

LIFE INSURANCE (A) COMMITTEE

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

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MINUTES

The Life Insurance (A) Committee met in Salon C of the Marriott Rivercenter Hotel in San Antonio, Texas, at 8:30 a.m. on Dec. 6, 1995. A quorum was present and Dwight K. Bartlett III (Md.) chaired the meeting. The following committee members or their representatives were present: Kerry Barnett, Vice Chair (Ore.); Terri Vaughan (Iowa); James H. Brown (La.); Chris P. Krahling (N.M.); Elton Bomer (Texas); and Robert E. Wilcox (Utah).

1. Report of the Viatical Settlements Working Group

Tom Foley (N.D.) reported that the Viatical Settlements Working Group had spent most of 1995 monitoring state activity in adoption of viatical settlement laws and regulations. He said the working group had decided that the NAIC's models adopted in 1994 may be antiquated already. Originally, viatical settlements were used when death was relatively close, but now with a longer life span and marketing to seniors, the minimum payouts in the model may need to be changed. In addition, the Life and Health Actuarial (Technical) Task Force nonforfeiture activity may have an impact on viatical settlements. Upon motion duly made and seconded, the report of the Viatical Settlements Working Group was adopted (Attachment One).

2. Report of the Genetic Testing Working Group

Director Robert Lange (Neb.) reported that the Genetic Testing Working Group continues development of a white paper that will help states in formulating a position on the issue of genetic testing. He said a very preliminary draft was attached to the working group's report, and the working group hopes to have a more complete document ready for consideration at the 1996 Spring National Meeting. Upon motion duly made and seconded, the report of the Genetic Testing Working Group was received (Attachment Two).

3. Report of the Life Disclosure Working Group

Commissioner Robert E. Wilcox (Utah) reported that the Life Disclosure Working Group is reviewing possible conflicts of the recently adopted Life Insurance Illustrations Model Regulation with other NAIC models. He said the working group also intends to begin consideration of variable life and its special problems and had concluded that it would be wise to divide into subgroups to work on variable and annuity illustrations. Commissioner Wilcox reported that Tony Higgins (N.C.) would lead a subgroup on annuity illustrations, and Rick Morse (N.Y.) would lead a subgroup on variable life

illustrations. Upon motion duly made and seconded, the report of the Life Disclosure Working Group was received (Attachment Three).

Commissioner Dwight Bartlett (Md.) congratulated Commissioner Wilcox and the members of the working group on the excellent job in preparing and seeing the Life Insurance Illustrations Model Regulation to final adoption. He said this was a watershed activity in the regulation of life insurance.

4. Report of the Ad Hoc Working Group on Annuities

Jerry Fickes (N.M.) said this working group had been created with the single purpose of recommending to the Life Insurance (A) Committee any additional charges that might be necessary to deal with annuities. He directed the members' attention to the attachment to the working group's report that suggested a number of issues that needed to be addressed. He said one of the areas of concern was sales of annuities and possibly life insurance to senior citizens. He said the Life Insurance (A) Committee could set up a task force similar to the one set up under the Accident and Health Insurance (B) Committee, or perhaps combine those issues all under one task force. Commissioner Bartlett said he had spoken to Commissioner Glenn Pomeroy (N.D.), chair of the Senior Issues (B) Task Force, and Commissioner Pomeroy had agreed to take on annuity sales in addition to other senior issues and report to the Life Insurance (A) Committee. Mr. Fickes pointed out the need for an additional charge on charitable gift annuities and the development of a model law on the topic. He also said the working group had discovered that the definition of annuity in many states was lacking or quite dissimilar, and thought this would be an appropriate charge for the working group also. He said the working group had considered whether to recommend a separate task force on annuities, but had decided against making such a recommendation to the Life Insurance (A) Committee. Upon motion duly made and seconded, the report of the Ad Hoc Working Group on Annuities was adopted (Attachment Four).

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

Mr. Fickes also reported on the activities of the Life and Health Actuarial (Technical) Task Force. He said the task force had received a letter from the American Academy of Actuaries (AAA) on the Valuation of Life Insurance Policies Model Regulation, commonly known as Guideline XXX. The letter from the AAA encourages states to adopt the model regulation uniformly, and the task force asked for the approval of the Life Insurance (A) Committee to send this to the insurance commissioners with a cover letter from the task force. Commissioner Bartlett said this issue was matter of great concern. He said he thought most commissioners support the model regulation, but did not want to be the first to adopt. He said his intent was to put this issue on the Commissioners Roundtable for the 1996 Spring National Meeting to encourage commissioner activity on this model.

Upon motion duly made and seconded, the committee gave approval to the task force plan to send a letter to all commissioners. Mr. Fickes said the Life and Health Actuarial (Technical) Task Force had made some changes in the Question and Answer document submitted to the Life Insurance (A) Committee in September 1995 in Philadelphia and at the suggestion of Commissioner Bartlett, had converted it to Actuarial Guideline JJJ. He said the task force recommended adoption of the document by the Life Insurance (A) Committee in this format. Commissioner Bartlett said this document had turned out to be controversial on both procedural and substantive grounds. The first thought had been to attach the Q&A to the Life and Health Reinsurance Agreements Model Regulation, then to develop an actuarial guideline.

Commissioner Bartlett said he received a memo from Norris Clark (Calif.) asking that this document be forwarded to the Accounting Practices and Procedures (EX4) Task Force with a suggestion to consider it in the Codification of Statutory Accounting Principles Working Group. Upon motion duly made and seconded, the members of the Life Insurance (A) Committee voted to forward the document to the Accounting Practices and Procedures (EX4) Task Force.

Mr. Fickes said the materials from the Life and Health Actuarial (Technical) Task Force include a revised draft of the NAIC Model Rule (Regulation) for Recognizing a New Annuity Mortality Table For

Use in Determining Reserve Liabilities for Annuities. Upon motion duly made and seconded, the Life Insurance (A) Committee adopted the model as recommended.

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

6. Consider Consumer Federation of America Report

Commissioner Bartlett said the members of the A Committee had received information from the Consumer Federation of America (CFA) but Jim Hunt (CFA), one of the authors, was unable to attend the meeting to discuss that report. He said he thought it was appropriate to discuss the conclusions of the report in the context of the 1996 charges.

7. Consider Charges for 1996

The Life Insurance (A) Committee considered charges for the Life Disclosure Working Group and asked for target dates for completion. Commissioner Wilcox said the working group intends to complete adoption of a model regulation on annuities by the 1996 Summer National Meeting, but that illustrations of variable life insurance would probably take all year because of the need to coordinate with the Securities and Exchange Commission (SEC) and the National Association of Securities Dealers (NASD). Commissioner Wilcox suggested that an additional charge for the working group would be to review NAIC models for potential conflicts with the newly adopted Life Insurance Illustrations Model Regulation and said the working group is planning a conference call in a week to discuss that issue. He said it was important to move quickly because states are adopting the new model. Commissioner Wilcox said that he thought it was important for the working group to serve as a resource to answer any questions that the states might have. A fourth item the working group suggested was to consider the issue of churning and replacement of life insurance policies. He said the Life Insurance (A) Committee might want to handle this in a different manner than assigning it to the Life Disclosure Working Group, but he thought churning is an important issue, as had been pointed out in the CFA letter. He suggested that this charge could include exploration of disclosure of front-end commissions rather than a prohibition as suggested by CFA. Commissioner Bartlett pointed out that New York is holding hearings on the issue of commissions, and Commissioner Wilcox responded that this would be an appropriate time to look at the issue. Roger Strauss (Iowa) suggested that the charge to consider the issue of churning would be broad enough to encompass consideration of commissions with the addition of the words "such as commission disclosure."

Mary Alice Bjork (Ore.) said that the charge being requested by the Genetic Testing Working Group was a continuation of the 1995 charge to explore the issues and develop a white paper.

Mr. Foley said the Viatical Settlements Working Group was requesting a broader charge to actively consider making changes to the models in light of state experience.

The recommendations of the Ad Hoc Working Group on Annuities were reviewed. Commissioner Bartlett said that the first charge was being addressed the Senior Issues (B) Task Force so that could be removed from consideration under this committee for the present time. Mr. Fickes said that state laws on charitable gift annuities currently in place range from full reserve requirements to a complete exemption from the insurance laws. He said that \$2 billion a year was placed into charitable gift annuities, and recent U.S. Supreme Court decisions had pointed out the fact that the insurance department did not always regulate annuities, for example charitable gift annuities. Mr. Fickes said he thought the time had come to consider development of a model law to address this issue. Ms. Bjork agreed, saying this was a constant concern in Oregon. Commissioner Bartlett said Maryland had adopted a law setting reserves similar to those for life insurance.

The committee reviewed other suggestions that had been received from the Oregon Department of Insurance, including a suggestion for life insurance equity between policyholders of different policy forms. Ted Becker (Texas) suggested that this was similar to a charge now being considered by the

Life and Health Actuarial (Technical) Task Force, but broader. Commissioner Wilcox agreed that this belonged for consideration in the scope of the nonforfeiture issue.

The Life Insurance (A) Committee also considered suggestions from the consumers representatives. Their first suggestion was information on life insurance illustrations and disclosure. Commissioner Wilcox pointed out that this went a little bit further than the charge being considered by the working group currently and asked if it was the will of the Life Insurance (A) Committee to go further and to consider comparison between policies. He pointed out that Texas and California would be most interested in working on the development of comparison indices to be included in the illustration model, and the committee agreed to add this to the charge to the Life Disclosure Working Group.

An additional suggestion from the consumer representatives dealt with the issue of prohibiting sales of life insurance to senior citizens when the policy had a high cost with a low face value. Mr. Foley pointed out that this was not really restricted to seniors, but the policies could be sold to anyone. Mr. Strauss said the Life Insurance (A) Committee already had considered this issue several years ago and had changed the Life Disclosure Model Regulation to require disclosure and recommended that this issue not be considered further. The members of the Life Insurance (A) Committee agreed with that recommendation.

Reginald Berry (D.C.) suggested that the charge that had been given in 1995 to recommend an appropriate regulatory approach to the product known as a "synthetic GIC" (guaranteed interest contract) be continued, with a goal of completing a model by December 1996. He asked that the District of Columbia, Illinois and New York be permitted to continue to serve on a working group to accomplish this goal.

Mr. Berry said he would like to suggest another charge for consideration by the Life Insurance (A) Committee: the issue of whether insurers receiving handwritten applications may substitute a typed application and write in the signature block "signature on file." He asked that a charge be given to look at this issue and decide whether this would be appropriate. Commissioner Bartlett questioned whether this would be an appropriate charge for the A Committee. He said it sounded more like a contract issue to him. Commissioner Wilcox agreed, but said this is a piece of a much larger problem that will be seen more in the future, the issue of dealing with Internet applications and other electronic forms. He also suggested that this was a much larger issue than just life insurance and recommended that this issue be forwarded to the Market Conduct and Consumer Affairs (EX3) Subcommittee with a recommendation to expand it to all kinds of technology issues. Upon motion duly made and seconded, the list of charges as amended was adopted by the Life Insurance (A) Committee (Attachment Five).

The suggested Actuarial Task Force charges also were approved.

Having no further business, the Life Insurance (A) Committee adjourned at 9:40 a.m.

[Editor's Note: Minutes of the Nov. 27, 1995, meeting of the Life Insurance Committee are published here as Attachment Six. The NAIC Executive Committee and Plenary adopted these minutes at their Dec. 4, 1995, meetings.]

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

ATTACHMENT ONE

Viatical Settlements Working Group of the
Life Insurance (A) Committee
San Antonio, Texas
December 4, 1995

The Viatical Settlements Working Group of the Life Insurance (A) Committee met in Salon A of the Marriott Rivercenter Hotel in San Antonio, Texas, at 8 a.m. on Dec. 4, 1995. Tom Foley (N.D.) chaired the meeting for Glenn Pomeroy (N.D.). The following working group members or their representatives were present: Ron Kotowski (Ill.); Lester Dunlap (La.); Frederick P. Schumpe (Mo.); Steve Maluk (N.Y.); Tom Jacks (N.C.); John Crawford (Okla.); Mary Alice Bjork (Ore.); Don Switzer (Texas); Dixon Larkin (Utah); and Eleanor Perry (Vt.).

Tom Foley (N.D.) discussed the work being done by the Life and Health Actuarial (Technical) Task Force on life nonforfeiture. He said the project considered removing the requirement for cash values in life insurance policies. Minimum nonforfeiture values (reduced paid up or extended term insurance) would be required but having a cash benefit would be optional. He said this could encourage viatical settlements, and explained that the United States was very unusual in having minimum nonforfeiture values.

1. Discuss Comments Received on the Viatical Settlements Model Act and Regulation

Gary Choades (Viaticus) expanded on the written comments his company had provided. He said one area where the regulators had acted in the earlier drafting effort was to put in a minimum payout requirement. He said the future of the viatical settlement industry was to viaticate senior citizens' policies, and this included people with longer life expectancies than contemplated by the NAIC's model regulation. He said the table of minimum payouts made it difficult to purchase policies from people with longer life expectancies. He recommended to the working group the approach taken in Louisiana where the commissioner had discretion to permit variance from the percentages set forth upon a determination that economic conditions had changed, or if the annual premium paid by the viatical settlement provider exceeded 5% of the face value of the policy. Mr. Choades said some states do not regulate the payout at all. Ted Becker (Texas) asked if the industry had any reaction to longer life expectancies. Mr. Choades said the viatical settlement companies tried to estimate reasonably, but breakthroughs in medical care made the estimates inaccurate.

Michael Hurdle (Living Benefits) emphasized the importance of the pricing section of the NAIC model. He said when the model had been developed most of the viatications were for people with Acquired Immune Deficiency Syndrome (AIDS), but he saw the future of viatical settlements in the senior market, where life expectancy was much longer. He also pointed out that life expectancy for AIDS victims was now much longer because of new treatments. Eleanor Perry (Vt.) agreed that when the model was developed originally the regulators were thinking of a very different product for a different time, and she strongly supported work on the minimum benefits section.

Mr. Choades said a tax bill providing for tax-free treatment of viatical settlements for the chronically ill or terminally ill was before President Clinton for his signature. He said the wording of the bill showed that Congress recognizes that seniors and the chronically ill will be the main users of viatical settlements in the future. Mr. Foley said he thought the viatical settlement minimum payouts was something to consider in the charge for 1996, and he encouraged an actuarial study of appropriate minimums.

Mr. Foley also said that the trend in viatical settlements appeared to track what insurers were doing in offering accelerated death benefits. Mr. Choades said it was often difficult to get people to pay for an accelerated death benefit rider but if this coverage was not purchased at the front end, the policyholder might viaticate the policy later on. Mr. Foley said accelerated death benefits for long-term care were now being offered in many instances. Arnold Dicke (U.S. Life) said a long-term care rider was being offered by many companies, but the pricing required to support the costs, made it an unpopular option.

Mr. Choades said that another area for consideration by the working group was licensing for brokers. He said it was unclear who could refer a potential client for compensation. He said laws passed in some states made it very difficult or almost impossible to act as a broker and recommended a requirement that the company appoint a broker so that the burden was on the viatical company to be responsible for its agents. He pointed out that appointment would also allow the department to track the number of brokers licensed.

Peggy Wallace (Affirmative Lifestyles) asked the regulators to consider a requirement for full disclosure of fees paid and to whom they were being paid. She said full disclosure would remove some of the potential for litigation which is now developing.

Mr. Choades said that the New York regulation required that insurance companies respond to the viatical settlement company within 10 days to verify the existence of the policy. He said this short timeframe was important because it often prevented a policy lapse. He suggested this provision would be valuable for the working group to add to the NAIC model. Mr. Foley asked what their experience had been in New York, and Mr. Choades said that he had not seen any insurers having a problem getting the information back to the viatical settlement company within 10 days. Ms. Perry said the Vermont regulation will contain a 10-day requirement, and add a provision to require alerting the insurer that this is for a viatical settlement so it is aware of the duty to respond within 10 days.

Mr. Choades said that many group policies prevent assignment for value, and he applauded the companies that had changed their policy or allowed exceptions to the policy so that a viatical settlement could be completed. Commissioner Linda Ruthardt

(Mass.) asked how the viatical settlement company got the information for a group policy. Mr. Hurdle said the group policyholder often made an arrangement so that the information could be provided. He said this problem needed to be addressed across the board. He also said it was a problem that many policies did not allow assignment except in the case of a gift. He said it was a valuable benefit to allow the right to assign the policy.

2. Consider Development of a Uniform Application Form

Ms. Perry said that she, Ron Kotowski (Ill.) and Tom Jacks (N.C.) had begun work on developing a uniform application form. She said preliminary analysis indicated that there were a variety of forms in use in the states, and that some states did not have a form, but just asked for a narrative. She asked for suggestions from the industry about what they considered to be a good application form, and asked that states with an application form under development send a copy to Carolyn Johnson (NAIC/SSO) for distribution to the working group. Mr. Foley added that it would be helpful for interested parties and regulators to send comments, marketing materials, and whatever else they thought would be useful to the working group to Ms. Johnson by Feb. 1. Mr. Kotowski asked that the working group request a longer meeting slot at the Spring National Meeting in Detroit so that there could be more discussion of the issues.

3. Consider Possible 1996 Charge for the Viatical Settlement Working Group

The working group discussed an appropriate charge for 1996 and agreed that it is important to monitor state adoption of the Viatical Settlements Model Act and Regulation and to accumulate information from the states on modifications to the models that might be needed and to make recommendations to the Life Insurance (A) Committee for modifications to the NAIC models.

Having no further business, the Viatical Settlements Working Group adjourned at 9 a.m.

ATTACHMENT TWO

Report of the Genetic Testing Working Group of the Life Insurance (A) Committee

The Genetic Testing Working Group of the Life Insurance (A) Committee held conference calls on Oct. 18 and Nov. 1, 1995, and met on Dec. 3, 1995, in San Antonio, Texas to discuss the genetic testing white paper under development. Dixon Larkin (Utah) chaired the meetings. The following working group members or their representatives participated: Kenney Shipley (Fla.); Ron Kotowski (Ill.); James E. Ulland (Minn.); Robert G. Lange (Neb.); Kip May (Ohio); Mary Alice Bjork (Ore.); and Birny Birnbaum (Texas).

1. Definition of Genetic Testing

The working group spent a considerable amount of time discussing the definition of genetic testing. Commissioner James Ulland (Minn.) emphasized the importance of defining genetic testing narrowly and using that definition in the white paper. He suggested that overly broad definitions are not as useful and the working group would have a better product by giving these broader terms a different name for clarity. Birny Birnbaum (Texas) pointed out that the original plan of the group was to show several definitions and how a broader or narrower definition affected the issues and to bring out the implications of the different definitions. The group agreed that this was important, but also agreed with Commissioner Ulland that it would be confusing to use the same term to describe different concepts. Dixon Larkin (Utah) said this was an opportunity to bring more clarity to the issue and perhaps develop new terms to help participants in the dialogue articulate their varying opinions more clearly.

The working group agreed to use a definition crafted by Commissioner Ulland for purposes of the drafting, and then to make changes to the paper as needed if the definition changed. It was agreed that the writing would be easier if each contributor used the same definition. Mr. Birnbaum agreed this would be useful, but emphasized the importance of communicating how a broader definition would produce different results.

2. Genetic Testing in Life, Health and Disability Income Insurance

Director Robert G. Lange (Neb.) discussed the first draft of the section he had prepared. Ron Kotowski (Ill.) questioned the assertion in the paper that disability income insurance premiums would not change, and asked if the premium could be changed if the occupation changed. Mr. Birnbaum questioned the implication that it was acceptable to prohibit genetic testing for health insurance but not for life insurance based on the differences articulated. Director Lange said it was not his intent to so imply, but rather just to point out the differences.

Mr. Kotowski also suggested changing the last paragraph in the health section so that it said "typically" states allowed differences in premium based on age, sex, etc. He pointed out this was not the case in all states for all types of health coverage.

3. Concerns about Genetic Testing in Life, Health and Disability Income Insurance

Mary Alice Bjork (Ore.) discussed the section on consumer issues that she had prepared. She said several consumer advocates in her office had reviewed it and offered suggestions.

4. Genetic Testing Working Group Recommendations

Ms. Bjork noted that it was difficult for her to draft this section with three other participants. Dr. Larkin said he saw this section as multiple suggestions and thought it was appropriate for each of the four to draft recommendations for consideration.

5. Next Steps

Dr. Larkin assembled the contributions of the various working group members into one document (Attachment Two-A) and asked interested parties to comment in writing to Carolyn Johnson (NAIC/SSO) as soon as possible so those comments could be incorporated into the next draft.

Dr. Larkin said that the draft of the paper had been kept brief purposely so that it would serve as an overview to educate regulators. He said the document will also contain a summary of state laws so that regulators who are interested in more detail can see how the various states have handled the issue. Roger Strauss (Iowa) asked if it was a goal of the working group to prepare a model law. Dr. Larkin responded that it was the consensus of the group that it was too early to set down policy. He said that technology was changing too quickly and the group had decided instead to suggest some policy alternatives. Wendy McGoodwin (Council for Responsible Genetics) said she understood the consensus of the working group had been to develop one or more model laws. Dr. Larkin clarified that the paper would instead include suggested language but a model regulation or law would not be developed.

6. Discussion of Senate Bill 1416

The working group spent some time discussing a bill submitted to the U.S. Senate by Sen. Mark Hatfield (R.-Ore.). The definitions of genetic testing and genetic information were discussed. Dr. Larkin said he thought the definition of a genetic test was relatively narrow. Commissioner Ulland said the genetic information definition was broad because it included family members so actually was information on family history. He pointed out that the section of the bill that prohibited the use of genetic information for health insurance would also be a prohibition on the use of family history information. Dr. Larkin agreed that this was a broad use of the term.

Dr. Larkin said the bill contained a general prohibition on the use of genetic information for an insurer offering health insurance. He opined that states are moving toward open enrollment so this section would not be of much effect. Tom Foley (N.D.) said that for a true group there is already guaranteed issue; small group insurance law is moving toward that; but in most states individual coverage does not have guaranteed issue. He opined that it would be significant for the individual applicant to have this kind of protection in the federal law.

Ms. McGoodwin said that her group was in general support of this bill but was concerned about some of its limitations. She said disability income and other types of insurance, other than health, could still require genetic testing. Commissioner Ulland said he saw the federal bill as very broad in its definitions and recommended that state regulators look at it very carefully. He said he would have serious problems with this bill in itself or as a model to states.

Jean Rosales (American Academy of Actuaries—AAA) recommended regulators keep in mind the difference between health insurance and life insurance in this context. She also recommended an awareness of the policy decisions to be made in underwriting and in pricing.

The working group next considered a provision in the bill that prohibited an insurer from using the results of a genetic test as an inducement for the purchase of insurance. Dr. Larkin asked what the effect of this provision was. Mary Alice Bjork (Ore.) said this provision came from Oregon law, and that the intent expressed at the Oregon hearings was that an insurer was prohibited from encouraging someone to have a test, and then selling him or her coverage based on the fact that the person had not demonstrated the genetic trait. Ms. McGoodwin added that this could be seen as a gentle nudge to do a test and as a sales technique.

Dr. Larkin asked the members of the working group how they wanted to follow up on this proposed federal bill. He indicated that more background information on the bill's intent and its prospect for enactment were necessary and said that NAIC staff was getting that information. Commissioner Ulland suggested that interested parties and working group members submit written comments for the working group's analysis to help decide if the NAIC should take a position.

Ms. Rosales suggested that regulators distinguish between policy decisions and technical flaws in the bill. She said their comments would have more impact this way. Ms. Rosales said that the Academy had adopted genetic testing as one of the key issues for 1996, and expected to devote significant resources into developing a position on this topic.

The working group discussed a request from Ms. McGoodwin for the opportunity to make a presentation to the Commissioners Roundtable to provide further information on genetic testing. The group agreed this would be useful, and decided this should be recommended for the June 1996 meeting, after the white paper would have been distributed to the regulators, and that a variety of presenters should be invited to explain all sides of the debate.

Report of the Genetic Testing Working Group

The Genetic Testing Working Group was created following the Spring National Meeting in Denver in 1994. The charge to the working group was to analyze the appropriateness of insurers using genetic testing in applications for insurance coverage. The working group conducted open hearings on genetic testing at the national NAIC meetings held in Baltimore, Minneapolis and New Orleans in 1994 and in Miami, St. Louis and Philadelphia in 1995. In addition members of the working group participated in various seminars specifically addressing genetic testing held across the country. Also, various states have held hearings and developed various model laws. This paper is designed to provide a brief, hopefully easily understood, primer on genetic testing, its current status and issues raised by its use; an overview of actions taken by the various states; suggestions as to possible regulatory options; recommendations by the working group; and finally a compilation of the statutes enacted by the states.

I. Introduction

Each person has his or her own unique combination of 23 pairs of genes or chromosomes, the basic units of human heredity. These genes form the human genome. The human genome is the genetic blueprint of the human body. The code is made up of about three billion chemical "letters" or nucleotides, the chemical units that create each person's chromosomes. The genetic code is formed by combinations of only four amino acids, cytosine, tyrosine, guanine and adenine, in various combinations. These nucleotides are arranged in pairs, forming a twisting, ladderlike structure, known as a double helix, called deoxyribonucleic acid (DNA). If stretched out, each cell's genetic code would be about three feet in length.

Each cell of the human body contains the entire genetic code for an individual, consisting of about 100,000 genes. Genes order the production of proteins and other chemicals that go into making up the human body. When a gene is altered or mutated, the wrong message is sent to the production mechanism of the cell, which can, in turn, cause the body to malfunction, creating genetic disease. Genetic disease may be either inherited or acquired. Inherited disease arises as a result of the chromosomes received directly from parents, as in cystic fibrosis. These diseases may be from dominant genes, requiring only a single gene from one parent. Or they may be from recessive genes, requiring a gene from each parent. Genetic disease may also arise from alteration of the genetic code after birth, an acquired disorder. Certain forms of cancer are most likely this type of disease, since the gene which controls the growth of a specific cell appears to be damaged so that the normal cell loses control, expanding locally and spreading distantly, ultimately killing the patient. Alterations to genes may also increase the likelihood of an individual developing a disease, even though the disease itself is not genetic in origin.

II. Definition of Genetic Testing

There has been no generally accepted term that precisely defines "genetic testing." The term implies that a piece of the human genetic code is examined to determine if the chemical sequence is proper. However, this is not currently possible except in the most sophisticated laboratories. Rather, the underlying genetic code must be deciphered through indirect evidence.

In those states where legislation has been adopted addressing genetic testing, the definition has been relatively restrictive, limiting the definition to those tests which examine the genetic code or direct gene products. In addressing the issue of defining genetic testing, insurers have advocated extremely tight restrictions, limiting such testing to laboratory testing of human DNA or chromosomes. On the other side of the issue, some advocacy groups have advocated much broader definitions, including a prohibition against inquiring into the applicant's family history or even the ages or health of one's parents as a form of a genetic test.

The Task Force on Genetic Testing of the Working Group on the Ethical, Legal and Social Implications of the Human Genome Project:

"Genetic tests" - The analysis of human DNA, chromosomes, proteins or other gene products to determine the presence of disease-related genotypes, mutations, phenotypes or karyotypes for clinical purposes. Such purposes include prediction of disease risks, identification of carriers, monitoring, diagnosis or prognosis, but do not include tests conducted purely for research.

The Working Group suggests the working definition be:

"Genetic screening or testing" means a laboratory test of a person's genes or chromosomes for abnormalities, defects, or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease, or other disorders, whether physical or mental, which test is a direct test for abnormalities, defects, or deficiencies, and not an indirect manifestation of genetic disorders.

III. Current State of Genetic Testing

Perhaps the most famous genetic project currently is the Human Genome Project. The Human Genome project is a worldwide project initiated approximately five years ago in an attempt to analyze the human genetic code. It is anticipated that the Project will take about 15 years and cost about \$3 billion. At the present time, scientists estimate that they have identified genes responsible for about one half of the 6,500 known inherited diseases caused by a single defective gene, including the genes responsible for cystic fibrosis and neurofibromatosis. In addition, certain genetic abnormalities have been discovered

which predispose individuals to certain diseases, such as breast cancer in women who inherit the BRCA-1 abnormality or indicate a high probability of cancer in families who have a history of hereditary non-polyposis colon cancer.

The project hopes to accomplish two goals. First is to map the genome, to determine the location of each of the thousands of genes. Second is to sequence the genome, to determine the order of each of the chemical letters making up the genetic code. By achieving this, scientists hope to be able to examine an individual's genetic code to identify any abnormality that might exist in the sequence of the code and then determine how that abnormality might affect the individual by ascertaining which structure or function might be changed by the location of the abnormality on the map of the genome. To date less than 1% of the genome's three billion units have been sequenced or deciphered.

Most current "genetic tests" examine either gene products or macroscopic structures resulting from the action of a specific gene. Many genetic syndromes are diagnosed solely through the physical examination of the patient. Other genetic tests examine the chemicals created by the body from the genetic code, for example testing of newborns for treatable metabolic diseases such as phenylketonuria (PKU). Many states mandate such neonatal testing. Still other diseases are diagnosed by a combination of these two methods.

On a microscopic basis, chromosomes themselves may be examined to determine if there is a cellular chromosomal abnormality, as when an amniocentesis is performed on a pregnant woman looking for Down Syndrome connected with trisomy.

Genetic testing is of variable utility. This is particularly evident in autosomal recessive conditions, where the genetic abnormality must be inherited from both parents. For example, with cystic fibrosis two individuals who carry the single abnormal gene will not develop the disease. However, should those individuals have children together, those children carry a 25% risk of inheriting both abnormal genes and will then certainly develop the disease. Therefore carrier status is not predictive of future disability for those individuals. In autosomal dominant conditions such as Huntington's Chorea, the presence of a single gene means those individuals will develop the disease if they live long enough. These individuals are essentially presymptomatic with the disease process, since the only condition under which the disease will not develop is an early death. The identification of the gene is therefore highly predictive of future disability. Intermediate between these two conditions are the complex gene-influenced conditions which have a predisposition toward the development of a disease. For example a woman who inherits the BRCA-1 abnormality has a high probability of developing breast cancer. However about 15% will not develop the disease. Therefore the predictive value of the genetic abnormality is of significance, but places the individual in an intermediate risk exposure, lying between the recessive and dominant genetic disorders.

The working group sought responses to several questions regarding the current status of genetic testing. The first was whether insurers were currently requiring applicants to submit to genetic testing. We found that, at the present time, insurers are not requiring genetic testing as a prerequisite to coverage. Second was whether insurers were using genetic test results from any source in underwriting. It was found that, although no insurers are now requiring genetic testing, if the results of genetic testing are in an applicant's medical record and are relevant, insurers are likely to include such results in the underwriting process.

IV. Genetic Testing Issues

Life and Disability Income Insurance

Life and disability income insurance policies provide financial security in the form of benefits to the policyholder's beneficiaries and to or for the benefit of the insured, respectively. By contrast, health insurance contracts provide indemnification for the cost of medical services rendered the insured.

Most life and disability income assurance is individually underwritten. Both the underwriting and pricing of these policies is performed at the inception of these contracts. Once issued, neither the terms of nor the premiums for these policies can be changed regardless of changes in the nature of the insured risk or the length of time during which the contract is in effect. These policies also cannot be terminated except for nonpayment of premium. By contrast, most health insurance is provided by employer group contracts and hence, re-priced annually and can be canceled under certain circumstances.

At the end of 1993, the most recent year for which there are published statistics, life insurance in force in the United States amounted to \$11,105 billion. Seventy-eight percent of all American households and 154 million Americans owned life insurance at the end of 1993. Life insurance purchases during the year totaled \$1.7 trillion. Two-thirds of that amount were for individual ordinary life insurance.

Of the \$11,105 billion of life insurance in force at the end of 1993, 57.9% (\$6,428.4 billion) was ordinary individual life insurance which continues to be the principal type of life insurance protection for Americans. This type of insurance is purchased by individuals to meet individual needs. Group life insurance in force at the end of 1993 totaled \$4,456.3 billion and represented 40.1% of the life insurance in force in the United States.

The process of risk classification is used primarily in underwriting individual life and disability income insurance. Through the process of risk classification and underwriting, insurance companies place applicants for coverage into groups or classes. Each class is comprised of individuals who pose the same or comparable levels of risk. All the members of the class pay the same premiums. This is how insurers attempt to achieve fairness among insureds by matching premiums to the risks presented so that all those who present the same level of risk pay the same premiums.

On one side, individuals with any type of genetic abnormality, even if that abnormality is not predictive of any increased morbidity or mortality, are concerned that they will not be able to get insurance. On the other, life and disability insurers are concerned that, if an individual has knowledge of a genetic condition which is either presymptomatic or highly dispositive to developing a disease, that individual has an increased incentive to obtain higher levels of insurance without disclosing what may be a highly predictive risk underwriting factor.

Health Insurance

Health insurance is sold on a group and individual basis. Most major medical insurance coverage is provided on a group basis by an employer. Insurers classify risk for health insurance for groups either by the group's own claims experience, or by data from the claims experience of other similar groups in the same industry. The premium rates are also set according to these factors. Major medical coverage pays for most medical expenses incurred for hospital and physician services at a percentage of the amount billed, after a deductible has been satisfied. Many policies limit coverage to a lifetime maximum, which is rarely exhausted.

The smaller the group, the fewer people there are to spread the cost of high cost claims; therefore, insurers individually medically underwrite smaller groups. Many states have enacted small employer laws that require insurers to accept all employees of a small employer so underwriting does not result in exclusion from the group. Some states have laws or regulations that limit medical underwriting.

Sole proprietors, small employers and individuals applying for major medical coverage experience medical underwriting. If a person has a medical condition that the insurer determines is unacceptable because of potential high medical expenses, in most states the insurer may reject the applicant, or issue a policy that excludes the preexisting condition for some period of time, or may never cover the condition. For this reason many states have laws that provide major medical coverage to individuals through a state high risk pool, while a few states require an insurer, such as Blue Cross Blue Shield, to accept these individuals. Insurers reject or limit coverage according to data that demonstrates that certain medical conditions, such as diabetes and cancer, will result in medical expenses. Other types of health insurance such as long-term care insurance, Medicare supplement insurance and limited indemnity coverage are also medically underwritten. However, federal and state laws require insurers to issue Medicare supplement insurance policies to applicants the first six months they receive Medicare Part B and reach 65 years of age, regardless of individual health conditions.

Premiums for individual insurance coverage are set according to the individual's age, sex and geographic residence because these are reliable factors that indicate claims experience and medical expenses in the area where a person resides.

With the increasing adoption of open enrollment requirements among the states, the utility of genetic information in underwriting health insurance is rapidly disappearing, since open enrollment requires the insurer to accept all applicants, regardless of health status. Despite these changes, Senators Mack and Hatfield have recently introduced legislation at the federal level to prohibit the use of genetic information in the health insurance area.

Availability of Insurance Coverage

Health insurance is the fundamental means to health care for many people. Life insurance is a primary means to future financial security. If an individual's genetic information indicates a potentially adverse genetic condition, genetic testing could threaten the individual's ability to obtain either coverage. In response to test results, an insurer may increase premiums, exclude coverage for a condition even if the individual is healthy, or deny insurance altogether. An individual's access to health care and future financial security may be threatened or closed.

Confidentiality

As a medical test, a genetic test becomes part of an individual's medical record. Consumers have justifiable concerns that private medical information will be circulated to persons other than the individual or his or her medical practitioner.

Burden of Knowledge

Learning about a genetic condition may create a serious mental and emotional burden for an individual, depending on the condition and its likelihood or potential for injuring the individual's health. An individual has no control over the condition. Depression, hopelessness and psychological trauma are obvious concerns. Family discord arising from unknown or undiscovered hereditary conditions are possible. Finally, the knowledge may have no therapeutic value for an individual if nothing can be done to prevent or deal with the condition. The lack of therapeutic value of the testing itself, as well as of the test results, is especially troubling because the testing at the outset was not done for the individual's medical benefit or by the individual's choice, but for the economic interest of a third party, the insurer.

DISCRIMINATION

A perfectly health individual who has a potentially adverse genetic condition may be the object of discrimination by insurers, employers and others. This discrimination may spill into other areas including employers, insurers and others. Essentially, the individual runs the risk of being negatively stereotyped or categorized regardless of the individual's current health.

EFFECT ON CURRENT POLICYHOLDERS

A policyholder who learns of a genetic condition will recognize that a change in employment may threaten health care and future economic security. The individual's freedom to move from one job to another and the freedom to move from one type of coverage to another may be circumscribed. The individual's employment may even be threatened. Finally, a healthy person with a potentially serious genetic condition may be treated unnecessarily as having a chronic, fatal disease.

V. Regulatory Options

Survey of State Legislation
Policy Options

VI. Genetic Testing Working Group RecommendationsVII. Bibliography

ATTACHMENT THREE

Life Disclosure Working Group
of the Life Insurance (A) Committee
San Antonio, Texas
December 2, 1995

The Life Disclosure Working Group of the Life Insurance (A) Committee met in Salon E of the Marriott Rivercenter Hotel in San Antonio, Texas, at 10 a.m. on Dec. 2, 1995. Robert E. Wilcox (Utah) chaired the meeting. The following working group members or their representatives were present: Tom Foley Vice Chair (N.D.); Don Koch (Alaska); Daphne Bartlett (Calif.); Roger Strauss (Iowa); Lester Dunlap (La.); Rick Morse (N.Y.); Tony Higgins (N.C.); Kip May (Ohio); and Ted Becker (Texas).

1. Discuss Potential Conflicts of Life Insurance Life Illustrations Model Regulation With Other Models

The Life Disclosure Working Group members reviewed several NAIC models to consider whether there was a potential conflict between any of those models and the newly adopted Life Insurance Illustrations Model Regulation. Commissioner Robert E. Wilcox (Utah) suggested that after the regulators had more time to review the models, a conference call should be held to consider whether any of the models need to be amended. Don Koch (Alaska) suggested adding a charge to the working group to reconcile the new illustrations model with other existing NAIC models. Tom Foley (N.D.) asked if it is the intent of the working group to produce an addendum to the illustrations model suggesting review of other laws, or whether these other models should be amended by the working group. Commissioner Wilcox said this decision would be made at the conference call. Review of the Life Disclosure Model Regulation produced consensus of the working group that there are many potential conflicts in that model. Daphne Bartlett (Calif.) asked what numbers would be used in the indices required by that model. She pointed out the disclosure regulation required the currently payable scale, where the illustrations model had an illustrated scale and a disciplined current scale. Commissioner Wilcox said the disclosure model also require delivery of a policy summary with contents that duplicated much of the illustration. He suggested that the policy summary only be required for policy forms that did not use an illustration. The working group also identified the Universal Life Regulation as one in need of reconciliation, and Mr. Koch suggested the Replacement of Life Insurance and Annuities Model Regulation also had some areas of conflict. Commissioner Wilcox asked working group members to meet by conference call at 3 p.m., Dec. 13, 1995. Commissioner Wilcox asked Carolyn Johnson (NAIC/SSO) and Mark Peavy (NAIC/SSO) to do some preliminary work on identifying potential conflicts and to list how widely each of the models were adopted. John Booth (American Council of Life Insurance—ACLI) thanked the working group for moving ahead with this project. He said it was very important to the companies to resolve these conflicts.

2. Discuss Variable Life Insurance Regulations

Carl Wilkerson (ACLI) provided background information on variable life insurance illustrations. He said they were regulated at three different levels: the Securities and Exchange Commission (SEC) regulated the prospectus; the National Association of Securities Dealers (NASD) governed the individually prepared sales literature; and state insurance departments regulated the insurance aspects of variable life. Mr. Wilkerson said the SEC has not had a registration statement specific to variable life but was now considering development of a special form that would help consumers with comparison shopping. He said the proposal under consideration would use a hypothetical to show how the policy works, and would contain a detailed list of restrictions on how individual illustrations could be used. He said the proposal under consideration also allowed illustration of the historical underlying performance. Ms. Bartlett asked Mr. Wilkerson if he thought the existing model regulation on illustrations was a good starting point for variable life illustrations and Mr. Wilkerson said yes. He said there was much on which to build in that model regulation. Mr. Foley asked if it was possible to dovetail the Jan. 1, 1997, effective date for non-variable life with the variable illustrations. He asked if Mr. Wilkerson thought the SEC project would be finished by that date. Mr. Wilkerson said the SEC had been alerted to the fact of the NAIC activity, and was sensitive to the fact that the two regulatory bodies should not be in conflict. Mr. Foley asked if it would be fruitful to talk to the SEC again about the NAIC project. The working group agreed to continue a dialogue with the SEC and the NASD as the work on the variable life illustrations regulation progressed.

Rick Morse (N.Y.) said an important part of the discussion was how to educate the consumer as to the investment risk and the mortality risk that is assumed in variable life. He said this must be brought home clearly to the consumer, and thought the newly adopted life illustrations model was a good springboard. Commissioner Wilcox asked Mr. Morse if the approach of including variable life in the same model as non-variable life was the best method, and Mr. Morse said that was the approach that had been taken in the New York draft. He said there was a great deal of commonality in the various types of life insurance illustrations and thought that was a good approach.

Mr. Foley suggested that a subgroup of the Life Disclosure Working Group be formed to work on annuities and another subgroup to work on variable life illustrations. Jerry Fickes (N.M.) encouraged this approach because he said the Ad Hoc Working Group On Annuities had expressed serious concern about getting to rules on illustration of annuities as quickly as possible. Tony Higgins (N.C.) agreed to chair the annuity subgroup and Mr. Fickes, Ted Becker (Texas), Roger Strauss (Iowa) and Don Koch (Alaska) offered to serve on that subgroup. Mr. Morse agreed to chair the subgroup on variable life, and Mr. Foley and Commissioner Wilcox agreed to serve with him on that project.

Commissioner Wilcox encouraged the interested parties who had experience and technical expertise in variable life to offer their assistance as technical resource advisors to the working group. He asked George Coleman (Prudential) to continue to coordinate the efforts of the advisors. Commissioner Wilcox asked those who were interested in participating, but had not participated in the past, to send information of their interest to Ms. Johnson. Commissioner Wilcox said that he hoped Jim Hunt (Consumer Federation of America) and Mary Griffin (Consumers Union) would continue to provide a consumer viewpoint for the working group's effort.

3. Consider Charge for 1996

The working group reviewed the charge for 1996. The members agreed that an important part of its charge should be to complete the work on illustrations of variable life and annuities and suggested asking for an additional charge to reconcile the Life Insurance Illustrations Model Regulation with existing NAIC models. Mr. Strauss asked if it would be appropriate to consider the issue of churning in replacement of life insurance policies at the Life Disclosure Working Group level or whether the Life Insurance (A) Committee might want to set up another working group to handle that charge. Commissioner Wilcox suggested that this be added to the list, for the A Committee's consideration. The working group identified an additional charge to clarify the meanings of the life insurance illustration regulation and actuarial standard of practice and to facilitate implementation of the model.

4. Any Other Business to be Brought Before the Working Group

Mr. Foley suggested that it would be necessary to ask the Actuarial Standards Board to develop a standard of practice for both the variable life illustrations and the annuity illustrations. Mr. Koch suggested that the process of concurrent development had worked well with the non-variable illustrations and suggested that process continue.

Mr. Higgins said a life insurance illustrations regulation had been filed for hearing in North Carolina and said that at the hearing his state would be receptive to suggestions to bring its regulation in line with the model except for the issue of non-term group life abbreviated illustrations. He said the North Carolina regulation only allowed these for employer groups. Commissioner Wilcox said this would not be a significant difference that would affect the application of the Standard of Practice. He emphasized the desirability of uniform adoption of the model in light of the additional expense for companies to comply with deviant state regulations.

Mr. Foley asked states that are implementing the model regulation to report to Ms. Johnson any changes they were making to the model. Commissioner Wilcox said Utah intended to propose the regulation for adoption in the first quarter of 1996, Alaska reported it also intends first quarter 1996 adoption, and Oregon will implement in mid-1996.

Having no further business, the Life Disclosure Working Group adjourned at noon.

ATTACHMENT FOUR

Ad Hoc Working Group on Annuities
of the Life Insurance (A) Committee
San Antonio, Texas
December 2, 1995

The Ad Hoc Working Group on Annuities of the Life Insurance (A) Committee met in Salon I of the Marriott Rivercenter Hotel in San Antonio, Texas, at 1 p.m. on Dec. 2, 1995. Jerry Fickes (N.M.) chaired the meeting. The following working group members or their representatives were present: Tom Foley (N.D.); Mary Alice Bjork (Ore.); and Ted Becker (Texas).

Jerry Fickes (N.M.) began the meeting by summarizing a survey which had been prepared by the working group to gauge insurance department interest in various annuity issues (Attachment Four-A). Mr. Fickes pointed out several areas where regulators felt strongly, such as the need for disclosure on annuities. He said this would affect two-tier annuities, inappropriate sales and the nonforfeiture law on annuities. Frank Dino (Colo.) said the current nonforfeiture concept was to keep the model on a generalized basis so that it would apply to new products as they were developed. Mr. Fickes said the Life Disclosure Working Group, which had met earlier in the day, was making a suggestion to the Life Insurance (A) Committee

that a subgroup work on annuity illustrations. Mr. Fickes said that another area that had generated interest on the survey was concern about the seniors market. He said regulators had expressed concern that there was inadequate protection for senior consumers and suggested someone look at this issue. Mr. Fickes also said an interest had been expressed in possible development of a charitable gift annuities model regulation or guideline. He also pointed out that many states do not define annuities in their code and suggested that it would be good to develop a definition of an annuity. Mr. Fickes said the working group had been asked to consider whether a separate task force on annuities should be established, and said the working group members were not inclined to recommend creation of a new task force at the present time.

The working group listed a series of suggested charges for the Life Insurance (A) Committee for its consideration (Attachment Four-B). Upon motion duly made and seconded, the working group adopted the recommended list of charges.

Having no further business, the Ad Hoc Working Group on Annuities adjourned at 1:30 p.m.

ATTACHMENT FOUR-A

Results of the Annuity Questionnaire from the Ad Hoc Working Group on Annuities NAIC Life Insurance (A) Committee

These are the questions that were asked of the states. Twenty-six states responded. Here is a summary of the responses:

1. Our records indicate you have adopted NAIC models on the topic of annuities that are checked. For each model not adopted in your state, please indicate if you intend to adopt some version of it, and if not, why not?

Model and latest NAIC amendment	Intend to Adopt	If not, why not?
Annuity and Deposit Fund Disclosure Regulation 6/88	Most do not intend, few yes	Most responded that they had received few complaints; some had addressed any problems in another manner, a few thought the model needed to be revised to be consistent with life disclosure.
Interest-Indexed Annuity Contracts Model Regulation 12/87	Most do not intend to adopt	Few states see these products or have complaints, so most did not feel regulation was needed; one expressed interest because of new products introduced.
Modified Guaranteed Annuity Regulation 6/90	Several plan to adopt soon	Most states said they did not have complaints or a need for the model; several plan to adopt; one said the model was not appropriate to adopt.
Nonforfeiture Law for Individual Deferred Annuities 6/77	Adopted in most states	
Replacement of Life Insurance and Annuities Model Regulation 6/84	Most states responding already have rule in place.	A few states intend to consider the model, but three expressed the opinion that the model needed to be updated, and reviewed in response to current problems.
Two-Tier Annuity Model Regulation 12/91	About half the respondents intend to consider the model	Several states have prohibited the sale of two-tier annuities instead, or dealt directly with companies to solve problems. Three pointed out a need to revise the Annuity Nonforfeiture Model Act to address problems here, and one suggested this model be incorporated into the annuity illustrations model planned.
Variable Annuity Regulation 12/79	Most states responding had adopted model or addressed through other reg. Several plan to adopt.	Several saw no need to adopt the model.
Variable Contract Model Law 2/71	Most have in place, couple plan to adopt model or variant	A few saw no need in their marketplace.

2. Do you regulate products with annuity characteristics? 3 no response; 3 no; 14 yes; 2 yes, if sold by life insurance company, 3 if they fall within definitions, 1 if have life contingencies.

3. How does your state define annuities? (See Exhibit One)

4. Are there NAIC annuity models that would be improved by revisions? (If so, which ones and how?) 15 had no opinion; 5 nonforfeiture model; 6 illustrations and disclosure; 1 replacement; 1 two-tier annuities; 1 review all to update for new products.

5. Do you see any special consumer problems related to the senior market or other markets served by annuities? 2 no opinion; 4 no; 12 concerned about sales to seniors that may be inappropriate or contain misrepresentations; 8 concerned about two-tier annuities, illusory account values, errors in field-issued products, confusion in disclosures and advertising, long-term surrender charges, lack of uniform definitions of terms.

6. Is your state satisfied with its law related to charitable gift annuities, or should there be a model? 10 states were satisfied with their current treatment; 11 thought a model should be developed; 5 had no opinion.

7. Do you see any other areas where the NAIC could help you by drafting an annuity model law or regulation? 3 synthetic guaranteed interest contracts (GICs); 1 update mortality tables; 1 tax regulations; 1 immediate annuities with surrender features; 1 consolidate NAIC models.

8. Do you feel annuities have adequate review in the present NAIC committee structure or should there be one task force under the Life Insurance (A) Committee that acts as a clearing house to make certain annuity issues are properly addressed? 10 need separate task force; 9 current structure adequate; 7 no opinion.

Exhibit One

Definitions of Annuities:

Alaska	"Annuities" means all agreements to make periodical payments if the making or continuance of all or some of a series of payments or the amount of a payment is dependent upon the continuance of human life. The business of annuities shall be considered to include additional benefits operating to safeguard the contract from lapse, or to provide a special surrender value, or special benefit or annuity in the event of the total and permanent disability of the holder.
Arizona	"Annuities" encompass all agreements to make periodic payments, other than contracts defined as "life insurance," where the making or continuance of all or of some of a series of such payments, or the amount of any such payment, is dependent upon the continuance of human life. Except as exemption or other provision is made, all provisions in this title applicable to life insurance shall be deemed applicable also to annuities.
Arkansas	"Agreement by insurer to make periodic payments that continue during the survival of the measuring life or lives under the agreement or for a specified period."
California	Not explicitly defined
Colorado	No definition in statute
Connecticut	Individual and group, fixed and variable benefits, deferred benefits with purchase guarantees, periodic payments in payment status (operational definition).
Delaware	A contract, ... under which obligations are assumed as to periodic payments for specific term or terms where the making or continuation of all or some such payments, or the amount of any such payment is dependent upon the continuation of human life.
Idaho	No set definition
Illinois	No definition
Indiana	Not defined, except for purposes of nonforfeiture
Iowa	No definition
Kansas	Not applicable
Minnesota	No definition
Montana	No definition in statute
Nebraska	No specific definition
New Jersey	"Annuity" means a contract not included within the definition of life insurance ... under which an insurer obligates itself to make periodic payments for a specified period of time, such as for a number of years, or until the happening of an event, or for life, or for a period of time determined by any combination thereof. Such a contract which includes extra benefits ... shall nevertheless be deemed to be an annuity if such extra benefits constitute a subsidiary or incidental part of the entire contract.
New Mexico	Weak definition
New York	"Annuities," means all agreements to make periodical payments for a period certain or where the making or continuance of all or some of a series of such payments, or the amount of any such payment, depends upon the continuance of human life ... Amounts paid the insurer to provide annuities and proceeds applied under optional modes of settlement or under dividend options may be allocated by the insurer to one or more separate accounts....
Oregon	An agreement to make periodic payments where all or some are dependent on a human life, or where payments begin within 13 months and are guaranteed to continue for at least five years.
South Carolina	"Annuity" means every contract or agreement to make periodic payments, whether in fixed or variable dollar amounts, or both, at specified intervals.
Texas	Some type of income settlement must be available. Also, the maximum death benefit can not exceed the larger of the accumulation value and a return of premiums.
Utah	"Annuities" mean all agreements to make periodical payments for a period certain or over the life time of one of more natural persons if the making or continuance of all or some of the series of the payments, or the amount of the payment, is dependent on the continuance of human life.

Vermont	An annuity is a contract issued for a valuable consideration under which the obligations are assumed with respect to periodic payments for a specified term or terms or where the making or continuance of all or of some of such payments, or the amount of any such payments, is dependent upon the continuance of human life.
Virginia	"Annuities" means all agreements to make periodic payments in fixed dollar amounts pursuant to the terms of a contract for a stated period of time or for the life of the person or persons specified in the contract. As used in the title, unless the context requires otherwise, "annuity" shall be deemed to include "variable annuity" and "modified guaranteed annuity" and shall be deemed to include a contract under which a lump sum cash settlement is an alternative to the option of periodic payments.
Washington	Only defined for purpose of exemption of proceeds.
Wyoming	"Annuity" means a contract under which obligations are assumed with respect to periodic payments where the making or continuance of all or some of the payments is dependent upon continuance of human life, and a contract which includes extra benefits ... is an annuity if the extra benefits constitute a subsidiary or incidental part of the entire contract.

ATTACHMENT FOUR-B

Recommendations of The
Ad Hoc Working Group on Annuities

The Ad Hoc Working Group on Annuities surveyed the states for input concerning current annuity models and regulations. Twenty-six of the states responded. The working group identified several concerns that it felt should be addressed by the Life Insurance (A) Committee. These are listed below in order of importance.

1. The Life Disclosure Working Group is urged to complete its charge to address illustrations of annuities as quickly as possible. This is listed first as it also addresses other concerns such as sales to seniors, two-tier annuities, misrepresentations and confusion in disclosures and advertising.
2. The Life Insurance (A) Committee is requested to consider these charges for 1996:
 - a. Consider issues related to annuity (and possibly life insurance) sales to seniors. This might be accomplished through the establishment of a working group to address senior issues, such as is present in the Accident and Health Insurance (B) Committee. That group has addressed issues such as suitability and buyers guides for seniors. An alternative could be to have the Senior Issues (B) Task Force address all issues of life, health or annuities.
 - b. Consider the need for a model law related to charitable gift annuities. Currently those states that have adopted a law have a great amount of variance.
 - c. Develop a definition or definitions of annuities. The questionnaire showed considerable differences between states.

The question regarding establishment of a separate committee or task force just to handle annuities and annuity concerns was divided in the response. The Ad Hoc Working Group suggests that annuities remain under the current structure of the Life Insurance (A) Committee with that committee deciding on the structure to be used to address the issues.

With these recommendations, the Ad Hoc Working Group on Annuities considers its charge to be complete and requests that it be discharged.

ATTACHMENT FIVE

Life Insurance (A) Committee Charges:

Life Disclosure Working Group

1. Establish model requirements for policy illustrations or ledger information disclosed or made available to consumers of variable life insurance and annuities. Recommend adoption of model regulation on annuities by Summer National Meeting.
2. Review NAIC models for potential conflicts with Life Insurance Illustrations Model Regulation adopted in 1995, and recommend changes to NAIC models as appropriate. Revisit the Life Disclosure Model Regulation and consider facilitating comparison between policies by way of indices.
3. Serve as a resource to clarify the meaning of the Life Insurance Illustrations Model Regulation and the accompanying Actuarial Standard of Practice to facilitate implementation of the model.

Life Insurance Committee

4. Consider issues related to churning in replacement of life insurance policies, such as commission disclosure.

Genetic Testing Working Group

Develop a white paper on genetic testing in underwriting that explores the issues and underscores regulatory concerns. Coordinate with the Accident and Health Insurance (B) Committee. Make a report by the Summer National Meeting. Monitor federal activity and prepare positions as necessary.

Viatical Settlements Working Group

Monitor state adoptions of the Viatical Settlements Model Act and Regulation in the states and gather information on possible modifications to the models in light of state experience. Complete an actuarial study to determine appropriate minimum payouts.

Charges Related to Annuities

1. Develop a model law on charitable gift annuities.
2. Develop a definition or definitions of annuities.

Synthetic Guaranteed Interest Contracts

Recommend appropriate regulatory approach to the product known as a "synthetic GIC." Develop a model law for A Committee consideration by the Winter National Meeting.

ATTACHMENT SIX

Adopted by Executive Committee and Plenary Dec. 4, 1995

Life Insurance (A) Committee November 27, 1995

The Life Insurance (A) Committee met by conference call at 1 p.m. on Nov. 27, 1995. Commissioner Dwight K. Bartlett III (Md.) chaired the conference call, and the following committee members or their representatives participated: Terri Vaughan (Iowa); Chris P. Krahling (N.M.); Jim Long (N.C.); Elton Bomer (Texas); and Robert E. Wilcox (Utah).

Commissioner Dwight Bartlett (Md.) reminded the members of the committee that at the Fall National Meeting in Philadelphia, the committee had adopted the Life Insurance Illustrations Model Regulation prepared by the Life Disclosure Working Group, with the understanding that if interested parties wish to make further comments, the Life Disclosure Working Group would consider those and recommend any further changes needed. Commissioner Bartlett said the Life Insurance (A) Committee had agreed to meet by conference call to ratify any such changes.

Commissioner Bartlett called on Commissioner Robert E. Wilcox (Utah) to explain the changes that had been made by the Life Disclosure Working Group. Commissioner Wilcox said the working group had tried to be responsive to comments received but thought it was important to move ahead without significant delay, so that companies could begin to implement the changes in their illustration systems. Commissioner Wilcox said at least 10 separate items had been discussed by the working group and in some cases changes were made to the model in response to those issues.

Commissioner Wilcox referred the members of the Life Insurance (A) Committee to the minutes of the working group meeting (Attachment Six-A) and pointed out changes of significance. Commissioner Wilcox said the first change was in Section 4L, where the definition of group universal life had been broadened to include all non-term group life policies. He said this was a substantive change to provide for treating other cash-value group policies similarly to universal life. He said the change was carried through also to Section 5D.

Commissioner Wilcox said the next significant change was in Section 6. What had been Paragraph (8) of Subsection A was deleted. He said this was a substantive change made because some companies felt that it would be difficult to come up with language that would clearly disclose to a consumer the method the company used to allocate expenses. Commissioner Wilcox noted that a Paragraph (5) had been added to Section 7B to add an additional statement to the narrative. He said this was a valuable addition to the descriptive language. A non-substantive change was made to Section 10B to remove jargon from the consumer notice and to make the language clearer. The next change, which was to Section 11C(5) was characterized as non-substantive, but rather clarification. Subsection F in the same section was broadened to add a requirement that the agent receive information about the allocation method being used by the company. This was to replace Section 6A(8) that had been deleted earlier.

Roger Strauss (Iowa) said the working group had discussed but had decided not to change the requirement for a zero percent lapse rate assumption after the first five years. He said Iowa's domestic companies had expressed concern about this and he asked whether any other companies had questioned the provision. Commissioner Wilcox responded that several comments had been made to the Actuarial Standards Board (ASB). Commissioner Wilcox said the provision had been considered as a part of

persistence bonus issue. He said that if the working group backed away from the lapse support test, it would run the risk of reintroducing problems with persistence bonuses that had been eliminated. Mr. Strauss asked if an alternative solution was to add a drafting note to Section 4J that recommended a state could modify this provision at the option of the commissioner. Commissioner Wilcox said the actuarial standard of practice would not apply to any state's law where there was substantial deviation from the model, and he added that it would increase the cost of compliance with the model for the industry if modifications were made in each state. Commissioner Terry Vaughan (Iowa) said this issue was of significant concern to Iowa's domestic companies.

Commissioner Wilcox recommended that the Life Insurance (A) Committee adopt the revised illustrations model and report it to the Executive Committee in San Antonio in December. Upon motion duly made and seconded the minutes of the Life Disclosure Working Group and the amended model were adopted with Texas abstaining (Attachment Six-A).

Having no further business, the Life Insurance (A) Committee adjourned at 1:30 p.m.

ATTACHMENT SIX-A

Life Disclosure Working Group of the Life Insurance (A) Committee November 8, 1995

The Life Disclosure Working Group of the Life Insurance (A) Committee met by conference call at noon on Nov. 8, 1995. Robert E. Wilcox (Utah) chaired the meeting. The following working group members or their representatives participated in the call: Daphne Bartlett (Calif.); Roger Strauss (Iowa); Martin Carus (N.Y.); Tony Higgins (N.C.); Tom Foley (N.D.) and Ted Becker (Texas).

Commissioner Robert E. Wilcox (Utah) reminded the working group members that he had committed at the Fall National Meeting to consider any additional comments to the Life Insurance Illustrations Model Act, and make further revisions if necessary before the model was adopted by the plenary. The purpose of the conference call was to address those comments that had been received.

1. Consider Lapse Rate Suggestions

The working group considered two suggestions for allowing illustration of some lapses beyond five years. The members of the group agreed that the existing provision was already a compromise because persistence bonus testing had been deleted. Tom Foley (N.D.) reminded the group that individual cells could still fail, but the results were measured in the aggregate. Daphne Bartlett (Calif.) asked if the decision should be left to the commissioner of each state, but the working group decided this would not be workable with the standard of practice. The group agreed to leave the model as it is. Commissioner Wilcox reminded the participants that the provisions do not eliminate any products, but rather require less aggressive illustrations. He pointed out that this provision had withstood the intense review of the Actuarial Standards Board (ASB) and the ASB felt comfortable with illustration of zero lapses after five years.

2. Group Life Illustrations

Several suggestions were received to broaden Section 5D to group traditional whole life, rather than just universal life. Tony Higgins (N.C.) said he had already filed the regulation in his state, and had made a change to follow this suggestion. He had replaced "universal life" with "non-term group life" and the working group agreed to make a similar change to the model in the definition in Section 4F and the provisions of Section 5D.

In response to a suggestion that "enrollee" and related terms in this section should be changed to "applicant," the group declined to make a change.

3. Lapse Support Tests and Policies without Nonforfeiture Values

The working group reviewed a comment that suggested that the lapse-support test served an important function for all products regardless of whether they have nonforfeiture values, and recommended removing that exemption. The group decided not to revisit that issue.

4. Requirement to Disclose Expense Allocation Method to Consumers

Several comments were received suggesting that Section 6A(8) be removed. The provision, added at the Fall National Meeting, required disclosure to the consumer of the type of expense allocation method used on the illustration. Those commenting argued that it would be very difficult to frame this in a manner that most consumers could understand. Mr. Higgins spoke in favor of the provision, which he said provided important information to applicants. He asked if there was an alternative way to get this information to agents, so they could use it in their presentations. Mr. Foley suggested an alternative provision in Section 11 that required certification that agents had been made aware of the expense allocation method of the company. This was adopted by the working group.

5. In-Force Illustration Compliance with Lapse Support and Self-Support Tests

Mr. Foley said that allowing an exemption from the lapse support and self-support tests for in-force illustrations would invite bait and switch activity. Bill Carmello (N.Y.) expressed the concern that it might be difficult for an in-force illustration to pass the self-support test. However, he went on to state that the alternative of not requiring that the self-support and lapse-support tests be met would create a worse situation, so he would not support the removal of the applicability of those tests to in-force illustrations. Commissioner Wilcox noted that it would be very difficult at this late date to remove the applicability of those tests to in-force illustrations, in part because a change in the regulation would necessitate a change in the Actuarial Standard of Practice (ASOP). He further noted that the final version of the ASOP contained language which he believed would allow, in most circumstances, the illustration actuary to certify compliance for in-force illustrations without having to reapply the self-support and lapse-support tests. Frank Irish (ASB) confirmed that modifications had been made to the ASOP to deal with that issue and unless that company had made major changes, little work would be required.

The regulators were asked for the intent of the last two sentences of Section 11C(5). Mr. Foley said they were intended to address bait and switch tactics, and the group agreed to a clarification by adding "to the same or similar forms" to the last sentence.

6. Composite Illustrations

A suggestion was received to change Section 7C(2) to exclude composite illustrations, but the group decided not to follow that suggestion.

7. Exemption from Illustration Requirements

One comment suggested that the model was inconsistent in that a policy form could be designated as one to market without an illustration, but Section 9 contained requirements for an illustration at delivery. The group decided this was not unclear; if a company designated a policy as one to market without an illustration, the model does not apply to that policy form.

8. Allocation Method to be Used for All Forms

Roger Strauss (Iowa) asked if the same allocation method must be used for all forms. Commissioner Wilcox said it had been his understanding that the company would choose one method and use it across the board. He said this suggestion had come from the ASB to eliminate the opportunity for abuse. Commissioner Wilcox also noted that the description of "fully allocated" in the ASOP, which states that "indirect costs should be fully allocated using a sound basis of expense allocation," allows the illustration actuary to exercise reasonable professional judgment regarding what constitutes "a sound basis." He stated that this provision should provide the needed flexibility to accommodate various products, markets and expense patterns. Ms. Bartlett reminded the group that this discussion only applied to illustrations, not to company pricing.

Mr. Strauss asked if the duty to create a table had been assigned, and what the time frame was for its completion. Commissioner Wilcox said the Society of Actuaries had already started the project, and he anticipated its completion within the next few months, with possible adoption by the NAIC in the second quarter of 1996.

9. Cost Indices

The working group considered a comment asking the NAIC to give the ASB the responsibility to overhaul the surrender cost and net payment indices to be consistent with the illustration model. Hal Phillips (Calif.) said the suggestion was not without merit, but was not appropriate to discuss here. The working group agreed not to take action on the suggestion.

10. Technical Changes

Ms. Bartlett suggested changing the consumer notice in Section 10B because the term "in force illustration" was technical jargon a consumer would not necessarily understand. The working group agreed to replace "in force" with "current" in the two places the term appears in the consumer notice.

Ms. Bartlett also suggested adding a Paragraph (5) to Section 7B, to require the addition of a statement to the narrative summary reminding the applicant that the nonguaranteed elements were likely to change. This suggestion was adopted by the working group also.

11. Next Steps

Commissioner Wilcox said he would contact Commissioner Dwight Bartlett (Md.), chair of the Life Insurance (A) Committee, and discuss the best way to proceed so that the model (Attachment Six-A1) with the revisions just adopted could still be voted upon by the Plenary and Executive Committee at the Winter National Meeting. He encouraged the company representatives participating in the call, as well as the regulators, to do everything possible to see the model adopted in as many states as possible, as soon as possible.

Having no further business, the Life Disclosure Working Group adjourned at 1:45 p.m..

ATTACHMENT SIX-A1

LIFE INSURANCE ILLUSTRATIONS MODEL REGULATION

Draft: 11/8/95

Adopted by the Life Insurance (A) Committee on 11/27/95

Underling and overstrikes indicate changes made by working group subsequent to the Fall National Meeting.

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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 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

This regulation applies to all group and individual life insurance policies and certificates except:

- A. Variable life insurance;
- B. Individual and group annuity contracts;
- C. Credit life insurance; or
- D. Life insurance policies with no illustrated death benefits on any individual 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. "Currently payable scale" means a scale of non-guaranteed elements in effect for a policy form as of the preparation date of the illustration or declared to become effective within the next ninety-five (95) days.
- D. "Disciplined current scale" means a scale of non-guaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the Actuarial Standards Board may be relied upon if the standards:

- (1) Are consistent with all provisions of this regulation;

- (2) Limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred;
- (3) Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date; and
- (4) Do not permit assumed expenses to be less than minimum assumed expenses.

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

G-F. "Guaranteed elements" 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 or not determined at issue.

H-G. "Illustrated scale" means a scale of non-guaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:

- (1) The disciplined current scale; or
- (2) The currently payable scale.

I-H. "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 three (3) 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.
- (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 only depict a scale of non-guaranteed elements that is ~~not~~ permitted in a basic illustration.
- (3) "In force illustration" means an illustration furnished at any time after the policy that it depicts has been in force for one year or more.

J-I. "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.

K-J. "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.

L-K. (1) "Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from the following:

- (a) Fully allocated expenses;
- (b) Marginal expenses; and
- (c) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the [National Association of Insurance Commissioners or by the commissioner].

(2) Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

F-L. "~~Group-universal life~~Non-term group life" means a group policy or individual policies of ~~universal~~ life insurance issued to members of an employer group or other permitted group where:

- (1) Every plan of coverage was selected by the employer or other group representative;
- (2) Some portion of the premium is paid by the group or through payroll deduction; and
- (3) Group underwriting or simplified underwriting is used.

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

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

O. "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 the twentieth policy anniversary for second-or-later-to-die policies (or upon policy expiration if sooner), the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For this purpose, policy owner value will include cash surrender values and any other illustrated benefit amounts available at the policy owner's election.

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 for any policy using that form prior to the first policy anniversary is prohibited.

Drafting Note: The prohibition in Section 5B may need to be modified if required by the state's replacement regulation.

C. If 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.

D. Potential enrollees of ~~group-universal-non-term group~~ life subject to this regulation shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and non-guaranteed basis appropriate to the group and the coverage. This quotation shall not be considered an illustration for purposes of this regulation, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the certificate to enrollees for ~~group-universal-non-term group~~ life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any ~~group-universal-non-term group~~ life enrollee who requests it.

Section 6. General Rules and Prohibitions

A. An illustration used in the sale of a life insurance policy shall 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; and
- (7) Dividend option election or application of non-guaranteed elements, if applicable; and.
- ~~(8) Clear disclosure of the method used by the company to allocate expenses, as disclosed to the commissioner in the actuarial certification as required in Section 11C.~~

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 to the policy owner than that produced by the illustrated 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 benefits, 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) Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or
- (10) Use an illustration that is not "self-supporting."

C. If an interest rate used to determine the illustrated non-guaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

Drafting Note: States may wish to replace disclosure requirements under the state's version of the Universal Life Insurance Model Regulation with the basic illustration as contained in this regulation.

Section 7. Standards for Basic Illustrations

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

- (1) The illustration shall be labeled with the date on which it was prepared.
- (2) 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").
- (3) The assumed dates of payment receipt and benefit pay-out within a policy year shall be clearly identified.
- (4) 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) 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) 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) If the illustration shows any non-guaranteed elements, they cannot be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled non-guaranteed.
- (8) 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) 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) 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) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.
- (12) 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) 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 clearly 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. If a contract premium is due, 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) 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.

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; ~~and~~
- (4) Identification and a brief definition of column headings and key terms used in the illustration; ~~and~~
- (5) A statement containing in substance the following: "This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

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 illustrated scale;
- (c) Insurer's illustrated scale used but with the non-guaranteed elements reduced as follows:
 - (i) Dividends at fifty percent (50%) of the dividends contained in the illustrated scale used;
 - (ii) Non-guaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated 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 illustrated 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.

- (1) A statement to be signed and dated by the applicant or policy owner 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 told me they are not 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 except for term insurance beyond the 20th year, for any year in which the premium outlay and contract premium, if applicable, is to change:

- (a) The premium outlay and mode 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.

(3) Non-guaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any non-guaranteed elements are shown they must be shown at the same durations as the corresponding guaranteed elements, if any. 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 in the guaranteed column.

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. The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

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 or policy owner 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 illustration or revised illustration is sent to the applicant or policy owner by mail from the insurer, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. 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 numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

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 universal life policies, the report shall include the following:

- (a) The beginning and end date 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 surrender value;
- (d) Current dividend;
- (e) Application of current dividend; and
- (f) Amount of outstanding loan.

(3) Insurers writing life insurance policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years when a change has been made to nonguaranteed policy elements by the insurer."

B. If the annual report does not include an in force 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 in force a current illustration. You may annually request, without charge, 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 in force a current illustration of your policy within 30 days from your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in force illustration.

C. Upon the request of the policy owner, the insurer shall furnish an in force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of Section 6A, 6B, 7A and 7E. 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 and the nature of the change prominently displayed.

Section 11. Annual Certifications

A. The board of directors of each insurer shall appoint one or more illustration actuaries.

B. The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice for Compliance with the NAIC Model Regulation on Life Insurance Illustrations promulgated by the Actuarial Standards Board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this regulation.

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) 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;
- (4) Not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under Paragraph (3) above;
- (5) Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five (5) years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in force policies, this must be disclosed in the annual certification. If nonguaranteed elements illustrated for both new and in force policies are not consistent with the nonguaranteed elements actually being paid, charged or credited to the same or similar forms, this must be disclosed in the annual certification; and
- (6) Disclose in the annual certification the method used to allocate overhead expenses for all illustrations:
 - (a) Fully allocated expenses;
 - (b) Marginal expenses; or
 - (c) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the [National Association of Insurance Commissioners or by the commissioner].

D. (1) The illustration actuary shall file a certification with the board and with the commissioner:

- (a) Annually for all policy forms for which illustrations are used; and
- (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 the scale for 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, shall certify annually:

- (1) ~~that~~ That the illustration formats meet the requirements of this regulation and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and

(2) That the company has provided its agents with information about the expense allocation method used by the company in its illustrations and disclosed as required in Subsection C(6) of this section.

G. The annual certifications shall be provided to the commissioner each year by a date determined by the insurer.

H. If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner of that fact 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.