



AMERICAN ACADEMY *of* ACTUARIES

To: Larry Gorski, Chair
Synthetic GIC Working Group of the Life Insurance (A) Committee,
National Association of Insurance Commissioners

From: Arnold Dicke,
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Date: March 14, 1998

Subject: Comments on Certain Provisions of the 11/26/97 draft of the Proposed
Synthetic Guaranteed Investment Contracts Model Regulation

On the February 25, 1998, conference call of the Working Group, I was asked to forward certain questions relative to the language used in describing the responsibilities of the qualified actuary under the Proposed Model Regulation to Alastair Longley-Cook, Chair of the Academy Working Group on the Proposed Separate Accounts Funding Minimum Benefits Regulation. I did so, and received from Mr. Longley-Cook a draft of the response his group is intending to submit at the Salt Lake City meeting. This response makes recommendations that, when applied to the provisions of the 11/26/97 draft of the Synthetic GIC Model Regulation (the “draft”), would be as follows:

- 1. Section 5(E)(1)(I):** The words “An unqualified opinion” should be substituted for “A statement certified.” The actuary cannot *certify* as to the adequacy of the consideration for risks in the usual sense of the word, which implies a guarantee. The actuary can *opine* as to the adequacy, with an unqualified opinion implying the same degree of positive assurance provided by the Actuarial Opinion and Memorandum Model Regulation (“AO&MR”).

In order to provide the opining actuary with the appropriate guidance as to what constitutes adequacy in this case, an Actuarial Standard of Practice, perhaps supplemented by Practice Notes, should be developed. There is no existing guidance available to the actuary. However, the adoption of the Model Regulation need not be delayed until such Standard is developed.

- 2. Section 10:** The only changes recommended by the Academy Working Group with respect to the actuarial opinion and memorandum required by the draft are as follows:

- The words “good and sufficient” should be replaced by “adequate” throughout the section. This change would ensure consistency with the AO&MR which uses only *adequacy* as the reserve criterion. The previously-used *good and sufficient* currently has no commonly agreed upon meaning. Specific references in the draft are paragraphs B(2), B(4), and D(4)(b).
- The list of officer-certified items in B(2) should not include any that require actuarial expertise. These should be transferred to the list of items required in the actuarial memorandum, paragraph B(4). Specifically, item (b) appears to require such expertise.
- The filing requirements for the actuarial opinion and memorandum should be made consistent with those for the company-wide actuarial opinion and memorandum. For example, the opinion would be filed annually, but the memorandum would be submitted to the commissioner only upon request.

In addition to “translating” the points made by Mr. Longley-Cook’s Working Group, I would make the following additional observations with respect to the Synthetic GIC Model Regulation. The draft sets forth a requirement for an actuarial opinion and memorandum that presumably is intended to replicate the company-wide opinion and memorandum, but to focus on the assets backing synthetic GICs only. **Ideally, the Academy would like to see this requirement coordinated with and incorporated into the company-wide memorandum, even if a separate statement of opinion with respect to synthetic GIC business is required.** Unfortunately, the draft does not go into the same detail as does the AO&MR. A number of items need to be treated definitively, by incorporation into or coordination with the AO&MR or by referring to or copying its language:

- a. **Confidentiality of the memorandum.** This was already mentioned above. The memorandum will necessarily contain proprietary information.
- b. **Protection of the actuary from liability.** The AO&MR and Standard Valuation Law specifically release the appointed actuary from liability to anyone except the commissioner and his or her company. The actuary opining under the synthetic GIC draft does not appear to have the same protection.
- c. **Appointment of the actuary.** There is no provision for appointment of the actuary. Without such appointment, the actuary may be disadvantaged in dealing with management if controversies arise.
- d. **Review of actuarial work.** The AO&MR and the Standard Valuation Law permit the commissioner to obtain an outside review of the appointed actuary’s work under certain circumstances.
- e. **Form of actuarial opinions.** The exact form of the actuarial opinion was developed through long discussion. It should be used here. Even placing the word “adequacy” in the text does not make clear that what the actuary should be opining on is that “the reserves and related actuarial

items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items *and the assets held in the segregated portfolio and anticipated cash flows*, including, but not limited to, the investment earnings on such assets *after taking account of any risk charge payable*, and the considerations anticipated to be received and retained under such contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.” I suggest this language be used in place of the words “after taking account of any risk charge payable, the segregated portfolio of assets, and the amount of any reserve liability with respect to the asset maintenance requirement, the account assets make good and sufficient provision for contract liabilities” in paragraph 10(B)(2), even if the opinion is defined by reference to the AO&MR.

- f. **Supporting opinions.** The AO&MR also gives specific language for supporting opinions. In at least one case, this language was carefully worked out in discussions with a group representing the affected parties (auditors). This language should be incorporated by reference as well, particularly as regards to reliances.

I realize there is a drafting note about possibly including the information in the actuarial opinion and memorandum as part of a state’s overall filing requirements, but considering the importance of the above issues, I personally feel that is too weak a linkage. I would prefer to see the points just listed specifically included in the language of the Model Regulation.

Due to the short time frame, I have not been able to go over these issues with the Academy’s General Counsel. From past experience, I know she is concerned about protections for actuaries and generally prefers actuarial opinion language to be specified by law or regulation. I will obtain her input as soon as possible and forward it to you.

Thank you for the opportunity to comment on behalf of the Academy.