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October 18, 2018

Mr. Mike Yanacheak
Chair, Annuity Disclosure (A) Working Group
National Association of Insurance Commissioners
via Email: Jennifer Cook (JCook@naic.org)

Re: Proposed changes to the Annuity Disclosure Model Regulation (#245)

Dear Mr. Yanacheak,

On behalf of the Annuity Illustration Work Group of the American Academy of Actuaries,¹ thank you for the opportunity to consolidate our comments on the proposed changes to the Annuity Disclosure Model Regulation into a draft version of Section 6 of the Annuity Disclosure Model Regulation (#245).

The comments from this working group on January 31, 2018, and July 2, 2018, have been incorporated (red lined for clarity) into the current version of Model Regulation (#245) Section 6F(9).

Section 6F(8) of the Model Regulation (#245) address nonguaranteed elements and proposed changes for participating immediate and deferred income annuities (“NYL/NWM proposal”) and changes have been proposed by other groups but are not incorporated in this draft.

We hope these comments are helpful. Please contact Ian Trepanier, the Academy’s life policy analyst (trepanier@actuary.org; 202-785-7880), if you have any questions.

Sincerely,

Beth Keith, MAAA, FSA
Chairperson, Annuity Illustration Work Group
American Academy of Actuaries

¹ The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

ANNUITY DISCLOSURE MODEL REGULATION

Table of Contents

Section 1.	Purpose
Section 2.	Authority
Section 3.	Applicability and Scope
Section 4.	Definitions
Section 5.	Standards for the Disclosure Document and Buyer’s Guide
Section 6.	Standards for Annuity Illustrations
Section 7.	Report to Contract Owners
Section 8.	Penalties
Section 9.	Separability
Section 10.	[Optional]
Recordkeeping	Section 11. Effective Date
Appendix A.	Annuity Illustration Example

Section 6. Standards for Annuity Illustrations

- A. An insurer or producer may elect to provide a consumer an illustration at any time, provided that the illustration is in compliance with this section and:
- (1) Clearly labeled as an illustration;
 - (2) Includes a statement referring consumers to the disclosure document and Buyer’s Guide provided to them at time of purchase for additional information about their annuity; and
 - (3) Is prepared by the insurer or third party using software that is authorized by the insurer prior to its use, provided that the insurer maintains a system of control over the use of illustrations.
- B. An illustration furnished an applicant for a group annuity contract or contracts 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.
- C. The illustration shall not be provided unless accompanied by the disclosure document referenced in Section 5.

- D. When using an illustration, the illustration shall not:
- (1) Describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
 - (2) State or imply that the payment or amount of non-guaranteed elements is guaranteed; or
 - (3) Be incomplete.
- E. Costs and fees of any type shall be individually noted and explained.
- F. An illustration shall conform to 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 disclosure document (e.g., the fourth page of a seven-page disclosure document shall be labeled “page 4 of 7 pages”);
 - (3) The assumed dates of premium receipt and benefit payout within a contract 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 contract is assumed to have been in force;
 - (5) The assumed premium on which the illustrated benefits and values are based shall be clearly identified, including rider premium for any benefits being illustrated;
 - (6) Any charges for riders or other contract features assessed against the account value or the crediting rate shall be recognized in the illustrated values and shall be accompanied by a statement indicating the nature of the rider benefits or the contract features, and whether or not they are included in the illustration;
 - (7) Guaranteed death benefits and values available upon surrender, if any, for the illustrated contract premium shall be shown and clearly labeled guaranteed;
 - (8) The non-guaranteed elements underlying the non-guaranteed illustrated values shall be no more favorable than current non-guaranteed elements and shall not include any assumed future improvement of such elements. Additionally, non-guaranteed elements used in calculating non-guaranteed illustrated values at any future duration shall reflect any planned changes, including any planned changes that may occur after expiration of an initial guaranteed or bonus period;
 - (9) In determining the non-guaranteed illustrated values for a fixed indexed annuity, the

index-based interest rate and account value shall be calculated for three different scenarios: one to reflect historical performance of the index for the most recent ten (10) calendar years; one to reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the least index value growth (the “low scenario”); one to reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the most index value growth (the “high scenario”). The following requirements apply:

- (a) The most recent ten (10) calendar years and the last twenty (20) calendar years are defined to end on the prior December 31, except for illustrations prepared during the first three (3) months of the year, for which the end date of the calendar year period may be the December 31 prior to the last full calendar year;
- (b) If any index utilized in determination of an account value has not been in existence for at least ten (10) calendar years, ~~indexed returns for that index shall not be illustrated~~ such index may be illustrated only if all of the following are true: (i) the index is comprised entirely of components that have been in existence for at least ten (10) calendar years; (ii) the index value is calculated according to an algorithm that is not subject to discretion; and (iii) if the insurance company is affiliated with the index provider, indexes published by that index provider are also used by entities unaffiliated with the insurance company. Otherwise, the index shall not be used to illustrate the account value. If the fixed indexed annuity provides an option to allocate account value to more than one indexed or fixed declared rate account, and one or more of those indexes has not been in existence for at least ten (10) calendar years, the allocation to such indexed account(s) shall be assumed to be zero;
- (c) If any index utilized in determination of an account value has been in existence for ~~at least ten (10) calendar years but~~ less than twenty (20) calendar years, the ten (10) calendar year periods that define the low and high scenarios shall be chosen from the exact number of years the index (or all of its components) has been in existence;-
- (d) The non-guaranteed element(s), such as caps, spreads, participation rates or other interest crediting adjustments, used in calculating the non-guaranteed index-based interest rate shall be no more favorable than the corresponding current element(s);
- (e) If a fixed indexed annuity provides an option to allocate the account value to more than one indexed or fixed declared rate account:
 - (i) The allocation used in the illustration shall be the same for all three scenarios; and
 - (ii) The ten (10) calendar year periods resulting in the least and greatest index growth periods shall be determined independently for each indexed account option;-

- (f) The geometric mean annual effective rate of the account value growth over the ten (10) calendar year period shall be shown for each scenario;
- (g) If the most recent ten (10) calendar year historical period experience of the index is shorter than the number of years needed to fulfill the requirement of subsection H, the most recent ten (10) calendar year historical period experience of the index shall be used for each subsequent ten (10) calendar year period beyond the initial period for the purpose of calculating the account value for the remaining years of the illustration;
- (h) The low and high scenarios: (i) need not show surrender values (if different than account values); (ii) shall not extend beyond ten (10) calendar years (and therefore are not subject to the requirements of subsection H beyond subsection H(1)(a)); and (iii) may be shown on a separate page. A graphical presentation shall also be included comparing the movement of the account value over the ten (10) calendar year period for the low scenario, the high scenario and the most recent ten (10) calendar year scenario; ~~and~~
- (i) The low and high scenarios should reflect the irregular nature of the index performance and should trigger every type of adjustment to the index-based interest rate under the contract. The effect of the adjustments should be clear; for example, additional columns showing how the adjustment applied may be included. If an adjustment to the index-based interest rate is not triggered in the illustration (because no historical values of the index in the required illustration range would have triggered it), the illustration shall so state; and
- (j) If any index utilized in determination of an account value has not been in existence for at least ten (10) calendar years, the insurance company must provide on the first page of the illustration, in bolded font or in a different color from the main text, the following disclosures that apply to the index:
 - (i) Notice that the index has existed for less than ten (10) calendar years. The notice must include the date the index was created; and
 - (ii) Notice that any estimates of how the index would have performed before its creation are hypothetical and based on the past performance of the components in the index.
- (10) 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 1 for guaranteed elements”);
- (11) The account or accumulation value of a contract, if shown, shall be identified by the name this value is given in the contract being illustrated and shown in close proximity to the corresponding value available upon surrender;
- (12) The value available upon surrender shall be identified by the name this value is given in the contract being illustrated and shall be the amount available to the contract owner in a lump sum after deduction of surrender charges, bonus forfeitures, contract loans, contract loan interest and application of any market value adjustment, as

applicable;

- (13) Illustrations may show contract benefits and values in graphic or chart form in addition to the tabular form;
- (14) 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 higher or lower;
- (15) Illustrations based on non-guaranteed credited interest and non-guaranteed annuity income rates shall contain equally prominent comparisons to guaranteed credited interest and guaranteed annuity income rates, including any guaranteed and non-guaranteed participation rates, caps or spreads for fixed indexed annuities;
- (16) The annuity income rate illustrated shall not be greater than the current annuity income rate unless the contract guarantees are in fact more favorable;
- (17) Illustrations shall be concise and easy to read;
- (18) Key terms shall be defined and then used consistently throughout the illustration;
- (19) Illustrations shall not depict values beyond the maximum annuitization age or date;
- (20) Annuitization benefits shall be based on contract values that reflect surrender charges or any other adjustments, if applicable; and
- (21) Illustrations shall show both annuity income rates per \$1000.00 and the dollar amounts of the periodic income payable.

G. An annuity illustration shall include a narrative summary that includes the following unless provided at the same time in a disclosure document:

- (1) A brief description of any contract features, riders or options, guaranteed and/or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the contract;
- (2) A brief description of any other optional benefits or features that are selected, but not shown in the illustration and the impact they have on the benefits and values of the contract;

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

(4) A statement containing in substance the following:

(a) For other than fixed indexed annuities:

This illustration assumes the annuity's current nonguaranteed elements will not change. It is likely that they **will** change and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.

The values in this illustration are **not** guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information;

(b) For fixed indexed annuities:

This illustration assumes the index will repeat historical performance and that the annuity's current non-guaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, will not change. It is likely that the index **will not** repeat historical performance, the non-guaranteed elements **will** change, and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees.

The values in this illustration are **not** guarantees or even estimates of the amounts you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information; and

(5) Additional explanations as follows:

(a) Minimum guarantees shall be clearly explained;

(b) The effect on contract values of contract surrender prior to maturity shall be explained;

(c) Any conditions on the payment of bonuses shall be explained;

(d) For annuities sold as an IRA, qualified plan or in another arrangement subject to the required minimum distribution (RMD) requirements of the Internal Revenue Code, the effect of RMDs on the contract values shall be explained;

- (e) For annuities with recurring surrender charge schedules, a clear and concise explanation of what circumstances will cause the surrender charge to recur; and
- (f) A brief description of the types of annuity income options available shall be explained, including:
 - (i) The earliest or only maturity date for annuitization (as the term is defined in the contract);
 - (ii) For contracts with an optional maturity date, the periodic income amount for at least one of the annuity income options available based on the guaranteed rates in the contract, at the later of age seventy (70) or ten (10) years after issue, but in no case later than the maximum annuitization age or date in the contract;
 - (iii) For contracts with a fixed maturity date, the periodic income amount for at least one of the annuity income options available, based on the guaranteed rates in the contract at the fixed maturity date; and
 - (iv) The periodic income amount based on the currently available periodic income rates for the annuity income option in item (ii) or item (iii), if desired.

H. Following the narrative summary, an illustration shall include a numeric summary which shall include at minimum, numeric values at the following durations:

- (1) (a) First ten (10) contract years; or
- (b) Surrender charge period if longer than ten (10) years, including any renewal surrender charge period(s);
- (2) Every tenth contract year up to the later of thirty (30) years or age seventy (70); and
- (3) (a) Required annuitization age; or
- (b) Required annuitization date.

I. If the annuity contains a market value adjustment, hereafter MVA, the following provisions apply to the illustration:

- (1) The MVA shall be referred to as such throughout the illustration;
- (2) The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the value available upon surrender;

- (3) The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the death benefit;
- (4) A statement, containing in substance the following, shall be included:

When you make a withdrawal the amount you receive may be increased or decreased by a Market Value Adjustment (MVA). If interest rates on which the MVA is based go up after you buy your annuity, the MVA likely will decrease the amount you receive. If interest rates go down, the MVA will likely increase the amount you receive.
- (5) Illustrations shall describe both the upside and the downside aspects of the contract features relating to the market value adjustment;
- (6) The illustrative effect of the MVA shall be shown under at least one positive and one negative scenario. This demonstration shall appear on a separate page and be clearly labeled that it is information demonstrating the potential impact of a MVA;
- (7) Actual MVA floors and ceilings as listed in the contract shall be illustrated; and
- (8) If the MVA has significant characteristics not addressed by Paragraphs (1) – (6), the effect of such characteristics shall be shown in the illustration.

Drafting Note: Appendix A provides an example of an illustration of an annuity containing an MVA that addresses Paragraphs (1) – (6) above.

- J. A narrative summary for a fixed indexed annuity illustration also shall include the following unless provided at the same time in a disclosure document:
 - (1) An explanation, in simple terms, of the elements used to determine the index-based interest, including but not limited to, the following elements:
 - (a) The Index(es) which will be used to determine the index-based interest;
 - (b) The Indexing Method – such as point-to-point, daily averaging, monthly averaging;
 - (c) The Index Term – the period over which indexed-based interest is calculated;
 - (d) The Participation Rate, if applicable;
 - (e) The Cap, if applicable; and
 - (f) The Spread, if applicable;

- (2) The narrative shall include an explanation, in simple terms, of how index-based interest is credited in the indexed annuity;
 - (3) The narrative shall include a brief description of the frequency with which the company can re-set the elements used to determine the index-based credits, including the participation rate, the cap, and the spread, if applicable; and
 - (4) If the product allows the contract holder to make allocations to declared-rate segment, then the narrative shall include a brief description of:
 - (a) Any options to make allocations to a declared-rate segment, both for new premiums and for transfers from the indexed-based segments; and
 - (b) Differences in guarantees applicable to the declared-rate segment and the indexed-based segments.
- K. A numeric summary for a fixed indexed annuity illustration shall include, at a minimum, the following elements:
- (1) The assumed growth rate of the index in accordance with Subsection F(9);
 - (2) The assumed values for the participation rate, cap and spread, if applicable; and
 - (3) The assumed allocation between indexed-based segments and declared-rate segment, if applicable, in accordance with Subsection F(9).
- L. If the contract is issued other than as applied for, a revised illustration conforming to the contract as issued shall be sent with the contract, except that non-substantive changes, including, but not limited to changes in the amount of expected initial or additional premiums and any changes in amounts of exchanges pursuant to Section 1035 of the Internal Revenue Code, rollovers or transfers, which do not alter the key benefits and features of the annuity as applied for will not require a revised illustration unless requested by the applicant.