January 17, 2017

William B. Carmello, Chief Life Actuary
New York Department of Financial Services
Life Bureau
One Commerce Plaza, 19th Floor
Albany, NY 12257

Re: American Academy of Actuaries Comments on Proposed 11 NYCRR 48 (Insurance Regulation 210) on Life Insurance and Annuity Non-Guaranteed Elements

Dear Mr. Carmello:

The Non-Guaranteed Elements Work Group of the American Academy of Actuaries[1] appreciates the opportunity to provide comments on proposed NY Regulation 210. We encourage you to consider the following comments.

In general, we note that the proposed regulation limits practices for setting and changing non-guaranteed elements within certain life insurance and annuity products, and we are concerned that these limits will have unintended consequences in the insurance marketplace. The current regulatory framework enables companies to offer consumers a wide array of product choices with competitive features and benefits. Companies are able to offer these benefits, in part, because changes in future experience (e.g., mortality, persistency, economic, expense, regulatory, etc.) can be managed by using the full array of non-guaranteed elements found within the policy form. Limiting companies' ability to manage non-guaranteed elements may have a negative impact on consumers, through decreased choice and/or increased price of available product offerings, and a negative impact on companies seeking to maintain financial stability.

Actuaries play an important role in the determination of non-guaranteed elements both at issue and after issue. There are several actuarial standards of practice (ASOPs), promulgated by the Actuarial Standards Board, that provide guidance to actuaries in fulfilling this role, including ASOP No. 2, *Nonguaranteed Charges or Benefits for life Insurance Policies and Annuity Products* (March 2004). Actuaries performing duties in connection with this regulation are also

[1] The American Academy of Actuaries is a 19,000-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.

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required to follow the guidance in that ASOP. We are concerned that the proposed regulation, in specifying certain new requirements around pricing, could hinder an actuary's exercise of professional judgment, as described in ASOP No. 2, in determining appropriate non-guaranteed elements.

Specific comments on the draft regulation follow below:

Section 48.0 Scope, purpose, and unfair trade practice.

1. 48.0(a)—The proposed regulation could be interpreted to apply to contracts previously filed and approved in New York, before or after the effective date of the regulation. Accordingly, insurers could have difficulty complying with both inforce contractual provisions and these new regulatory requirements. Therefore, we recommend that the proposed regulation only apply to contracts issued after the effective date. If the intent is to apply these sections to inforce policy forms, the Department of Financial Services (DFS) should allow a transition period over which policies can be brought into compliance and an allowance for policy expenses to be adjusted to cover the higher cost associated with this additional regulatory compliance.
2. 48.0(a)—It is not clear if the proposed regulation is intended only to apply to direct writers or to include reinsurers as well. There are several provisions that would be difficult to apply to reinsurers. Therefore, we recommend that the proposed regulation only apply to direct writers.

Section 48.1 Definitions.

3. 48.1(a)—We propose that DFS clarify that "a change in the insurer credited interest rate" includes, for index products, changes in the index parameters (e.g., participation rate and cap rate).
4. 48.1(d)—The proposed regulation seems to require the board-approved criteria to include written "reasonableness standards, financial objectives, equity objectives, marketing objectives, good faith standards, and fair dealing standards." Such specificity, not commonly found in board-level pronouncements, could conflict with inforce contractual provisions and hinder an actuary's exercise of professional judgment, as described in ASOP No. 2, in determining appropriate non-guaranteed elements.
5. 48.1(g)—It seems that policy provisions that are considered exempt by one superintendent could be deemed by a future superintendent not to be exempt after a policy form was issued. This could change the requirements imposed on the actuary and the insurer's board of directors. We recommend limiting changes to future contracts only.
6. 48.1(n)(3)—The definition of "qualified actuary" in unduly limited. Because each of the four subsections must be satisfied, the inclusion of subsection (3) means that only a subset of the members of the American Academy of Actuaries is within the "qualified actuary" definition (i.e., only those who are fellows (by examination) of the Society of Actuaries or the Institute of Actuaries). Any Academy member otherwise meeting applicable qualification standards for statements of actuarial opinion required by the new proposed Part 48 should be considered qualified to make those statements, which is the

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essence of subsection (2). We respectfully submit that subsections (1) and (2) are sufficient and recommend deleting 48.1(n)(3).

7. 48.1(n)(4)—It appears that the criteria stated in (4) would mean that an actuary in violation of "any obligation imposed" by "any law" would be banned from qualifying under this proposed regulation. This could lead to a career-ending ban for immaterial infractions. We recommend adding an exception process for the superintendent.

Section 48.2 Non-guaranteed elements.

8. 48.2(a)(2)—Sections 48.2.(a)(2)(i) and 48.2(a)(2)(v) can conflict when guarantees based on Commissioners' Standard Ordinary (CSO) tables change, but company underwriting and anticipated experience factors do not change, thus creating inequality in treatment of policies for which the company has similar expectations.
9. 48.2(b)(1)—We recommend the list of underlying experience factors match the list in 48.1(h). Note that taxes were not included explicitly in 48.1(h).
10. 48.2(b)(4)—Because there is a wide variety of profit measures for different blocks of business, we recommend revising this section to state, "An insurer shall not make changes to non-guaranteed elements that result in prospective profit objectives that are materially higher than the profit objectives established in the pricing at issue, or, if original pricing is not known, then no higher than current profit objectives for the company as a whole." In addition, we recommend adding an exception to maintain the solvency of a company.
11. 48.2(d)—As reinsurance rates or costs associated with other third-party agreements are specific expenses considered as part of the product pricing, we recommend including changes to the underlying reinsurance rates and other third-party agreements in prospective revisions.
12. 48.2(e)—We recommend adding exceptions to this provision for special scenarios, such as distress situations or lack of information about the original pricing.
13. 48.2(f)(4)—We recommend clarifying the scope of this section to specify whether it would only apply to changes within an approved policy form. We note that implementation would be difficult if the scope of this section extends beyond a single policy form.
14. 48.2(g)—We note that there could be additional items that are not covered by sections 48.2(g)(1), (2), and (3). As such, we recommend adding the following: "(4) any other items approved by the superintendent."
15. 48.2(h)—This section requires board criteria for non-guaranteed elements related to anticipated expenses to be "reasonable," but does not offer any guidance as to how reasonableness should be determined. Also, this limitation could create challenges for the actuary in situations in which laws and regulations require that the actuary attest to "reasonableness" (e.g., as found in NY 4228(h)). We recommend eliminating this requirement and relying on existing laws and regulations.

Section 48.3 Form and report requirements.

16. 48.3(b)(5)—This provision seems to tie each policy element to a specific experience factor, and is inconsistent with the determination process for non-guaranteed elements

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that is described in Section 3.3 of ASOP No. 2. We recommend that 48.3(b)(5) be removed.

Section 48.4 Filing and records requirements.

17. 48.4(a)(2)(i–v)—This section expands the requirements of the actuarial memorandum to include full details about all pricing information, assumptions, and methods used to determine premium and benefit rates and non-guaranteed elements. The proposed regulation does not specify the intended use or subsequent availability of this information, raising concerns that (1) if the information could be used as a basis for not approving the filing, this could be considered a form of rate regulation that may drive up costs and limit consumer choice, and (2) this requirement could allow companies to gain access to proprietary pricing of competitors. Many companies consider pricing information proprietary, and we are concerned that operation of this section as proposed could lead to unfair or inappropriate trade practices. We recommend against expanding the actuarial memorandum requirements. Alternatively, if a decision is made to retain the expanded requirements, we recommend the proposed regulation set limits on the use of the newly required information (i.e., that the regulation explicitly state this is not intended to be "rate regulation" and include express protections of proprietary company information from public disclosure and use beyond what is needed for the regulation).
18. 48.4(a) (2)(vi)—The proposed actuarial statement requires the actuary to attest to using his or her professional judgment in the choice of reasonable assumptions in determining non-guaranteed elements and to be knowledgeable about the applicable state requirements. The proposed regulation also prescribes requirements and limitations, which may be in conflict with the actuary's professional judgment with regard to "reasonableness." We recommend changing the attestation from "…are reasonable assumptions…" to "meet the requirements of this regulation and…"
19. 48.4(c)(2)—This subsection applies for inforce repricing and raises similar concerns to those expressed in comment 17, which applies for new policy forms. Here: (1) if the information could be used as a basis for not approving the repricing, the proposal would be a form of rate regulation that could drive up costs and limit consumer choice, and (2) because companies consider pricing information proprietary, we recommend that the regulation be revised to set limits on the use of the information (i.e., that the regulation explicitly state this is not intended to be "rate regulation" and include express protections of proprietary company information from disclosure and use beyond DFS).

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Thank you for the opportunity to comment. If you have any questions or would like to discuss these topics, please contact Amanda Darlington, life policy analyst, at darlington@actuary.org.

Sincerely,

Gabe Schiminovich, MAAA, FSA
Chairperson, Non-Guaranteed Elements Work Group
American Academy of Actuaries

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