



May 5, 2023

Submitted electronically to comments@insurancecompact.org

ILVA Subgroup of the Product Standards Committee

Re: *Insurance Compact's ILVA Standard – Discussion Draft 2023*

Dear ILVA Subgroup:

On behalf of our members, the Insured Retirement Institute (“IRI”)¹ appreciates the opportunity to comment on the draft of the index-linked variable annuity uniform standard (“Standard”) put forth by the Subgroup. We strongly support the development and adoption of a workable uniform standard for index-linked variable annuities (“ILVAs”)² to enable our insurance company members to submit product filings for review and approval of ILVAs through the IIPRC. We appreciate the work of the Subgroup to date, and we are committed to working closely with the Subgroup to advance this important initiative. To that end, we respectfully offer the comments and recommendations set forth below for consideration by the Subgroup.

As a preliminary matter, we note that the current draft Standard more closely aligns with older working drafts of NAIC’s revised Actuarial Guideline 54 (“AG 54”) rather than the final version approved by the NAIC earlier this year. Several of our recommended modifications to the draft Standard in this letter are intended to align the Standard more fully and precisely with AG 54.

In response to the Subgroup’s two specific requests for feedback, we offer the following comments:

1. *The definition of “floor” in the draft standard does not include a zero floor and therefore a product with a floor of zero is not within the scope of the standard and instead would be subject to the non-variable standards.*

IRI Comment: Our members believe it would be appropriate to have a definition of “floor” that includes a zero floor. Such products should still be included within the scope of the Standard as an interim value calculation in a particular scenario could still lead to losses in a contract with a zero floor strategy.

¹ IRI is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks, and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., the top 10 distributors of annuities ranked by assets under management and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

IRI is an active member of the Industry Advisory Council of the Interstate Insurance Product Regulation Commission (the “IIPRC”).

² ILVAs are also commonly referred to by IRI and our members as registered index-linked annuities, or RILAs.

2. *The purpose of the new provision in the application standard is to help assure that consumers that purchase compact approved products are aware and hopefully better understand the differences between an ILVA and non-variable indexed annuities and variable annuities.*

IRI Comment: While we appreciate the Subgroup’s intent to ensure consumers have knowledge and information about the products they are purchasing, we believe such a comparison would cause more confusion and is ultimately unnecessary for two reasons:

First, all annuity recommendations and sales must already comply with applicable federal and state standard of conduct requirements, including the best interest standard now imposed under NAIC Model 275³ and the SEC’s Regulation Best Interest. Under these rules, producers are required to act in the consumer’s best interest when recommending annuities. Among other things, this means that a producer must have a reasonable basis to believe that a recommended annuity effectively addresses the consumer’s financial situation, needs, and objectives, and that the consumer is informed of various key features of the product.

Second, ILVAs are treated as securities under the federal securities laws, and therefore must be registered with the SEC and offered in compliance with applicable SEC rules. As required by the Registration for Index-Linked Annuities Act of 2022 (which was enacted by Congress as part of the Consolidated Appropriations Act, 2023), the SEC is required to adopt a new registration statement tailored specifically to ILVAs by mid-2024. Notably, all SEC registration statements include a product prospectus that must be delivered to purchasers and prospective purchasers. The prospectus provides detailed information, such as fees and product features, that consumers may need to make an informed decision about whether to purchase the product.

In addition, we note that this proposed requirement seemingly conflicts with the new “Product Comparisons” section and Appendix C of the draft Standard.

With all this in mind, we believe the proposal to require inclusion of comparison between different product types in the application will provide no additional benefit to consumers and is far more likely to create unnecessary confusion by presenting information about products that the producer may not be authorized to sell or that the producer may have determined are not in the consumer’s best interest.

Accordingly, we would oppose the inclusion in the Standard of any product comparison requirement that goes beyond existing state law requirements.

Based on our review of the current draft Standard, we have a number of additional recommendations and comments. As noted above, several of these points are intended to align the Standard more fully and precisely with the final version of revised AG 54.

- **Page 2 - Definition of “Non-variable subaccount”:** This definition appears to define a fixed account. If that is the intent, we recommend using “Fixed Account” as the defined term instead of “Non-variable subaccount” because “subaccount” is typically not used in the context of a fixed account.

³ To date, Model 275 has been adopted without substantive deviations in 36 states, and proposals to adopt Model 275 are actively pending or under development in many of the remaining states.

- **Page 2 – Definition of “Indexed linked variable account or subaccount (ILVA)”**: Similarly, we do not think the word “subaccount” should be used here, and we think the definition should be refined to better reflect AG 54’s description of these products: *“This guideline applies to any index-linked annuity exempt from the NAIC Model 805 on the basis that it is a variable annuity and includes index-linked crediting features that are built into policies or contracts (with or without unitized subaccounts) or added to such by rider, endorsement, or amendment.”*
- **Page 3 – Definition of “Cap”**: This definition appears incomplete and inconsistent with the way certain products may be designed. We believe it may be appropriate to simply remove this defined term.
- **Page 3 – Definition of “Trigger rate or Step-up rate”**: This definition appears incomplete since there are additional methods of Index Strategy calculations that are not captured here. Again, we question whether such a definition should be in the Standard since not every formula for an Index Strategy could (or should) be referenced in the Standard.
- **Page 4 - Section 1.A(8)**: We are unclear as to the intent of the reference to a “plan” in this subsection. We recommend that this reference be removed.
- **Page 5 – Section 1.B(1)(d)(iv)**: This subsection appears to require an MVA as a mandatory part of the interim value calculation. We recommend that language such as, “may include” or “if applicable” be added to provide flexibility given that not all contracts will include an MVA.
- **Page 5 – Section 1.B(1)(d)(v) and Page 8 – Section 1.B(1)(g)(iii)**: These sections limit the Trading Costs that can be reflected in the interim value calculation to 10 bps. This is inconsistent with AG 54, which does not impose a cap on those costs, and we request that these sections be updated accordingly.
- **Pages 5-6 – Section 1.B(1)(d)(vi)**: The references to the market value of the Hypothetical Portfolio and the market value of the Fixed Income Asset Proxy follow an older exposure draft of the AG 54. We recommend that this subsection be updated to align with the final draft that was approved by the NAIC.
- **Page 6 – Section 1.B(1)**: The Drafting note within this section does not fully align with AG 54, and we **strongly recommend** that the following sentence be removed to provide more flexibility for companies when it comes to the MVA formula: “An MVA is applied in determining the Fixed Income Asset Proxy, not to Strategy Values or Interim Values.” We note that when money leaves a contract, even the assets used to support the derivative purchases could be impacted by interest rate movement.
- **Page 8 – Section 1.B(1)(g)(iv)**: This section states that “Testing must be performed for a sufficient range of positive and negative index changes to establish that equity between the contract holder and the company exists under any reasonable scenario that may occur under the contract.” The “under any reasonable scenario” language is particularly problematic as it doesn’t provide consistency or clarity about what may be approved or not. We **strongly urge** the Subgroup to follow the language from AG 54, which requires testing “under a reasonable number of realistic economic scenarios.”
- **Page 8 – Section 1.B(1)(g)(vi)**: We do not believe this section is necessary or appropriate. Some ILVAs use a crediting strategy or index that is not consistent with this subsection and therefore request that it be removed.
- **Page 9-10 – Section 1.C**: We request more flexibility here to allow for changes or modifications to in-force contracts that would benefit the contract owner without needing prior Compact approval. We also request that an index or indices be listed as a variable item so that they can be added or removed for new Index Strategy terms.
- **Page 13 – Section 2.A(9)**: The disclosures referenced in this section are effectively covered in the product prospectus and do not need to be included in the contract. We recommend removal of this section.

- **Page 17 – Section 3.G):** We request clarification that the values of non-guaranteed elements can be changed in the future for a new Index Strategy without prior Compact approval.
- **Page 18 – Section 3.H(3)(a):** We recommend more flexible language here so that additional contract details could be included in a prospectus as opposed to having to describe all elements used in determining interim values within the contract itself.
- **Page 18 – Section 3.H(5):** This section does not contemplate availing different Index Strategies to in-force contracts. Offering different Index Strategies by rider should be an option, and it is unclear whether the Standard requires companies to issue new spec pages with the addition of a new index or Index Strategy. We note that AG 54 does allow for index-linked features to be added to a contract by rider, endorsement, or amendment.
- **Page 20 – Section 3.K(2):** We request that insurers be permitted to change the index for a broader scope of reasons than currently contemplated by this subsection. We also note that Section 3.A(3) would require an endorsement if an index is changed, but we do not believe this is necessary if the contract clearly indicates what would happen under this scenario.

Finally, we note that AG 54 applies to all contracts (including associated riders, endorsements, or amendments) issued on or after July 1, 2024, and we therefore recommend that the final version of the Standard take effect on the same timeline. On a related note, we are concerned that AG 54 could be read as requiring re-filing of all contracts approved prior to July 1, 2024, which could raise significant logistical and operational challenges for our members and the IIPRC. As such, we recommend that the next iteration of the draft Standard include or be accompanied by discussion of the IIPRC’s planned approach with respect to whether previously approved contracts will have to be refiled and if so, how such re-filing would be facilitated. Our members look forward to the opportunity to provide feedback on this important question.

On behalf of IRI and our members, thank you again for the opportunity to provide these comments. We would be happy to discuss further with you and look forward to continued collaboration and partnership with the Subgroup.

Sincerely,

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