

June 2, 1998

Thomas C. Foley, ASA, MAAA  
Actuary  
North Dakota Insurance Department  
600 East Boulevard Avenue  
State Capital  
Bismarck, ND 58505-0320

Dear Mr. Foley,

At the request of the NAIC Life Disclosure (A) Working Group, the American Academy of Actuaries Disclosure Working Group has developed definitions of guaranteed and non-guaranteed elements suitable for inclusion in the Annuity Disclosure and Illustrations Model Regulation. During our deliberations, we determined that a third definition was necessary for products with values based on a guaranteed process. This situation is addressed with the definition of determinable elements. The definitions are attached as Attachment 1.

The Academy Working Group felt that it was important to review the current draft of the Model Regulation to assess the impact of the recommended definitions and make recommendations as to changes to the Model Regulation in order to remain consistent with recommendations previously made by this and other Academy groups. Since the NAIC Model Regulation is still in a state of flux relative to certain key elements, our review stopped at the end of Section 7 of the February 20, 1998 draft. We have limited our recommendations to implementing our proposed definitions of guaranteed, non-guaranteed, and determinable elements. Absence of comments or recommendations on a specific topic in the Model Regulation should not be interpreted as concurrence with language or concept. The following are our recommended changes and comments concerning Sections 1 through Section 7 of the Model Regulation.

Section 1. - No changes recommended relative to our definitions.

Section 2. - No changes recommended relative to our definitions.

Section 3. - No recommendations for changes. We reviewed Paragraph B and felt that no change was necessary.

- Section 4. - The following definitions may change as the work of the NAIC Working Group progresses and when the definitions are finalized we may have some recommendations for changes but at this time we do not.

Currently Payable Scale, Disciplined Current Scale, Illustrated Scale, Illustration, Illustration Actuary, Lapse Supported Illustration, Self-Supporting Illustration

The definition of Equity Indexed Annuity extends only to deferred annuities. Given that the scope of the Draft Regulations extends to both deferred and immediate annuities, we are unsure as to the reasons underlying the proposed definition of Equity Indexed Annuity.

We question the need and purpose of the definition of Interest Indexed Annuity. Are special rules being considered for this type of annuity? Is an Interest Indexed Annuity considered to be different than an Equity Indexed Annuity?

- Section 5. - Paragraph B. (3) (a) Replace existing sentence with the following. The guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate.

Paragraph D. Insert the phrase “and determinable” after the word “non-guaranteed”.

- Section 6. - Paragraph A. (1) We recommend that neither guaranteed elements nor determinable elements should be used as a triggering mechanism for an insurer to provide an illustration.

We are still discussing the appropriateness of using non-guaranteed elements as a trigger for providing an illustration.

Also, the reference to “disclosure material” is ambiguous. Is “disclosure material” limited to the “Disclosure Document” discussed in Section 5 or is it a more comprehensive concept?

- Section 7. - Paragraph A. (2) Insert the phrase “or determinable” after the word “non-guaranteed”.

A new paragraph A. (4) should be added after (3) as follows: “State or imply that determinable elements are determined at issue” and renumber (4) through (8).

We will review the (4) through (8) and Paragraph B. after more progress is made concerning the required illustration portion of the Model Regulation.

We are ready to discuss our recommended definitions and any of our other recommendations that are included in this matter.

Sincerely,

Larry M. Gorski, FSA, MAAA

**Definitions of Guaranteed, Determinable and Nonguaranteed Elements  
Solely for Use in a Model Regulation on Fixed Annuity Disclosure**

Developed by the Supportability Disclosure Subgroup,  
Disclosure Work Group, Committee on State Insurance Issues  
June 1, 1998

The following definitions are intended solely to be used in a model regulation on fixed annuity disclosure. These definitions are not intended to be used for model regulations on annuity nonforfeiture or valuation, or for other model regulations covering variable annuities or other products.

Definitions

"Guaranteed Elements" means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges, or elements of formulas used to determine any of these, which are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

"Determinable Elements" means elements which are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but whose values or amounts cannot be determined until some point after issue. Such elements include the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges, or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

"Non-guaranteed Elements" means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges, or elements of formulas used to determine any of these, which are subject to company discretion, and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

Examples

Examples of Guaranteed Elements would include the initial rate and accumulated value at the end of the first year for a typical SPDA. Examples of Non-Guaranteed Elements would include a renewal rate and the accumulated value at the end of the second year for a typical SPDA. Examples of Determinable Elements would include a guaranteed published index used to determine the credited rate for an indexed product, and the value at the end of that year for that product assuming it was calculated with a guaranteed participation rate and no other non-guaranteed elements.