group COLI-TOLI arrangements that reduce if not entirely eliminate the possibility of an IRS challenge are:

1. That the contract in toto benefits all the employees.
2. The contract will typically have been approved by the insurance department in each state.
3. The contract itself will contain restrictions as aforementioned in the COLI discussion.
4. If a VEBA trust is used, there will be further assurance, enforced by laws governing fiduciaries and by the federal government's excise tax penalties, that the policy benefits will inure to the benefit of employees.

Regulatory Concerns - A few states have felt it necessary or desirable to do one or more of the following:

1. Pass laws specifically addressing the insurable interest of employers in COLI (TOLI) arrangements.
2. Set requirements for participation of insured employees in the underlying employee benefit plan.
3. Establish requirements for consent by and disclosure to covered employees.

Congressional Developments - Bills pending in Congress for the last two years and supported by the insurance industry would address certain perceived abuses in COLI arrangements providing employee benefits. However, they in no way threaten legitimate COLI-TOLI arrangements nor the favorable tax treatment they enjoy. The current legislation sponsored by Congresswoman Kennelly would:

1. Prohibit abuses in the use of highly leveraged COLI plans to generate excessively high policy loan interest deductions. This is accomplished by limiting the policy loan interest deduction to a percentage reflecting the true market cost of money and by requiring payment of at least 75% of the full premium in four of the first seven years without the use of dividends or policy withdrawals.
2. Require everyone whose life is insured under the COLI plan be made aware of the arrangement and be a participant in the plan eligible for benefits. (This later requirement is really no more than what a fair reading of the state insurable laws would require.)

The majority of this Advisory Committee believes that group COLI-TOLI arrangements can be structured to meet the current insurable interest requirements of virtually all states. Where changes are needed, the industry would be happy to assist in developing necessary legislation and assisting with its passage.

ATTACHMENT THREE-C3

STATE STATUTES PERTAINING TO INSURABLE INTEREST IN CORPORATE-OWNED LIFE INSURANCE (COLI)

STATE	CITATION	EMPLOYERS HAVE INSURABLE INTEREST TO PURCHASE POLICY?	COMMENTS
Alabama	§ 27-14-3	No	Insurable interest must exist at time contract made. Definition of insurable interest does not mention employers.
Alaska	§ 21.42.020	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
Arizona	§ 20-1104	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
Arkansas	§ 23-79-103(4)	Yes	Publicly owned corporation has insurable interest in the lives of its directors, officers, employees.
California	§ 10110.1(c)	Yes	Insurable interest specifically includes an employer which effectuates insurance on employees, directors, officers, shareholders and retirees with the consent of the insured.
Colorado	No Provision		No definition of or requirement for insurable interest in the statutes.
Connecticut	No provision		No definition of or requirement for insurable interest in the statutes.

STATE	CITATION	EMPLOYERS HAVE INSURABLE INTEREST TO PURCHASE POLICY?	COMMENTS
Delaware	tit. 18 § 2704	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
District of Columbia	§ 35-521	No	Insurable interest required. Definition of insurable interest does not mention employers.
Florida	§ 627.404	No	Insurable interest must exist at time contract made. Definition of insurable interest does not mention employers.
Georgia	§ 33-24-3(c)	Yes	Corporation has insurable interest in employees.
Hawaii	§ 431:10-202	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
Idaho	§ 41-1804	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
Illinois	No Provision		No definition of or requirement for insurable interest in the statutes.
Indiana	No Provision		No definition of or requirement for insurable interest in the statutes.
Iowa	No Provision		No definition of or requirement for insurable interest in the statutes.
Kansas	No provision		No definition of or requirement for insurable interest in the statutes.
Kentucky	§ 806 KAR 14:040	Yes	Employer has insurable interest if cessation of employee's employment will result in a substantial pecuniary loss to the employer.
Louisiana	§ 22:613	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
Maine	24-A § 2404(D)	Yes	Corporation has insurable interest in lives of employees.

STATE	CITATION	EMPLOYERS HAVE INSURABLE INTEREST TO PURCHASE POLICY?	COMMENTS
Maryland	48A § 366(2)	Yes	Requirement for insurable interest. With insured's consent, employer has insurable interest.
Massachusetts	ch. 175 § 125	No	Insurable interest must exist at time contract made. Definition of insurable interest does not mention employers.
Michigan	§ 500.2210	Yes	If employee consents, employer may have insurable interest in employee.
Minnesota	No Provision		No definition of or requirement for insurable interest in the statutes.
Mississippi	No Provision		No definition of or requirement for insurable interest in the statutes.
Missouri	No Provision		No definition of or requirement for insurable interest in the statutes.
Montana	§ 33-15-201	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
Nebraska	§ 44-373	Yes	Corporation may have an insurable interest in its employees.
Nevada	§ 687B.040	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
New Hampshire	§ 408:2	No	Lawful beneficiary entitled to proceeds if has an insurable interest. Does not mention employers or define insurable interest.
New Jersey	Sec. 178:24-1	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
New Mexico	§ 59A-18-4	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
New York	N.Y. Ins. Law § 3205	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.

STATE	CITATION	EMPLOYERS HAVE INSURABLE INTEREST TO PURCHASE POLICY?	COMMENTS
North Carolina	§ 58-58-75	Yes	An employer has an insurable interest in and the right to insure the physical ability and/or the life of an employee for the benefit of the employer.
North Dakota	§ 26.1-29-09.1	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
Ohio	§ 3911.09	No	Policy for sole benefit of spouse, children or other relatives dependent upon insured. Does not mention employers.
Oklahoma	36 § 3604	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
Oregon	§ 743.024	No	Policy may only be procured by person with insurable interest. Does not mention employers.
Pennsylvania	40 § 512 (Purden) § 40-37-121 (NILS)	Yes	Corporations may insure the lives of employees without the signing of a personal application.
Puerto Rico	T.26 § 1104	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
Rhode Island	§ 27-4-27(3)	Yes	Corporation which is beneficiary under an insurance contract shall have an insurable interest in its employee.
South Carolina	No Provision		No definition of or requirement for insurable interest in the statutes.
South Dakota	§ 58-10-3	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
Tennessee	No Provision		No definition of or requirement for insurable interest in the statutes.
Texas	Art. 3.49	Yes	Corporation may be named beneficiary on the life of any officer or stockholder.

STATE	CITATION	EMPLOYERS HAVE INSURABLE INTEREST TO PURCHASE POLICY?	COMMENTS
Utah	§ 31A-21-104	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
Vermont	No Provision		No definition of or requirement for insurable interest in the statutes.
Virginia	§ 38.2-301(3)	Yes	Corporation is beneficiary under an insurance contract and has an insurable interest in its employees.
Washington	§ 48.18.030	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
West Virginia	§ 33-6-2	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.
Wisconsin	§ 631.07	Yes	Individual policy may be issued to a person other than the one whose life is at risk if he has given written consent to the issuance of the policy. Does not specifically mention employers.
Wyoming	§ 26-15-102	Yes	Insurable interest includes any person having a lawful and substantial economic interest in having the life of an individual insured.

ATTACHMENT THREE-C4

Insurable Interest Working Group
of the Life Insurance (A) Committee
Telephone Conference Call
September 5, 1991

The Insurable Interest Working Group of the Life Insurance (A) Committee held a telephone conference call on Sept. 5, 1991, at noon CDT. Harold C. Yancey (Utah) chaired the meeting. The following working group members participated: David Parsons (Ala.); Lloyd Rice (Ill.); and Bob Wright (Va.). Also participating was Judy Lee (NAIC/SSO).

1. Charitable Organizations

Commissioner Harold C. Yancey (Utah) stated that the purpose of the conference call was to prepare a status report for the Life Insurance (A) Committee on insurable interest concerns as they pertain to *charitable organizations*, corporate-owned life insurance/trust-owned life insurance, and living benefits companies. He referred members to the State Legislative Survey of Insurable Interest in Charities prepared by the American Council of Life Insurance (ACLI) and commented that the NAIC would be expanding the survey to include brief comments from each state statute. He suggested that the NAIC/ACLI survey be attached as background material to the status report prepared for the Life Insurance (A) Committee.

Bob Wright (Va.) commented that Virginia has recently received a legislative proposal that would change Virginia's statute to permit charitable organizations to have an insurable interest under a life insurance policy. He said the department would support that change, provided safeguards are included in the law. David Parsons (Ala.) said legislation was introduced in

Alabama to permit an insurable interest for charities; however, the legislation did not pass. Lloyd Rice (Ill.) reminded the group that the Illinois law requiring the state attorney general to decide on an individual basis if a charity had an insurable interest had proved unworkable.

After considerable discussion, the working group members decided to recommend that a "policy statement" be developed to address insurable interest concerns for charitable organizations. NAIC staff was directed to research the force and effect of a policy statement and how the statement might appropriately be incorporated into the NAIC model law structure.

2. Corporate-Owned Life Insurance (COLI)/Trust-Owned Life Insurance (TOLI)

Mr. Rice commented that the briefing paper prepared by the Insurable Interest Advisory Committee provided good background on corporate-owned life insurance/trust-owned life insurance, the need, the industry response, insurable interest issues and other areas of concern. He said these issues appear to lend themselves to development of a model regulation. Commissioner Yancey suggested that the advisory committee paper be attached as background material to the status report for the Life Insurance (A) Committee. After considerable discussion, the working group decided to recommend that the background paper be circulated to all NAIC members. They will be requested to respond within 30 days on whether their present state statutes accommodate this concept and what regulatory concerns they believe need to be addressed in a model regulation.

3. Living Benefits Companies

Commissioner Yancey suggested that the working group continue to explore the appropriate regulatory response, if any, to living benefits companies. Mr. Rice suggested that a copy of the California statute which requires regulation of living benefits contracts be attached to the status report to the Life Insurance (A) Committee.

Having no further business, the Insurable Interest (A) Working Group adjourned at 12:30 p.m.

ATTACHMENT THREE-C5

Insurable Interest Working Group
of the Life Insurance (A) Committee
Chicago, Illinois
July 16, 1991

The Insurable Interest Working Group of the Life Insurance (A) Committee met in the Trocadero Room of the Hotel Sofitel in Chicago, Ill. at 8:30 a.m. on July 16, 1991. A quorum was present and Harold C. Yancey (Utah) chaired the meeting. The following working group members were present: David Parsons (Ala.); Lloyd Rice (Ill.); and Bob Wright (Va.). Also participating was Judy Lee (NAIC/SSO).

1. Charitable Organizations

Commissioner Harold C. Yancey (Utah) and Lloyd Rice (Ill.) discussed a recent Internal Revenue Service (IRS) Private Letter Ruling (No. 9110016, Nov. 30, 1990) which has taken a narrow position concerning the interpretation of state insurable interest laws. The IRS has interpreted 3205(B) of the New York Insurance Law to hold that charities may not benefit from gifts of life insurance because they lack an "insurable interest" in the life of the donor.

Mr. Lloyd Rice (Ill.) reported that proposed Illinois legislation puts the onus on the Illinois attorney general to determine if a charity is organized under Section 501(c)(3) of the Internal Revenue Code as a charitable institution. While many states feel that public policy does not permit a charitable organization to have an insurable interest in the life of a donor, 14 states expressly permit charities to have such insurable interest (Arizona, Connecticut, Delaware, Hawaii, Idaho, Kentucky, Maine, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Texas and Wyoming). George T. Coleman (The Prudential) said New York law prohibits charitable organizations from procuring policies due to a lack of insurable interest.

Commissioner Yancey commented that the Utah Legislature passed a bill last year that allows charitable organizations to use life insurance as a funding vehicle. He said the insurance department testified to get market conduct provisions into the bill. The Utah law defines insurable interest and clarifies the IRS Code that donations through charitable organizations are protected by the organization's insurable interest in the donor. Commissioner Yancey added that the Utah law does not address the situation where charities are purchasing the policy and paying the premiums. Mr. Coleman stated that there is no problem when the insured applies for a policy and designates a charitable organization as the policy beneficiary. The problem arises when the organization applies for the insurance on the life of an individual. He further stated that if an insured consents to the policy, he thought the insurer would have no right to question the payment of the proceeds.

Bob Wright (Va.) commented that Virginia's legislation would permit corporations to have an insurable interest, but is silent as to charitable organizations. He agreed that there is a problem with charitable organizations procuring policies on the life of an individual.

Jack H. Blaine (LeBoeuf, Lamb, Leiby & MacRae) commented that the question of insurable interest arises only at the time of purchase and policy assignment would not raise this issue. Mike Bartholomew (American Council of Life Insurance) said

that a change in policy ownership can also raise the insurable interest question. Commissioner Yancey commented that there is a legitimate purpose in designating policy proceeds to a charitable organization and there should be a mechanism available to accomplish that. Mr. Rice agreed, but cautioned that regulatory safeguards were needed. Commissioner Yancey suggested that the working group come up with a guideline on the appropriate regulatory safeguards.

Commissioner Yancey asked Mr. Bartholomew to prepare a legal analysis of state laws on insurable interest prior to the September NAIC meeting in Pittsburgh, Pa. Commissioner Yancey directed NAIC staff to determine if the New York Insurance Department had responded to the IRS regarding the Private Letter Ruling.

2. Corporate-Owned Life Insurance

Mr. Coleman commented on the use of corporate-owned life insurance (COLI) to provide a tax-favored vehicle for the corporate market to accrue monies to pay post-retirement employee benefits. The Financial Accounting Standards Board has promulgated an accounting standard that will require corporations beginning in 1993 to accrue liabilities for anticipated post-retirement health benefits. These are the health benefits paid to retired employees before they qualify for Medicare and supplemental coverage for those retirees eligible for Medicare. Mr. Coleman said that, until now, most companies have funded these benefits on a pay-as-you-go basis and the estimate of the aggregate unfunded liabilities of U.S. corporations ranges from \$100 billion-500 billion. The change in the accounting standard is especially significant since money set aside for retiree health benefits is not afforded the same favorable tax treatment as pension funds and could cause companies to discontinue or substantially reduce their coverage of such health expenses. He said COLI provides a way for employers to accrue the necessary funding and to receive the pension funds.

The funds the organization pays in are sheltered in a Voluntary Employee Benefit Association (VEBA) 501(c)(9) Trust. Ownership of the policy is in the trust, not the corporation, and inside buildup and proceeds are sheltered. Mr. Coleman said the laws of all but a handful of states can accommodate these arrangements.

Mr. Rice said the flaw in the plan is language in the Internal Revenue Code section that says "the policy benefits shall be for other than the employer." Mr. Coleman responded that group life insurance statutes require that insurance be for the benefit of the employee. He added that Prudential has its policy approved in forty (40) jurisdictions. The VEBA Trust precludes use of the funds by the employer except for the benefit of the employees. If no trust is established, the funds are not sheltered and taxes must be paid on the premiums. Mr. Coleman said policy proceeds do not inure to the benefit of the beneficiary, but go directly for the benefit of other employees. Bob MacDonald (Fidelity Investments) said typically the corporate-owned policies are insuring everyone in the corporation and the VEBA Trust is usually used for funding the post-retirement benefits. Mr. Rice responded that the group statutes never contemplated the use of a funding vehicle. Mr. Bartholomew noted that if state law does not recognize a corporate insurable interest in its employees, then the tax advantage would not apply. Mr. Wright said the Virginia statute was changed three years ago and now gives corporations an insurable interest providing they comply with the requirements spelled out in the law. Mr. Bartholomew said that in states that require that the benefit be for other than the employer, there is a need in those jurisdictions for a change in group statutes to allow these types of transactions.

Mr. Coleman said that a background paper on trust-owned life insurance (TOLI) had been prepared for the Product Development (A) Task Force in May 1990 and asked that copies of it be distributed to working group members.

Mr. Coleman expressed the hope that the working group would conclude that this type of vehicle is appropriate and would give that guidance to the states. Commissioner Yancey reiterated that he did not have a problem with the concept of a funding vehicle used to protect the future benefits of employees. His reservation concerns the corporation purchasing coverage in the employee's name. He expressed concern that the Internal Revenue Service would not conclude that corporations have an insurable interest and the issue would need to be readdressed.

Commissioner Yancey suggested that the working group compile a package of materials describing the corporate-owned life insurance concept, the VEBA Trust, a survey of how the various states define insurable interest in their insurance codes, and an issues paper for the Life Insurance (A) Committee's consideration in September. He requested that the advisory committee prepare a brief on insurable interest, a response to the regulatory concerns addressed in this meeting and forward it to NAIC staff by Aug. 15. Commissioner Yancey said he would work with NAIC staff to prepare the issues paper and the background documents for presentation to the Life Insurance (A) Committee in September.

In discussing whether current tax legislation threatened COLI arrangements, Mr. Coleman said the legislation introduced in Congress last year and again this year would prohibit certain potential abuses in the use of highly leveraged COLI plans to garner inappropriate benefits from the policy loan interest deduction. It does this by limiting such interest deductions to a percentage reflecting the market cost of money. He said the congressional legislation also requires that anyone whose life is insured be made aware of the arrangement and be a participant in the plan eligible for benefit therefrom. He said this is no more than would be required by the vast majority of insurable interest laws.

3. Living Benefits Companies

Mr. Rice discussed companies that offer to buy insurance policies from terminally ill policyholders for some percentage of the policy face amount, usually 60-75%. These companies are usually billed as "living benefits" services and the funds received from these companies can be used for any purpose. He referred to subsection 59a-20-34, Assignment of Death Benefits, of the New Mexico Insurance Code which defines a living benefit contract as "an agreement entered into between a person owning a life insurance policy upon the life of a terminally ill person and another person by which the policyowner receives

compensation or anything of value less than the death benefits of the insurance policy in return for an assignment, transfer, sale, devise or bequest of the death benefits or ownership of the insurance policy...." Also required is "a duly witnessed written document in which the terminally ill person consents to the living benefits contract, acknowledges the terminal illness, represents that he has a full and complete understanding of the living benefits contract and the benefits of his life insurance policy, releases his medical records and acknowledges that he has entered into the contract freely and voluntarily."

Mr. Rice said that the regulatory concern is that the accelerated benefit option in life insurance policies or riders to insurance policies is preferable to the payment a terminally ill person would receive from a living benefits company. He said the California Insurance Code 10113.2 (1991) requires any person entering into or soliciting living benefits contracts to be licensed by the insurance commissioner. Commissioner Yancey questioned whether that requirement would be right for all jurisdictions. Mr. Rice said there is no gain to the company purchasing the policy since the tax-free death benefit would then be taxable back to the entity that made the purchase since this is a transfer for value and loses the tax advantage.

Commissioner Yancey questioned whether trade association members have a corporate responsibility in this situation. Mr. Coleman commented that insurers are concerned about living benefits companies escaping the regulatory requirement that these payments be at an established interest rate and would like to see these companies subject to the requirements of the Accelerated Benefit Regulation, i.e., subject to the definitions and interest rate calculations. Mr. Bartholomew discussed the positive social message conveyed to the AIDS community by these companies.

Commissioner Yancey commented that the problem seems to be a lack of consumer understanding regarding the options. He said further investigation of this matter might lead to model disclosure language, including a requirement for licensure and a disclosure form for consumers.

Mr. Coleman reminded the working group that the Accelerated Benefit Regulation requires disclosure that receipt of these benefits may be taxable. He said there are currently two bills in Congress dealing with the tax consequences of receipt of these benefits. Commissioner Yancey said he thought input from the California Department on its code requirements would be valuable. Commissioner Yancey asked that the advisory committee look at the appropriateness of insurance regulation for "living benefits services" and their inclusion under insurance codes. He indicated the report should be forwarded to NAIC staff prior to the September meeting, if possible.

Having no further business, the Insurable Interest (A) Working Group adjourned at 11:20 a.m.

ATTACHMENT FOUR

Life Insurance (A) Committee Pittsburgh, Pennsylvania September 17, 1991

The Life Insurance (A) Committee met in Ballrooms 3 & 4 of the Hilton Hotel in Pittsburgh, Pa., at 1 p.m. on Sept. 17, 1991. A quorum was present and Harold C. Yancey (Utah) chaired the meeting. The following committee members or their representatives were present: David J. Lyons, Vice Chair (Iowa); John Garamendi (Calif.); Harold T. Duryee (Ohio); Gary Weeks (Ore.); Philip W. Barnes (Texas); and Steven T. Foster (Va.).

1. Report of Senior Marketing Working Group

Sheldon Summers (Calif.) reported that during the open session of the Senior Marketing (A) Working Group, reports were heard from industry and advisory committee members regarding the suitability of small face amount life insurance policies. In Executive Session, the working group discussed the California notice to insurers writing small face amount policies to file Financial Review of This Policy disclosure forms on an informational basis. The working group concurred that no amended notice would be distributed by California to address loopholes in the original. Mr. Summers said that based on information received from industry to date, the working group had decided to draft an amendment to the Life Insurance Disclosure Model Regulation to require distribution of the disclosure form at point of solicitation rather than at point of policy issuance.

Mr. Summers reported that the working group had appointed Glenn Joppa (Union Fidelity Life Insurance Company) to chair an advisory committee to provide input on the proposed amendment to the Life Insurance Disclosure Model Regulation. He said that the working group and advisory committee would hold a joint meeting in Washington, D.C., in late October for further discussions on the proposed amendments.

2. Report of Annuities Working Group

Roger Strauss (Iowa) reported that the Annuities (A) Working Group had initially drafted a Two-Tier Annuity Disclosure Model Regulation and disclosure form in June 1991 which was provided to the advisory committee for comment. At its Pittsburgh meeting, the working group considered amendments from the advisory committee. Mr. Strauss said the regulation and disclosure form would be amended and exposed to the advisory committee for comment at the next joint meeting in Washington, D.C., on Nov. 1, 1991. Mr. Strauss stressed that the working group planned to adopt the model regulation and disclosure form during the NAIC December Winter National Meeting in Houston. Commissioner David Lyons (Iowa) thanked the advisory committee for their helpful insights.

3. Report of the Insurable Interest Working Group

Commissioner Yancey reminded the committee that the Insurable Interest (A) Working Group is considering insurable interest issues for charitable organizations, corporate-owned life insurance and living benefit companies. A status report was prepared for the Life Insurance (A) Committee and distributed prior to the Pittsburgh meeting.

Commissioner Yancey said the American Council of Life Insurance (ACLI) had prepared a review of state statutes pertaining to insurable interest for charitable organizations which had been annotated by the NAIC. The working group is recommending preparation of a policy statement on regulatory considerations. The working group and advisory committee are developing a list of issues in the corporate-owned life insurance area that need regulatory attention. This list will be sent to all NAIC members to ask for their consideration of concerns that are prevalent in their state and should be addressed in a model.

Commissioner Yancey clarified that living benefit companies are companies that purchase life insurance policies for a certain percentage of the face amount from the terminally ill. He said these funds are used by the policyholder for a variety of purposes. He reported that the advisory committee had determined that these entities are regulated in New Mexico and California. He said the California laws are more rigorous, requiring licensing, disclosure, and forms filing. At its next meeting, the working group will continue to explore the appropriate regulatory response to living benefit companies and may invite representatives of these companies to its meeting.

Upon motion duly made and seconded, the committee directed the Insurable Interest (A) Working Group to proceed with its work as outlined in the remarks made by Commissioner Yancey.

George T. Coleman (Prudential), chair of the Insurable Interest Advisory Committee, pointed out to the committee that reviewing state statutes does not address the entire issue of insurable interest for corporate-owned life insurance and suggested a review of caselaw would be appropriate.

Having no further business, the Life Insurance (A) Committee adjourned at 1:15 p.m.