

LIFE INSURANCE (A) COMMITTEE

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Dwight K. Bartlett III, Chair—Md.
Kerry Barnett, Vice Chair—Ore.

CONTENTS

Life Insurance Committee June 7, 1995, Minutes	531
Genetic Testing Working Group June 4, 1995, Minutes (Attachment One)	533
Viatical Settlements Working Group June 5, 1995, Minutes (Attachment Two)	534
Vermont Considerations for Regulation of Viatical Settlements (Attachment Two-A)	536
Life Disclosure Working Group Report (Attachment Three)	536
Life Insurance Sales Illustrations Model Regulation Draft (Attachment Three-A)	540
Memorandum Regarding an Annuity Charge (Attachment Four)	547
State Adoptions of Annuity Models (Attachment Four-A)	549

MINUTES

The Life Insurance (A) Committee met in St. Louis E of the Adam's Mark Hotel in St. Louis, Mo., at 1 p.m. on June 7, 1995. A quorum was present and Mary Alice Bjork (Ore.) chaired the meeting for Commissioner Kerry Barnett, Vice Chair (Ore.). The following committee members or their representatives were present: Terri Vaughan (Iowa); James H. Brown (La.); Dwight Bartlett (Md.); Christopher P. Krahling (N.M.); Elton Bomer (Texas); and Robert E. Wilcox (Utah).

1. Report of the Genetic Testing Working Group

Commissioner Robert E. Wilcox (Utah) reported for Dixon Larkin (Utah), the chair of the Genetic Testing Working Group. Commissioner Wilcox said that the working group is receiving comments and is ready to begin to take the information provided and flesh out the outline that had been developed at the spring National Meeting. He said the working group members plan to choose particular sections to draft and then to hold an interim meeting to discuss the combined draft. Upon motion duly made and seconded, the report of the Genetic Testing Working Group was received (Attachment One).

2. Report of the Viatical Settlements Working Group

Mary Alice Bjork (Ore.) reported for Commissioner Glenn Pomeroy (N.D.). Ms. Bjork said that the main thrust of the meeting was to hear from states that had adopted the NAIC's model on viatical settlements or had other regulatory authority for regulating viatical settlement companies. She said the working group was encouraged that more states were beginning to regulate viaticals. Upon motion duly made and seconded, the report of the Viatical Settlements Working Group was received (Attachment Two).

3. Report of the Life Disclosure Working Group

Commissioner Wilcox reported that the working group met four times since the spring National Meeting, most recently at a hearing June 3 and a meeting June 5. He said the working group produced a draft of the Life Insurance Sales Illustration Model Regulation that it thinks is in final form, but delayed adoption pending the results of final testing. The working group expects to bring back a document that is essentially the draft attached to its report except for a couple of open items. The working group still needs to consider persistency bonuses and term insurance more fully and expects to present a draft for the A Committee to adopt in September. He said included in the regulation is a Jan. 1, 1997, effective date, which will give the industry time to implement its computer software development. He said many companies are interested in getting started now so that an illustration standard could be in place before 1997. He said as soon as the working group completes the last items, it intends to begin work on variable life insurance.

Jerry Fickes (N.M.) asked if the working group would be able to review the results of testing begin performed. Commissioner Wilcox said the testing was being submitted to the Actuarial Standards Board (ASB) but that persistency bonus testing was outside of the scope of the ASB Standard of Practice, and only the working group would review it. He said the tests would be submitted in a form that allowed the protection of the confidentiality of companies submitting the material. He emphasized that he was not asking the A Committee to do anything more than to receive a report at this time. Mr. Fickes thanked Commissioner Wilcox for the way the report was brought to the Life Insurance Committee. He said this working group was probably one of the most important at the NAIC and was developing an effective way to protect consumers. Commissioner Wilcox said he thought it was important to recognize that some of the working group members would like to go further, but they were willing to compromise to have something to bring forward now. He said the industry is willing to support the working group's efforts even though it would significantly change the way companies do business.

Ted Becker (Texas) expressed concerns about the model and asked that one change be made to the minutes of the Life Disclosure Working Group. He asked that a sentence in the middle of the large paragraph under Section 4: Definitions be deleted. He said the sentence: "This is not a tontine effect because the amount credited to the individual has been withheld from his or her own policy, and does not depend on others lapsing their policies" did not represent the opinion of all of the working group. Upon motion duly made and seconded, the report of the Life Disclosure Working Group was received with the change suggested by Mr. Becker (Attachment Three).

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

Frank Dino (Colo.) reported that the Life and Health Actuarial Task Force is recommending exposure of a question and answer document that would assist states, industry and other interested parties with the interpretation of the provisions of the Life and Health Reinsurance Agreements Model Regulation. He said the task force continued its work on the life nonforfeiture law and is looking at a conceptual framework with the assistance of the Society of Actuaries and the American Academy of Actuaries. He explained that the current direction was to place a greater reliance on the actuary, in a manner similar to that being suggested by the Life Disclosure Working Group in its illustrations regulation.

Commissioner Wilcox asked if Mr. Dino would like to comment on the question and answer document in light of the discussion at the Financial Regulation Standards and Accreditation (EX6) Subcommittee held earlier in the week. Mr. Dino said the Financial Regulations Standards and Accreditation Subcommittee is concerned that if the question and answer document is attached to a regulation that was part of an accreditation standard, it might be viewed as a change to the accreditation standards. Mr. Dino said his own opinion was that it did not change the accreditation standards. He said once the Life Insurance (A) Committee had adopted the question and answer document, the Financial Regulations Standards and Accreditation (EX6) Subcommittee would consider whether this changed the accreditation standards.

Mr. Dino requested that the Life Insurance (A) Committee return to the Life and Health Actuarial Task Force the Standard Nonforfeiture Law for Deferred Annuities that had been submitted to the Life Insurance (A) Committee in December. Mr. Dino said the Actuarial Task Force had identified more changes that should be made to the model and those were included as an attachment to the task force minutes.

Upon motion duly made and seconded, the report of the Life and Health Actuarial (Technical) Task Force was received. Upon motion duly made and seconded, the recommendation to send the annuity nonforfeiture law back to the Life and Health Actuarial Task Force was adopted.

5. Consider Whether to Ask for a Charge Relative to Banks and Annuities

Mr. Fickes said that he had suggested at the spring National Meeting that a small group be appointed to consider whether it is appropriate to ask for a charge relative to banks and annuities. Mr. Fickes

said he had been authorized to get together with several other regulators to make a recommendation to the A Committee (Attachment Four). The group consisting of Ms. Bjork, Roger Strauss (Iowa), Dr. Larkin, Caroline Scott (Texas) and Mr. Fickes met to consider this issue. Mr. Fickes said the group talked about annuities being a "stepchild" that did not receive an appropriate amount of regulatory attention. He drew the group's attention to a chart he had prepared showing the state adoptions of the NAIC's models on the subject of annuities. He noted that adoption by the states was not very complete except for valuation and nonforfeiture laws. Mr. Fickes said the recommendation is to request formal appointment of an ad hoc working group to meet in open session at the fall National Meeting to determine whether it was appropriate to request the appointment of a task force on annuities under the auspices of the Life Insurance (A) Committee. He said it was not the intent to replace groups that are working on annuities, but to coordinate the efforts and to make sure the work was being completed. He said the sole purpose of this ad hoc working group would be to draw up charges.

Commissioner Wilcox pointed out that it was important that any changes made to annuity laws should be coordinated with the rules on life insurance. He emphasized that it was important to be consistent so that the marketplace was not tilted one direction or another. He agreed that the issues which the ad hoc group was being formed to explore are very important. Commissioner Wilcox reminded Mr. Fickes that it was necessary to prepare an impact statement of the effect on the NAIC of any possible proposal, and he suggested exploring the potential cost of carrying out the charge at the same time as the working group discussed other issues.

Upon motion duly made and seconded, the Life Insurance (A) Committee adopted the recommendation to appoint an ad hoc working group. Ms. Bjork appointed the following members to meet in public session in Philadelphia and report to the Life Insurance (A) Committee: Tom Foley (Fla.), Mr. Strauss, Mr. Fickes, Ms. Bjork, Ms. Scott and Dr. Larkin.

Having no further business, the Life Insurance (A) Committee adjourned at 1:35 p.m.

Dwight K. Bartlett, Chair, Md.; Kerry Barnett, Vice Chair, Ore.; Terri Vaughan, Iowa; James H. Brown, La.; Drew Karpinski, N.J.; Chris P. Krahling, N.M.; Jim Long, N.C.; Elton Bomer, Texas; Robert E. Wilcox, Utah

ATTACHMENT ONE

Genetic Testing Working Group of the Life Insurance (A) Committee St. Louis, Missouri June 4, 1995

The Genetic Testing Working Group of the Life Insurance (A) Committee met in Promenade F of the Adam's Mark Hotel in St. Louis, Mo., at 11 a.m. on June 4, 1995. Dixon Larkin (Utah) chaired the meeting. The following working group members or their representatives were present: Don Koch (Alaska); Tom Foley (Fla.); Richard Rogers (Ill.); Robert G. Lange (Neb.); Kip May (Ohio); Mary Alice Bjork (Ore.); Birny Birnbaum (Texas); and Kathleen Connor (Wash.).

Dixon Larkin (Utah) said the working group had received comments from the American Council of Life Insurance (ACLI) and the Health Insurance Association of America (HIAA), and if anyone was interested in receiving a copy of the comments they could call these organizations. Dr. Larkin said the American Academy of Actuaries had recently sponsored a meeting of experts in the field to gather information about genetic testing and had invited regulators to attend. Jean Rosales (American Academy of Actuaries) said a transcript of the meeting would be available within two weeks. She said the meeting had lasted approximately five hours so the transcript was a substantial document.

Birny Birnbaum (Texas) suggested that it was time to take the information provided and flesh out the outline that had been developed at the spring National Meeting. He suggested this could be issued for comments and forwarded to the parent committee at the winter National Meeting. Kenney Shipley (Fla.) said after the working group members had had an opportunity to review the Academy's transcript, she thought a face-to-face meeting of the working group was necessary and suggested an interim meeting. Dr. Larkin said that many of the members would be involved in a mid-July meeting on individual health care reform and suggested that the two meetings be held in conjunction.

Kathleen Connor (Wash.) said that guidelines had recently been released by the Equal Employment Opportunity Commission (EEOC) about requirements for employer-provided insurance under the Americans With Disabilities Act and she offered to share that material with the working group.

Mr. Birnbaum said that one of things he had learned at the Academy's presentation was just how difficult it is to come up with a definition of genetic testing. He suggested that the working group concentrate on a description that might be more useful. Don Koch (Alaska) agreed that this was an appropriate suggestion. He said the working group had already realized that if genetic testing is defined one way, the concerns were different than if the definition was phrased differently. Mr. Koch suggested that to expedite the process members of the working group could volunteer to begin work on different pieces of the outline. Dr. Larkin asked the members of the working group to decide which part of the outline they were interested in working on and to communicate that information to Carolyn Johnson (NAIC/SSO) within two weeks.

Having no further business, the Genetic Testing Working Group of the Life Insurance (A) Committee adjourned at 11:45 a.m.

ATTACHMENT TWO

Viatical Settlements Working Group of the Life Insurance (A) Committee St. Louis, Missouri June 5, 1995

The Viatical Settlements Working Group of the Life Insurance (A) Committee met in Promenade D of the Adam's Mark Hotel in St. Louis, Mo., at 3 p.m. on June 5, 1995. Glenn Pomeroy (N.D.) chaired the meeting. The following working group members or their representatives were present: Michael Bownes (Ala.); Carol Ostapchuk (Fla.); Ron Kotowski (Ill.); Marlyn Burch (Kan.); Lester Dunlap (La.); Mary Alice Bjork (Ore.); Don Switzer (Texas); and Dixon Larkin (Utah).

Commissioner Glenn Pomeroy (N.D.) said that in the last several years, a working group had drafted a model act and regulation and when its job was finished, the working group was disbanded. He said the working group was being reconstituted, and the purpose of the day's meeting was to discuss regulatory activities in the states. He said a year ago there had been three states regulating viatical companies and now there were 14 states that either had a law in place or were very close to having one enacted.

Commissioner Pomeroy called on Roy Hansel (NAIC/SVO) for information about the secondary market in viatical settlements. Mr. Hansel said that the Securities Valuation Office (SVO) was responsible for rating securities purchased by insurance companies, and he had recently become aware that Standard and Poors is now rating the securitization of viatical settlements. Commissioner Pomeroy said that the last working group talked to some extent about the secondary market for viatical settlements, and he asked if this was an issue this working group needed to be concerned about. Commissioner Pomeroy asked Carolyn Johnson (NAIC/SSO) to analyze the insurable interest concern about companies purchasing life insurance policies and marketing them on the secondary market. Gary Chodes (Viaticus) clarified that most companies are not making a secondary market themselves. He said this was not actually a resale of the policies, but companies issued securities and used the policies for collateral. Commissioner Pomeroy thanked Mr. Chodes for the clarification.

Commissioner Pomeroy called on Marlyn Burch (Kan.) to explain the regulatory system in Kansas. Mr. Burch said that Kansas had been the third state to pass a law regarding viatical settlement companies, in July 1992. He said at the time Kansas adopted its procedures, there was no NAIC model law so the Kansas statute was very basic. He said no rules had been developed at this time but the state was looking at the NAIC's model and hoped to revise the law next year to adopt more of the model's provisions. He said eight companies had requested information about the requirements for admission and six of those companies had decided that they did not do enough Kansas business to warrant the admission process. One company had completed the procedures and a second application was pending. Mr. Burch said one very important problem in the Kansas statute was that companies that solicit viators and line up investors are exempt from the law.

Martin Carus (N.Y.) explained some of the features of the law and regulation on the books in his state. He said the New York law had a grandfathering provision for companies already in business at the time the law was adopted. He said New York had received 14 applications, two companies were licensed currently, and New York had identified no undue problems in implementing the law.

Mr. Carus expressed concern about allegations made by one company concerning confidentiality. He indicated advertisements had been placed in certain publications which wrongfully assert that the state of New York was unable to maintain confidential information about the individuals who viaticated policies. He said they had a legal opinion that no personal information would be required to be made public. Commissioner Pomeroy asked if names of viators were requested when licensing a company, or when performing an examination. Mr. Carus answered both questions in the negative. Commissioner Pomeroy further explained that one organization had taken out advertisements warning people to only deal with companies that were not licensed, because otherwise the department would disclose the names of persons with Acquired Immune Deficiency Syndrome (AIDS) who had viaticated policies. Commissioner Pomeroy said he thought that information was misleading and false and he appreciated the fact that New York was able to confirm his impression.

Jacqueline Hughes and Eleanor Perry (Vt.) explained the provisions of the law in Vermont. Ms. Hughes said that a law had been passed that is very close to the NAIC's model except that it has a provision that a corporation could buy a policy from its

employee and it also requires a license for brokers. She said Vermont had also added an unconditional seven-day right of cancellation. She said the legislature had been very concerned with disclosure and gave authority to adopt several provisions in the regulation that are not included in the NAIC's model. Ms. Perry explained that Vermont was having difficulty in developing its regulation because of a number of issues not covered in the NAIC's model. She said there was a need to expand the model in the area of market conduct and listed 12 concerns the Vermont department had identified that were not handled adequately in the NAIC's model regulation (Attachment Two-A). Ms. Perry said that an actuary had been hired to review the regulation and give them assistance in determining appropriate discounts to include in the regulation. Ms. Hughes explained that the Vermont law also put a cap on the amount of commissions that a broker could accept and prohibited finders' fees.

Briget Policheue (Ind.) said that Indiana had adopted a law in 1994 and is working on a regulation. She said Indiana's law differed from the NAIC's model law in that it had collapsed the concept of broker and provider into one entity, and that made it difficult to draft the regulation because in reality the two entities operated differently. Ms. Policheue said that Indiana intended to have a draft of its regulation completed by the end of the summer.

Dixon Larkin (Utah) said that Utah had gone from being the strictest state in the regulation of viatical settlement companies to having no regulation whatsoever. He said companies were basically uncontrolled in Utah because of a law that had been passed in the prior year, but as far as he was able to determine, few policies had been sold in Utah.

Scott Borchard (Minn.) reported on a bill that had just been adopted in Minnesota. He said a representative of the industry had come to the legislature and asked for a law, and the department had been consulted for assistance. He said Minnesota would have been at a loss without the NAIC's model. He said that much of the model regulation had been incorporated into the Minnesota statute which will be effective Jan. 1, 1996. He said that no substantive objection had been raised in the legislature.

Patrick Musick and John Woodall (Wash.) explained that a law that was basically the NAIC's model act had recently been adopted in Washington, and they were required to have emergency regulations in place by July 23. Mr. Musick said the consumer protection division of the insurance department had felt a need for a law and had taken the lead in getting a bill passed. Mr. Woodall said the statute in Washington allows the commissioner to adopt rules setting capital and surplus requirements, set a format for an annual statement, and set a bond requirement for providers and brokers. He asked for input from other regulators with similar provisions to assist in setting those amounts. Ms. Hughes said that Vermont's statute does not include a capital and surplus requirement but does have a bond requirement. Ms. Perry said they anticipated requiring a bond of \$250,000, or a flexible amount that would be 10% of the prior year's business in Vermont.

Ronald Kotowski (Ill.) said the bill that had been introduced in Illinois had contained a capital and surplus requirement, which met with some objection. The Illinois bill had overcome that objection with alternatives to capital and surplus of a surety bond or letter of credit. Mr. Kotowski also clarified that the Illinois bill had not yet passed its legislature. Commissioner Pomeroy asked if any of the states had a blank for reporting, and Mr. Carus responded that New York did have a blank. Commissioner Pomeroy suggested that this would be a good starting point for the working group to develop a reporting blank form.

Lisa Weinmann (N.D.) reported on the law recently adopted in North Dakota. She said they had difficulty in getting the bill passed and some changes had been made from the NAIC's model. She said the legislators were concerned that there was too much power in the hands of the commissioner so amendments had been prepared to remove commissioner discretion. Ms. Weinmann said the bill adopted does not contain authority to adopt a regulation or any limitations on the discount. She said the reporting requirement had been included from the model regulation to help the department develop a database of information on pricing. Ms. Weinmann said the bill had been strengthened somewhat from the NAIC's model with the addition of criminal sanctions. She said the senior citizens' lobby had been very helpful in getting the bill adopted.

Mary Alice Bjork (Ore.) reported that the Oregon bill had passed through the legislature and was awaiting the governor's signature. She said the Oregon bill had been difficult to get adopted because many of the new legislators had been elected with a promise that no new regulations would be adopted. She said the legislature had asked the department to add more information to the bill and "put it in English." Ms. Bjork said the word "viatical" was changed to "life settlement contract" and many of the provisions of the NAIC's model regulation were added to the statute to provide more clarifications. Ms. Bjork said the department was looking at many of the same issues as Vermont was concerned about and planned to adopt rules by the end of the year. She said the Oregon statute did have a sunset provision, and the department would be required to go back and show that the law had been helpful.

Don Switzer (Texas) said that Texas had started with the model in its legislature, but the bill had not gone anywhere. He said later someone from the Cancer Society had pushed the legislation as a benefit to all who were ill. The bill that was adopted was very brief and required approval of the contract forms, disclosure, and protections against discrimination to be adopted by the insurance commissioner in a regulation.

Mr. Kotowski said the Illinois bill that had been proposed was the model with some enhancements. He said it was shelved because the legislature had more bills than could be considered, but he had been assured it would be reconsidered in the fall session. Mr. Kotowski said a capital and surplus requirement had been added and a requirement to notify the insurance company if the agreement was rescinded. The bill also contained disclosure language about any relationship between the provider and broker, and contained a licensing fee of \$1,500 initially and \$750 for renewal. Mr. Kotowski said the bill had required that a broker deal only with a licensed provider and prohibited assignment except to another licensed provider. Mr. Kotowski said that some representatives from the viatical industry had been very helpful in ironing out a number of issues to include in the Illinois bill.

Lester Dunlap (La.) reported that a bill very similar to the NAIC's model had been introduced in the Louisiana legislature and was proceeding very well. He said that the broker must be licensed and must be an insurance agent to operate in the state.

Commissioner Pomeroy thanked those who had presented information about their state laws and said a number of very interesting issues had been raised. He said it would be appropriate at future meetings to break out the issues that had been raised and prioritize them for solutions. He said after the conclusion of this discussion, it might be necessary to revise the NAIC's models. Commissioner Pomeroy asked Ms. Johnson to compile a list of the issues that had been raised at this meeting as a starting point for the discussion. He suggested a conference call of the members of the working group before the September National Meeting.

Having no further business, the Viatical Settlements Working Group adjourned at 4:50 p.m.

ATTACHMENT TWO-A

Vermont's Considerations for Regulation of Viatical Settlements June 2, 1995

1. The viator (owner of the life policy) may not be the person whose life is insured. What care should be taken to protect the sick person's rights?
2. When life insurers and viatical settlement companies are intertwined, their relationship should be made clear to the viator.
3. When a viatical settlement provider buys the policy, the viatical settlement provider should not get the accidental death benefit windfall; that should return to the family.
4. When the main policy which is being viaticated is part of a joint policy or has spouse or family riders, is sold, the family's protection should not be lost as a result of the sale.
5. If the spouse or family riders are to be retained, the viatical settlement contract needs to address who will pay those parts of the premium (if they can be accounted for separately), and how that payment will be done.
6. If the policy includes a guaranteed right to purchase additional insurance, that right should not go to the viatical settlement provider, but should continue to be available to the family.
7. The law speaks of discounts, but they are really minimum payouts. Those payouts should be tested periodically by an actuary for reasonableness.
8. If the viator decides to purchase an annuity with the proceeds from the viatical settlement contract, that transaction should be separate from the viatical settlement contract and provider; this can be handled by the trustee or escrow agent, or such other agent as the viator wishes.
9. The viatical settlement provider should, as part of its contract offer, provide information which clearly outlines what the transaction will mean, e.g., how much the policy is actually worth (net of loans); how much the policy would pay out in case of death at any point in the next several months or years; what the offer of payment is, i.e., any adjustments or broker's commissions; and, what the viator would receive if he/she is eligible to receive accelerated death benefits.
10. The viatical settlement provider, as part of the contract offer period should also be required to inform the viator that he/she should contact their state office of disability, their Medicaid agency, and any other state services which might provide resources for the viator prior to death.
11. The regulation needs to give the viator protection from various questionable dealings and approaches, e.g., physicians or attorneys who would charge a "finder's fee," nursing homes who might coerce their terminal patients into viatical settlement contracts, etc.

ATTACHMENT THREE

Life Disclosure Working Group of the Life Insurance (A) Committee

The Life Disclosure Working Group met in Washington, D.C., on April 20-21, 1995, and in St. Louis, Mo., held a hearing on June 3, 1995, and met on June 5, 1995, for the purpose of finalizing a draft of the Life Insurance Sales Illustrations Model Regulation. The Actuarial Standards Board has also prepared a draft of actuarial standards to accompany the model. The following working group members participated: Robert Wilcox, Chair (Utah), Tom Foley, Vice Chair (Fla.); Don Koch (Alaska); Roger Strauss (Iowa); Lester Dunlap (La.); Tony Higgins (N.C.); and Ted Becker (Texas). The working group began by discussing general topics and then discussed specific sections of the model regulation.

1. Focus Groups

The working group discussed whether to use focus groups to review illustrations that would be prepared using the provisions of the model regulation. The group viewed a videotape of the focus group sessions held by one insurer while in the process of developing new illustrations. The working group heard a variety of comments including that: the focus group is a rather artificial situation and it would be more meaningful to see an agent working with a client; focus groups with a group of agents would be more meaningful; a one-on-one situation would be more useful because some people are embarrassed to admit they do not understand the illustration. The working group decided not to use focus groups at this time and suggested that, if a company was interested in seeing if its illustrations were understandable, it could do its own focus groups.

2. Interest Rate Illustrated

Another general issue was whether the interest rate shown on an illustration should be disclosed and, if so, whether it should be the gross rate earned by the company or the net rate after expenses. One attendee said that the net rate would be most helpful, because it would be after expenses and commissions were paid. Another opinion was that the rate the insurer would have to earn on its investments in order to pay the illustrated amounts would actually be more helpful and less subject to manipulation. It might be easier for consumers to measure whether this rate was likely to be available in the marketplace. Others expressed concern that an insurer could make the interest rate quoted on the illustration a high number and then load on many expenses, so that the net result was a much lower figure. Others expressed concern that the applicant would not understand either the gross rate or the net rate or the possibility for manipulation. Another concern expressed was that prominent disclosure of the interest rate increased the possibility of confusing life insurance with investments. One regulator suggested that insurers should be prohibited from disclosing the rate and instead just show the results. Others in attendance responded that a prohibition of the illustration of a rate was unfair because some applicants ask for that information. The working group decided to require that an interest rate be available for disclosure in connection with an illustration and that this rate be the rate underlying the disciplined current scale and that the company be required to fully explain that rate.

3. Inclusion of Term Life in Model Regulation

The next topic discussed by the working group was whether it was appropriate to include term life insurance in the model regulation. The working group members heard a number of viewpoints. One suggestion was that many problems have occurred as a result of term life illustrations because they are not complete, the guaranteed amounts may not be shown, and many variations may be included which may or may not be part of the term insurance. The re-entry premiums and the assumptions, which vary from policy to policy, should be shown. Some people start out with a term policy and move to a cash value policy. It is difficult to define what term life is because of the many variations available. Much of the information required in the model regulation does not apply to term policies, which have no cash value; term life policies only are concerned with maximum premiums and current premiums. The working group decided to identify specific areas of the model regulation that do not apply to term life and indicate at that point that they did not apply. At the June meeting of the group S. Reed Ashwill, (National Association of Independent Life Brokerages Agencies—NAILBA) presented a suggestion for several new definitions and a section specifically for term insurance that does not develop cash values. The working group discussed the concept, and agreed to give it further consideration.

4. Standardized Format of Illustrations

It was clear there was some confusion among the attendees as to the amount of standardization that was required in the model regulation. Some suggested that it was important to require the inclusion of certain items, but they requested that the insurer be allowed to put them in any order it desired. It was pointed out that if the tabular ledger illustrations came first, the consumer might not look past the numbers. The working group decided it was important that the elements come in the same order so that consumers would know they could find certain information in certain places, but declined to standardize the illustrations to the degree of requiring the information to be in a required format.

5. Review of Life Insurance Sales Illustrations Model Regulation

Section 1: Purpose

The standards prepared by the working group indicated that it was a goal that illustrations should be understandable without the aid of an agent, but the draft prepared before the spring National Meeting had been changed to eliminate that requirement. After some discussion, the working group made further changes to the language to make it more similar to the language in the Rules Governing the Advertising of Life Insurance. At the June 5 meeting the working group considered a suggestion by Ted Becker (Texas) to change Section 1 to refer to comparisons between policies, recognizing that people will compare illustrations whether the working group thinks it is appropriate or not. The majority decided the NAIC should not go on record as in any way encouraging what they consider may be an inappropriate use of illustrations.

Section 3: Applicability and Scope

Technical resource advisors suggested saying that Subsection B did not apply to policies with no nonguaranteed elements. The working group decided this was not necessary. The working group discussed whether it was appropriate to include an exemption for pre-need funeral arrangements. It was pointed out that the typical funeral expense contract does not have nonguaranteed elements, and the risk is generally borne by the funeral home director. A representative for the industry said the industry's main concern was that the illustration requirements might be interpreted so broadly that a pre-need funeral agreement might be interpreted as an illustration. He said the documents used by funeral directors are regulated by the

Federal Trade Commission and encouraged the NAIC to exempt pre-paid funeral plans from the model. The working group also considered the Life Disclosure Model Regulation provisions related to pre-need funeral plans, but learned that few states have adopted those provisions. The working group decided to exempt all policies with a face value of less than \$10,000 from the provisions of the model regulation.

Section 4: Definitions

The working group reviewed the definitions and made a number of changes. Most of the changes were technical wording revisions to clarify the meaning of the terms being defined. Some changes were made to clarify the definition of "disciplined current scale." Mr. Becker suggested a change to require that each element of the calculation be supportable; for example, mortality charges related to mortality experience, credited interest rate supported by interest earned. Other members of the working group agreed that this requirement from an earlier draft was the ideal way to perform the calculations, but Tom Foley (Fla.) expressed the concern that the considerable support of the industry and the Actuarial Standards Board (ASB) would evaporate. The working group agreed by a narrow vote to leave the draft as is in this regard, and revise later if the regulation proved ineffective. The working group spent a considerable amount of time discussing the definition of "persistence bonus." One of the most difficult aspects of the problem was the fact that the persistence bonus, as calculated by the current draft of the proposed actuarial standard of practice, allows a company to withhold part of the nonguaranteed elements earned by a policy until later years and pay that as a persistence bonus. The working group decided it had two alternative methods of handling this type of persistence bonus: it could be disclosed or it could be forbidden. The working group decided on a close vote to allow the illustration of this type of persistence bonus but to include a strong disclosure so that an individual would understand that he would not get all of the money earned by his policy if he did not keep it until payment of the persistence bonus.

At the June 5 meeting the working group discussed this issue again. Alternative suggestions for a definition of "persistence bonus" were proposed by technical resource advisors and by Mr. Becker. Commissioner Robert E. Wilcox (Utah) asked staff to prepare the draft with the alternative suggestions in a working group note for further consideration.

Section 5: Policies to be Illustrated

The working group discussed the application of the model to illustrations of group policies. Technical resource advisors suggested language to be added to Subsection C that exempted groups' illustrations from the requirements of this model. The working group members recognized that sometimes an individual was shown his own personal illustration and the language was adjusted to cover that situation.

Section 6: General Rules and Prohibitions

The provisions of Section 6 were rearranged from the March 1995 draft, but no substantive changes were made except for the addition of Subsection C to address the decision made by the working group earlier on illustrations including an interest rate. Technical resource advisors suggested that Paragraphs (9) and (10) of Subsection B be deleted, but the working group rejected the suggestion.

Section 7: Standards for Basic Illustrations

The working group had previously identified the need for some type of glossary of terms so that a consumer would understand the terms used in the illustration. There had been some discussion of developing a glossary to include in the model, or asking the Society of Actuaries to develop a glossary. Several industry representatives expressed concern about using glossary terms that might not match the language in the policy. The working group decided that the language in Subsection B(4) requiring that key terms used in the illustration be defined was adequate to address their concerns.

Several items were identified that did not apply to term insurance, and the words "as applicable" were added where this was appropriate. The most significant change to Section 7 from the March draft was the addition of Subsection A(13) on premiums paid from the policy value rather than out-of-pocket. This provision had formerly been part of the supplemental illustration and the working group decided to move this into the basic illustration. In addition, Paragraph (14) was added to further define the obligation of the insurer in the illustration. Paragraph (15) was the notice suggested earlier to assist the consumer in understanding the effect of a persistence bonus. Technical resource advisors suggested a different disclosure statement, which was rejected as being too soft. The working group agreed the disclosure needed to be straightforward and understandable. Mr. Becker suggested deletion of the disclosure and a prohibition of a persistence bonus of this type. The working group decided to leave the question open until it received examples of possible "good" persistence bonuses, but did agree to a technical revision of the language.

At the June 5 meeting a request was made to delete a requirement that each illustration carry a unique identifying number. The drafters agreed to this suggestion.

Over the past months, the working group spent a considerable amount of time discussing the inclusion of a "sensitivity index" to the illustration. Subsection C of the draft contains a requirement for a numeric summary including, for specified years, the policy guarantees, the insurer's disciplined current scale, and an additional column of numbers halfway between. The working group considered a sensitivity index of one or two percentage points below the disciplined current scale or grading into a standardized assumption, but chose the halfway mark for interest, insurance charges and expense charges as being simpler to implement and easier for consumers to understand. The working group also considered whether this section should apply to

term insurance and agreed that it was important because for an indeterminate premium policy this information would be useful.

Subsection D was changed from earlier drafts to move elements related to the timing of the statements to Section 9 and to clarify the requirement. Some adjustments were made to Subsection E for term insurance. The working group considered whether it was necessary for annually renewable term to show every year to age 100, and the working group decided that this was appropriate if the premium would change. In addition, the working group decided that when a guaranteed benefit would end, zeros should be shown. There was consideration of including a notation that the policy lapses at this point, but those familiar with writing computer programs to create an illustration were concerned that it might be difficult to insert language in a numeric display.

Section 8: Standards for Supplemental Illustration

The working group considered whether it was important that the contract premium in a supplemental illustration be equal to the contract premium in a basic illustration. One member of the working group pointed out that a big advantage of a supplemental illustration is that it is not necessary to show the guarantees. What offsets that is that the illustration may be required to have premium payments shown that are not expected to be used. The working group decided to add a Paragraph (4) to express that concept.

Section 9: Delivery of Illustration and Record Retention

A number of changes were made to Section 9 to address the desire of the regulators that they should find a copy of a signed illustration in the policy file. Industry representatives expressed concern that if the illustration was delivered by mail with the policy form, that it would be very difficult to get a signature for the file. Consideration was given to certified mail, and other methods of demonstrating a general business practice. One addition to the model to inform the applicant to expect another illustration was that, if the policy was not applied for as illustrated, the applicant should acknowledge that he did not yet receive an illustration conforming to the policy and that he understood one would be issued. The producer will also be required to inform the insurer whether an illustration was used at the time of sale. Some in attendance expressed concern that it would be very difficult to get a signed statement back if the agent did not make a personal delivery of the policy. Some regulators were surprised that the company and agent would not be extremely interested in getting back a signed statement because otherwise it would be more difficult to demonstrate that the policy owner received and understood the illustration. One representative of an insurer said that his company had been requiring signatures since 1989, and reversed the commissions of the agent if it did not get a signed statement back. He said this worked well, although it had been difficult in the beginning. At the June 5 meeting this issue was discussed further and it was agreed that it would be sufficient to require a diligent effort instead of specifying how the signature should be obtained. The insurer should be able to document in its files that it had made a sincere effort to get a signed statement.

Section 10: Annual Report; Notice to Policy Owners

The working group identified the need to specify the contents of the annual report. Paragraphs (1) and (2) were added to Subsection A to identify those requirements. The requirement for the annual report and the notice to be included was changed from the prior draft to add information that, if the individual did not receive an updated illustration, he or she could contact the state insurance department. The working group also decided to delete the requirement for the agent's telephone number so that a generic form could be prepared by the insurer. It was made clear that the insurer could change the order of the list of parties to contact to request an illustration, to put in a preference of where to request first. The working group was asked to consider exempting policies with no nonforfeiture values from the requirement for an annual report. The working group rejected that suggestion.

Section 11: Annual Certifications

The working group was asked to consider a provision for appointment of more than one illustration actuary by a company. The working group agreed that it was possible that more than one actuary could be appointed and each report to the board of directors. It was decided the actuary should be named for a specific product line. Changes were made in the draft to accommodate this decision. A provision was added to disqualify an actuary whose certification had been rejected any time in the past five years, but the working group decided in June this provision was too broad and it was deleted.

Subsection D in the March draft contained a provision requiring that a new filing be made with the commissioner each time the scale changed. There was discussion over whether it was necessary to include this provision, and the working group agreed that it was not necessary to certify each time a change was made, but at the end of the year the certification would be made that the scale or scales used during the entire previous year had been appropriate.

Subsection H was revised at the June 5 meeting to clarify it.

Section 14: Effective Date

Some in attendance requested that the working group consider changing the effective date to require that the regulation was effective on Jan. 1 a year following the year of adoption by a state. The working group members agreed that initially, some time would be necessary to allow companies to put into place the appropriate procedures, but that once these procedures were in place, a delayed effective date would no longer be necessary. The decision was made to recommend an effective date of Jan. 1, 1997, or some later effective date that a state might include in its regulation.

After making the above noted changes to the model regulation, the working group agreed that work on the model regulation was basically complete. The working group voted to provisionally adopt the model as a signal that the draft was nearly complete, and that changes should be expected only if they were shown to be necessary as a result of testing being conducted.

Commissioner Wilcox emphasized that it was unnecessary to comment on the same issues already considered, and any comments on the June 5 draft should be limited to results of testing and on the changes made on June 5, which are indicated on Attachment Three-A. Gary Corbett (ASB) said a legal opinion had been obtained that the ASB could keep confidential the results of any testing on disciplined current scale or lapse support and he asked that test results be sent to Christine Nickerson (ASB) with a request to keep the names of the company confidential. Commissioner Wilcox said persistency bonus testing was not a concern of the ASB and said the ASB would forward those results to him.

ATTACHMENT THREE-A

LIFE INSURANCE SALES ILLUSTRATIONS MODEL REGULATION

Draft: 6/5/95

Table of Contents

Section 1.	Purpose
Section 2.	Authority
Section 3.	Applicability and Scope
Section 4.	Definitions
Section 5.	Policies to Be Illustrated
Section 6.	General Rules and Prohibitions
Section 7.	Standards for Basic Illustrations
Section 8.	Standards for Supplemental Illustrations
Section 9.	Delivery of Illustrations and Record Retention
Section 10.	Annual Report; Notice to Policy Owners
Section 11.	Annual Certifications
Section 12.	Penalties
Section 13.	Separability
Section 14.	Effective Date
Section 1.	Purpose

The purpose of this regulation is to provide rules for life insurance policy illustrations that will protect consumers and foster consumer education. The regulation provides illustration formats, prescribes standards to be followed when illustrations are used, and specifies the disclosures that are required in connection with illustrations. The goals of this regulation are to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable. Insurers will, as far as possible, eliminate the use of footnotes and caveats and define terms used in the illustration in language that would be understood by a typical person of average education or intelligence within the segment of the public to which the illustration is directed.

Section 2. Authority

This regulation is issued based upon the authority granted the commissioner under Section [cite any enabling legislation and state law corresponding to Section 4 of the NAIC Unfair Trade Practices Act].

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

Section 3. Applicability and Scope

A. This regulation applies to all group and individual life insurance policies and certificates except variable life insurance.

B. This regulation shall not apply to the illustration of individual and group annuity contracts, credit life insurance, or life insurance with no illustrated death benefits exceeding \$10,000.

Section 4. Definitions

For the purposes of this regulation:

A. "Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

B. "Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

C. "Disciplined current scale" means a scale of non-guaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is defined in standards established by the Actuarial Standards Board and certified by an illustration actuary designated by the insurer. Standards shall include, but not be limited to, requirements that illustrations must not be lapse-supported, must be self-supporting and that the illustrated scale may not be more favorable than ~~either the lesser~~ of the insurer's currently paid or credited scale or a scale (the disciplined current scale) reflecting the most recently available experience on the policy block. A disciplined current scale may reflect actions that have already been taken or events that have already occurred but shall not include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date.

D. "Generic name" means a short title descriptive of the policy being illustrated such as "whole life," "term life" or flexible premium adjustable life."

E. "Guaranteed" and "non-guaranteed elements"

(1) "Guaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are guaranteed and determined at issue.

(2) "Non-guaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are not guaranteed at issue, including, but not limited to, dividends, credited interest rates, mortality charges and expense charges.

F. "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years and that is one of the two types defined below:

(1) "Basic illustration" means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and non-guaranteed elements and that meets the requirements of this regulation applicable to basic illustrations.

(2) "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this regulation, and that may be presented in a format differing from the basic illustration, but may not depict a scale of non-guaranteed elements that is not permitted in a basic illustration.

G. "Illustration actuary" means an actuary meeting the requirements of Section 11 who certifies to illustrations based on the standard of practice promulgated by the Actuarial Standards Board.

H. "Lapse-supported illustration" means an illustration of a policy form failing the test of self-supporting as defined in this regulation, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five (5) years and 100 percent policy persistency thereafter.

I. "Persistency bonus" means a non-guaranteed element or combination of elements of a policy that results in the illustrated cash surrender value at the end of the fifteenth policy year or any policy year thereafter being greater than the accumulated value of the cash surrender value illustrated five (5) years earlier and the premium outlay to be paid in that five-year period. The cash surrender value and gross premiums are to be accumulated at the interest rate underlying the disciplined current scale.

Comment: The working group is considering two alternatives to this definition. The first, proposed by technical resource advisors, is:

"Persistency bonus" means a non-guaranteed element or combination of elements of a policy that results in the illustrated cash surrender value at the end of the eleventh policy year or any policy year thereafter being greater than the accumulated value of the cash surrender value illustrated one year earlier and the gross premiums to be paid during that year, plus one-tenth of the initial expense allowance based on the policy guarantees and the provisions of the Standard Nonforfeiture Law. The cash surrender value and gross premiums are to be accumulated at the interest rate underlying the disciplined current scale. In the year that a policy becomes paid up on a guaranteed basis, the entire remaining unamortized expense allowance shall be added, rather than one tenth of the maximum initial expense allowance."

The second alternative was proposed by Ted Becker (Texas):

"Non-guaranteed bonus means any non-guaranteed payment or credit, other than an annual dividend or a termination dividend in a participating policy, that would have the effect of distributing past gains."

J. "Policy owner" means the owner named in the policy or the certificate holder in the case of a group policy.

K. "Premium outlay" means the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.

L. "Self-supporting illustration" means an illustration of a policy form for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary (or upon policy expiration if sooner), the accumulated value of all policy cash flows equals or exceeds the total policy owner value available.

Section 5. Policies to Be Illustrated

A. Each insurer marketing policies to which this regulation is applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being actively marketed on the effective date of this regulation, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. For policy forms filed after the effective date of this regulation, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the commissioner.

B. If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration with that form is prohibited.

C. ~~If the insurer identifies a policy form~~ is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this regulation is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

Section 6. General Rules and Prohibitions

A. An illustration used in the sale of a life insurance policy must satisfy the applicable requirements of this regulation, be clearly labeled "life insurance illustration" and contain the following basic information:

- (1) Name of insurer;
- (2) Name and business address of producer or insurer's authorized representative, if any;
- (3) Name, age and sex of proposed insured, except where a composite illustration is permitted under this regulation;
- (4) Underwriting or rating classification upon which the illustration is based;
- (5) Generic name of policy, the company product name, if different, and form number.
- (6) Initial death benefit;
- (7) Dividend option election or application of non-guaranteed elements, if applicable.

B. When using an illustration in the sale of a life insurance policy, an insurer or its producers or other authorized representatives shall not:

- (1) Represent the policy as anything other than a life insurance policy;
- (2) Use or describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
- (3) State or imply that the payment or amount of non-guaranteed elements is guaranteed;
- (4) Use an illustration that does not comply with the requirements of this regulation;
- (5) Use an illustration that at any policy duration depicts policy performance more favorable than that produced by the disciplined current scale of the insurer whose policy is being illustrated;
- (6) Provide an applicant with an incomplete illustration;
- (7) Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefit, unless that is the fact;
- (8) Use the term "vanish" or "vanishing premium," or a similar term that implies the policy becomes paid up, to describe a plan for using non-guaranteed elements to pay a portion of future premiums;
- (9) Use an illustration that is "lapse-supported";
- (10) Use an illustration that is not "self supporting."

C. If an interest rate is shown on the illustration or available upon request, the rate shown shall be the rate underlying the disciplined current scale.

Drafting Note: Illustrations subject to the Universal Life Insurance Model Regulation would also be required under those rules to disclose the current crediting rate.

Section 7. Standards for Basic Illustrations

A. Format. A basic illustration shall conform with the following requirements:

(1) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages").

(2) The assumed dates of payment receipt and benefit pay-out within a policy year shall be clearly identified.

~~(3) Each page of an illustration, including any explanatory notes or pages, shall contain an identifying number that is unique to that illustration.~~

~~(4)~~(3) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force.

~~(5)~~(4) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay.

~~(6)~~(5) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.

~~(7)~~(6) If the illustration shows any non-guaranteed elements, they cannot be based on a scale more favorable than the insurer's disciplined current scale at any duration. These elements shall be clearly labeled non-guaranteed.

~~(8)~~(7) The guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., "see page one for guaranteed elements.")

~~(9)~~(8) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.

~~(10)~~(9) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans and policy loan interest, as applicable.

~~(11)~~(10) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.

~~(12)~~(11) Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:

- (a) The benefits and values are not guaranteed;
- (b) The assumptions on which they are based are subject to change by the insurer; and
- (c) Actual results may be more or less favorable.

~~(13)~~(12) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using non-guaranteed values, the illustration must disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. The premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.

~~(14)~~(13) If the applicant plans to use dividends or policy values, guaranteed or non-guaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.

~~(15)~~(14) Any illustration that contains a persistency bonus shall include the following disclosure statement: "NOTICE: If you drop this policy before year [10], you may receive less than your share of value because this policy form has reduced values in years 1 through [10] so that larger values can be shown in later years." This policy contains elements that only reward you if you keep it for more than [] years. Non-guaranteed elements that are earned in early policy years are not credited to the policy until later years. If you terminate this policy before year [] you will not receive the benefit of these rewards."

B. Narrative Summary. A basic illustration shall include the following:

(1) A brief description of the policy being illustrated, including a statement that it is a life insurance policy;

(2) A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;

(3) A brief description of any policy features, riders or options, guaranteed or non-guaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

(4) Identification and a brief definition of column headings and key terms used in the illustration.

C. Numeric Summary.

(1) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. ~~For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium.~~ This summary shall be shown for at least policy years five (5), ten (10) and twenty (20) and at age 70, if applicable, on the three bases shown below. For multiple life policies the summary shall show policy years five (5), ten (10), twenty (20) and thirty (30).

(a) Policy guarantees;

(b) Insurer's disciplined current scale or another scale not more favorable than disciplined current scale;

(c) Insurer's disciplined current scale or less favorable scale used but with the non-guaranteed elements reduced as follows:

(i) Dividends at fifty percent (50%) of the dividends contained in the disciplined current scale or less favorable scale used;

(ii) Non-guaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the disciplined current scale or the less favorable scale used; and

(iii) All non-guaranteed charges, including but not limited to, term insurance charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the disciplined current scale or the less favorable scale used.

(2) In addition, if coverage would cease prior to policy maturity or age 100, the year in which coverage ceases shall be identified for each of the three (3) bases.

D. Statements. Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, ~~or the policy owner in the case of an illustration provided at time of delivery, as required in this regulation, unless the illustration is produced and mailed to the applicant by the insurer, in which case no statement or signature shall be required.~~

(1) A statement to be signed and dated by the applicant reading as follows: "I have received a copy of this illustration and understand that any non-guaranteed elements illustrated are subject to change and could be either higher or lower. The agent has not told me they are guaranteed."

(2) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any non-guaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

E. Tabular Detail.

(1) A basic illustration shall include the following for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and for any year in which the premium outlay and contract premium, if applicable, is to change:

(a) The premium outlay the applicant plans to pay and the contract premium, as applicable;

(b) The corresponding guaranteed death benefit, as provided in the policy; and

(c) The corresponding guaranteed value available upon surrender, as provided in the policy.

(2) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium. If the non-guaranteed elements are shown, they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a non-guaranteed benefit or value is shown, a zero shall be displayed.

Section 8. Standards for Supplemental Illustrations

- A. A supplemental illustration may be provided so long as:
- (1) It is appended to, accompanied by or preceded by a basic illustration that complies with this regulation;
 - (2) The non-guaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;
 - (3) It contains the same statement required of a basic illustration that non-guaranteed elements are not guaranteed; and
 - (4) For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.
- B. If the supplemental illustration does not show guaranteed elements, it shall include a notice referring to the basic illustration for guaranteed elements.

Section 9. Delivery of Illustration and Record Retention

- A. (1) If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this regulation, shall be submitted to the insurer at the time of policy application. A copy also shall be provided to the applicant.
- (2) If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this regulation, shall be labeled "Revised Illustration" and shall be signed and dated by the applicant and producer or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.
- B. (1) If no illustration is used by an insurance producer or other authorized representative in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application.
- (2) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.
- C. If the basic or revised illustration is delivered to the applicant or policy owner by mail, it shall include instructions for the applicant or policy owner to sign and return a copy to the insurer. ~~and shall provide a self-addressed, postage prepaid envelope for that purpose. The insurer's obligation under this subsection shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the illustration.~~
- D. A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three (3) years after the policy is no longer in force. A copy need not be retained if no policy is issued.

Section 10. Annual Report; Notice to Policy Owners

- A. In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain at least the following information:
- (1) ~~For policies subject to [cite state law or regulation corresponding to the NAIC Universal Life Insurance Model Regulation], those items required under [cite provisions corresponding to Section 9 of NAIC model]; and For universal life policies, the report shall include the following:~~
- (a) The beginning and end of the current report period;
 - (b) The policy value at the end of the previous report period and at the end of the current report period;
 - (c) The total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders);
 - (d) The current death benefit at the end of the current report period on each life covered by the policy;

(e) The net cash surrender value of the policy as of the end of the current report period;

(f) The amount of outstanding loans, if any, as of the end of the current report period; and

(g) For fixed premium policies:

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

(h) For flexible premium policies:

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

Drafting Note: For states that have adopted the NAIC Universal Life Model Regulation, this paragraph could be replaced with a reference to the equivalent of Section 9 of the model regulation.

(2) For all other policies, where applicable:

- (a) Current death benefit;
- (b) Annual contract premium;
- (c) Current cash value;
- (d) Current dividend;
- (e) Application of current dividend;
- (f) Amount of outstanding loan.

B. If the annual report does not include an updated illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting an updated illustration. You may request such an illustration by calling [insurer's phone number], writing to [insurer's name] at [insurer's address] or contacting your agent. If you do not receive an updated illustration within 30 days from your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an updated illustration.

C. Upon the request of the policy owner, the insurer shall furnish an updated illustration of current and future benefits and values based on the insurer's present disciplined current scale or some less favorable scale applicable to the policy. No signature or other acknowledgment of receipt of this illustration shall be required.

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

Section 11. Annual Certifications

A. The use of disciplined current scale in illustrations shall be in conformity with the standard of practice for the determination of disciplined current scale promulgated by the Actuarial Standards Board.

B. The board of directors of each insurer shall, either directly or through an executive officer of the company, appoint one or more illustration actuaries to annually certify to the board and to the commissioner that the scales used in insurer-authorized illustrations are in conformance with the actuarial standards of practice and shall designate the block of business for which that illustration actuary will be responsible. The illustration actuary also shall certify that any scales that have been favorably changed during the past year have been in conformance with the actuarial standard of practice.

C. The illustration actuary shall:

- (1) Be a member in good standing of the American Academy of Actuaries;
- (2) Be familiar with the standard of practice regarding life insurance policy illustrations;
- (3) Not have been found by the commissioner, following appropriate notice and hearing to have:
 - (a) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary;

- (b) Been found guilty of fraudulent or dishonest practices;
 - (c) Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or
 - ~~(d) Submitted to the commissioner during the past five (5) years a certification that was rejected by the commissioner because it did not meet the provisions of this regulation including standards set by the Actuarial Standards Board; or~~
 - ~~(e)~~ (d) Resigned or been removed as an illustration actuary within the past five (5) years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards; and
- (4) Not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under Paragraph (3) above.
- D. (1) The illustration actuary shall file a certification with the board and with the commissioner:
- (a) Yearly for all policies for which illustrations are used; or
 - (b) Before a new policy form is illustrated.
- (2) If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly.
- E. If an illustration actuary is unable to certify any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly of his or her inability to certify.
- F. A responsible officer of the insurer, other than the illustration actuary, also shall certify annually that the illustration formats and scales used in insurer-authorized illustrations meet the requirements of this regulation.
- G. The annual certifications shall be provided to the commissioner each year by [insert date].
- H. If an insurer ~~appoints a different~~ changes the illustration actuary responsible for all or a portion of the company's business policy forms, the insurer shall notify the commissioner of that fact ~~immediately~~ promptly and disclose the reason for the change.

Section 12. Penalties

In addition to any other penalties provided by the laws of this state, an insurer or producer that violates a requirement of this regulation shall be guilty of a violation of Section [cite state's unfair trade practices act].

Section 13. Separability

If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the regulation and its application to other persons or circumstances shall not be affected.

Section 14. Effective Date

This regulation shall become effective [January 1, 1997, or effective date set in regulation, whichever is later] and shall apply to policies sold on or after the effective date.

ATTACHMENT FOUR

To: Life Insurance (A) Committee
 From: Jerry Fickes (N.M.)
 Date: May 22, 1996
 Subject: Report on Potential Charges Relating to Annuities

As requested by the chair of the Life Insurance (A) Committee, New Mexico sought the aid of other states to consider if a charge should be drawn up to consider various aspects of annuities. This group consisting of Mary Alice Bjork (Ore.), Roger Strauss (Iowa), Dixon Larkin (Utah), Caroline Scott (Texas) and Jerry Fickes (N.M.), met in St. Louis at 10 a.m. on June 5, 1995. Mr. Fickes acted as chair of the meeting.

The group reviewed a table of statutes and regulations on annuities adopted in the various states (Attachment Four-A). The group discussed the lack of adopted regulations concerning annuities, problems of solvency that could occur on mass termination of annuity contracts, the question of consumer disclosure and protections in the sale of annuities and possible problems in maintaining a level playing field when insurance annuities must compete with other products.

We are requesting that the above states, all members of the Life Insurance (A) Committee, be established as an *ad hoc* working group to meet in open meeting in Philadelphia to determine if a request should be made through the Life Insurance (A) Committee to institute next year a task force on annuities under the Life Insurance (A) Committee. It was initially felt, among other charges, the task force could consider:

1. Current statutes and regulations for suggested updating;
2. Becoming a clearinghouse of annuity issues initially recommended to the Life Insurance (A) Committee for assignment to the proper committee for review;
3. Being alert to marketplace changes and the possible need for reaction including structure of annuity contracts and disclosure problems; and
4. Reviewing any requests assigned by the Life Insurance (A) Committee.

The Ad Hoc Working Group would report in either Philadelphia or San Antonio. Its sole purpose is to draw up proposed charges.

Meeting was adjourned at 11:00 a.m.

ATTACHMENT FOUR-A

State Adoptions of Annuity Models

State	Interest-indexed ann. contract regulation	Model annuity & deposit fund disclosure reg	Two-tier annuity disclosure reg	Variable annuity disclosure reg	Variable contract law
Alabama	No	No	No	No	Yes - 1971/86
Alaska	No	No	No	Yes - 1973	Yes - 1968/80
Arizona	No	No	No	No	Related - 1976/82
Arkansas	No	No	No	Yes - 1970	Yes - 1975
California	No	No	No	Yes - 1972	Yes - 1963/84
Colorado	No	No	No	Yes - 1994	Yes - 1971/77
Connecticut	No	No	No	No	Yes - 1967/83
Delaware	No	No	No	Yes 1969/80	Yes
D.C.	No	No	No	Related - 1961	Related - 1981
Florida	No	Yes - 1982/91	No	Related 1974	Related - 1961/82
Georgia	No	No	No	Yes - 1969	Related - 1966/82
Guam	No	No	No	No	No
Hawaii	No	No	No	No	Yes - 1988
Idaho	No	No	No	Yes - 1969/93	Yes - 1968/71
Illinois	No	No	No	Related - 1972	Yes- 1977
Indiana	No	No	No	Related 1971	No
Iowa	No	No	No	Yes - 1968/88	Yes - 1973
Kansas	No	No	No	Yes - 1969/86	Related - 1967/72
Kentucky	No	Related - 1991	No	Yes - 1975/84	Yes - 1970/86
Louisiana	No	No	No	Yes - 1969	Yes - 1966/76
Maine	No	No	No	Related - 1984	Yes - 1970/73
Maryland	No	Yes - 1980	No	Related - 1965/88	Related - 1970/73
Massachusetts	No	No	No	No	Related - 1982
Michigan	No	No	No	Related - 1971/78	Related - 1963/74
Minnesota	No	No	No	No	Related - 1967/78
Mississippi	No	No	No	Yes - 1978	Yes - 1978
Missouri	No	No	No	Yes - 1969/85	Yes - 1963/83
Montana	No	No	No	Related - 1991	Yes - 1989
Nebraska	No	No	No	No	Related - 1969
Nevada	No	Related - 1980	No	No	Yes - 1971
New Hamp	No	Yes - 1983	No	No	Related - 1967/77
New Jersey	No	No	No	Related - 1959	Related - 1971/81
New Mexico	No	No	No	Related - 1958	Yes - 1985
New York	No	Related - 1990	No	Related - 1971	Related - 1984
North Carolina	No	No	No	Yes - 1978/88	Yes - 1965/79
North Dakota	No	No	No	Yes - 1974/86	Yes - 1985
Ohio	No	No	No	No	Related - 1969
Oklahoma	No	No	No	Yes - 1969	Yes - 1967/73
Oregon	No	No	Prohibited - 1977	No	Yes - 1973
Pennsylvania	No	Related - 1978	No	Related - 1978/81	Yes - 1963/74
Puerto Rico	No	No	No	Yes - 1975	Related - 1974
Rhode Island	No	No	No	No	Yes - 1966/77
South Carolina	No	Yes - 1986	No	Yes - 1976/88	Yes - 1988
South Dakota	No	No	No	Yes - 1978/86	Yes - 1966/71
Tennessee	No	No	No	Yes - 1974/78	Yes - 1967/70
Texas	No	No	No	Related - 1985	Yes - 1983/84
Utah	No	No	No	Related - 1989/94	Yes - 1992
Vermont	No	No	No	No	Yes - 1971/81
Virgin Islands	No	No	No	No	No
Virginia	No	No	No	Yes - 1969	Related - 1986/92
Washington	No	Yes - 1980	Prohibited - 1991	No	Yes - 1969/83
West Virginia	No	No	No	No	Yes - 1977
Wisconsin	No	Related - 1982/8	No	Yes - 1981	Related - 1975/79
Wyoming	No	No	No	Yes - 1968	Yes - 1967/83

State	Modified guaranteed ann. regulation	Replacement of life ins & ann. regulation	Rules governing advertising of life (ann.) ins.	Annuity mortality table	Standard Nonforfeiture
Alabama	No	Life	Yes - 1981/89	Yes - 1985	Yes - 1981/84
Alaska	No	No	No	Yes - 1985	Yes - 1966/78
Arizona	No	Life	Related - 1969	Yes - 1985	Yes - 1977
Arkansas	Yes - 1994	Related - 1987	Related - 1974	Yes - 1985	Yes - 1981
California	Yes - 1992	Yes - 1990-92	Yes - 1975	Yes - 1985	Yes - 1981
Colorado	No	Related 1982	Related - 1974	Yes - 1985	Yes - 1979
Connecticut	Yes - 1986	No	Yes - 1976/87	Yes - 1985	Yes - 1977
Delaware	No	Yes - 1984	No	Yes - 1985	Yes - 1978
D.C.	No	No	No	No	Yes - 1980
Florida	No	Yes - 1981/91	Yes - 1973/89	Related - 1985	Yes - 1978
Georgia	No	Life	Yes - 1980	Yes - 1987	No
Guam	No	No	No	No	Yes - 1979/82
Hawaii	No	Yes - 1981	No	No	No
Idaho	No	Yes - 1983/93	No	Yes - 1985/93	Yes - 1988
Illinois	No	Yes - 1970/84	Yes - 1976/91	Yes - 1985	Yes - 1977/89
Indiana	No	Yes - 1983	No	Yes - 1985	Yes - 1977
Iowa	No	Yes - 1984/87	Yes - 1976/89	Yes - 1985	Yes - 1977
Kansas	No	Yes - 1971/93	Yes - 1977/93	Yes - 1986	Yes - 1981
Kentucky	No	Life	Related - 1975	Yes - 1985	Yes - 1978
Louisiana	No	Yes - 1990	No	Yes - 1985	Yes - 1978
Maine	No	No	No	Yes - 1984	Yes - 1979/91
Maryland	No	Yes - 1962/85	Related - 1970	Yes - 1985	Yes - 1979
Massachusetts	No	Yes - 1987	No	No	Yes - 1980
Michigan	Yes - 1991/93	Life	Yes - 1984	Yes - 1984	Yes - 1979
Minnesota	Yes - 1992	No	No	No	Yes - 1980/87
Mississippi	No	Yes - 1981	No	Yes - 1985	Yes - 1978/79
Missouri	Yes - 1990	Yes - 1979/83	Yes - 1976/77	Yes - 1986	No
Montana	No	Life	No	No	No
Nebraska	No	Yes - 1984/94	Yes - 1990/94	Yes - 1985/94	Yes - 1979
Nevada	No	Yes - 1980/85	No	No	Yes - 1979
New Hampshire	No	Related - life	No	Yes - 1985	Yes - 1977/79
New Jersey	No	Life	Yes - 1985/89	Yes - 1985	Yes - 1979
New Mexico	No	Life	No	Yes - 1985	Yes - 1981
New York	No	Yes - 1971/75	Yes - 1980	Yes - 1984	Yes - 1985
North Carolina	No	Yes - 1985	Yes - 1978-92	Yes - 1985	Yes - 1984/85
North Dakota	No	No	No	Yes - 1986	Yes - 1979
Ohio	No	Life	Related - 1972	No	Yes - 1985
Oklahoma	No	Related - 1983/84	Yes - 1990/93	Yes - 1985	Yes - 1983
Oregon	No	Yes - 1968/84	No	Yes - 1985	No
Pennsylvania	No	Yes - 1986	No	Yes - 1986	Yes - 1977
Puerto Rico	No	Related - 1957	Related - 1957/92	No	Yes - 1980
Rhode Island	No	Life	No	No	No
South Carolina	No	Yes - 1986	No	Yes - 1984	Yes - 1994
South Dakota	No	Yes - 1989/90	Related - 1973/89	No	Yes - 1988
Tennessee	No	Yes - 1985	Yes - 1976	Yes - 1985	Yes - 1977
Texas	No	No	Related - 1981	Yes - 1985	Yes - 1978
Utah	No	Yes - 1984/89	Related - 1989-90	Yes - 1985/93	Yes - 1977
Vermont	No	Life	No	Yes - 1989	Yes - 1986
Virgin Islands	No	No	No	No	Yes - 1981
Virginia	Related - 1992	Life	Yes - 1982	Yes - 1985	Related - 1968
Washington	No	Yes - 1980/87	Yes - 1975/89	Yes - 1987	Yes - 1986
West Virginia	No	Life	No	No	Yes - 1982/87
Wisconsin	Related - 1990	Related - 1982	Related - 1984/89	Yes - 1985	Yes - 1977
Wyoming	No	Yes - 1986	No	Yes - 1985	Yes - 1977/79 Yes - 1981/83