

**Agenda Item 2. Discuss public comments received for the revised draft of the *Group Annuity Certificate Uniform Standards for Employer Groups* and finalize recommendation for the Management Committee.**

Mary Mealer, Chair of the Product Standards Committee (PSC) stated that after exposure of the revised draft of the *Group Annuity Certificate Uniform Standards for Employer Groups*, written comments were received from ACLI and Tom Kilcoyne, Pennsylvania, and these comments were discussed during the last public call of the committee. Compact staff detailed the comments.

In reference to the ACLI comment that riders and endorsements attached to the certificate should be added to the definition of certificate, the PSC concluded that use of such terms was confusing since they are normally used regarding contracts, not certificates and that if added forms were attached to the certificate, they would still meet the current definition as is. The Committee concluded no change was necessary.

The PSC discussed the ACLI comments requesting that the Flesch Score be lowered to 40 and outlining the information regarding the states with no requirement or a lower score than 50. The committee concluded that although they understood the companies' request and rationale, they were not comfortable establishing a Uniform Standard that would result in certificates that could be more difficult for the certificateholders to read. They indicated that regulators seek more clarity in insurance documents, not less. It was noted that during development of individual annuity Uniform Standards, the Flesch Score of 50 was higher than most states as well; however, companies have adapted to this standard. The PSC decided no change would be made.

In reference to the ACLI request to add "Plan/contract" rather than "certificate" back to the items discussed in the Statement of Variability, and the explanation of the intent of this reference, the PSC agreed to change the language back to "Plan/contract".

The PSC discussed more the detailed information provided by insurers regarding the proposed additions under Death of the *Annuitant*, §4 F. The insurance companies had explained that individual annuity contracts may provide for accumulation of cash value during the deferral period and, if the contract is a variable annuity, investment of part or all that value in securities. Group annuity certificates issued to Plan participants are not permitted to provide accumulation and/or investment features. Rather, qualified retirement plans use group annuity certificates to meet their fixed and defined obligations under ERISA and the Internal Revenue Code for retirement benefits to participants. As such, references to SEC rules governing variable annuities aren't appropriate since variable annuities are not permitted in the qualified plan certificate context. Similarly, requirements with respect to payment of death benefits that are premised on the existence of a cash accumulation account or value don't apply. The death benefits that a qualified plan may provide to its participants – whether directly under the plan or through group certificates – are typically limited in form under ERISA and the Internal Revenue Code to qualified preretirement survivor annuities or qualified joint and survivor annuities. Following discussion, the PSC agreed not to add these additional requirements.

The PSC next discussed the request from Tom Kilcoyne to consider adding back with revisions the Entire Contract provision in § 4. Mr. Kilcoyne noted that it may be possible if a contract terminates

that the certificate is the contract and if so, it should be stated. Kentucky agreed with his statement if in fact such a situation occurred. Other PSC members noted that they are unaware of any situation where the contract is not the master contract and may or may not include the certificate or the application. They noted that the contract must contain the Entire Contract provision, but not the certificate. Following extensive discussion, the PSC agreed to continue with their earlier recommendation to delete this provision in its entirety.

In reference to the request from Mr. Kilcoyne to clarify the responsibility of the certificateholder for misstatements, the PSC agreed with the explanation provided by the industry representatives during the public call that insurers receive their information from the employer or plan sponsor, not directly from certificateholders and it would be difficult to determine who made the misstatement and if it was a misstatement or an error. Insurers also explained that underpayments and overpayments can be due to misstatements as well as administrative errors. The PSC decided, as suggested by Utah, to make the language clear that (2) is required if the contract allows adjustment of annuity payments as a result of a misstatement of age, sex, other relevant data, etc. The following change was made:

- (2) If the contract allows ~~The certificate may contain a provision describing~~ adjustment of annuity payments as a result of a misstatement of age, sex or other relevant data; compliance with court orders or applicable law, or overpayments or underpayments, the certificate shall contain a provision describing annuity payment adjustments for the reasons listed in the contract.

Under § 4 Payment of Premium, the PSC reviewed the language suggested by Tom Kilcoyne and agreed to his recommended change as follows:

- (1) If the premium payment amount is shown in the certificate, the ~~The~~ certificate may contain information describing the premium payment and shall state when premiums are due. The provision may state that the insurance company is only liable for those annuity payments for which premium has been duly received.

The Chair stated that Compact staff would update the document and the recommendations would be presented to the Management Committee at the in-person meeting in New York on August 2<sup>nd</sup>.

**Agenda Item 3. Continue discussion of public comments received for the draft of the *Uniform Standards for Group Guaranteed Interest Contracts for Non-Variable Annuities for Employer Groups*.**

The Chair noted that during its last member call, the group had completed the review of the first three sections of the draft. The Compact staff lead the review of the remaining items.

In reference to the Scope section, the PSC agreed to a suggestion by Minnesota to add the following language from the *Single Premium Group Fixed Annuity Contract Uniform Standards for Employer Groups* regarding guaranteed separate accounts:

**Separate Accounts:** Approval by the Interstate Insurance Product Regulation Commission of an insurance product filing in compliance with this Uniform Standard shall not be deemed as regulatory approval of the company's use of *Separate Accounts* which are guaranteed in whole or in part by the *General Account*. Action from the Member State, both domiciliary state and if applicable, state of issue, may be required before an insurer may use an Interstate Insurance Product Regulation Commission approved contract or other product component backed by funds associated with a *Separate Account*. If the product contains *Separate Accounts*, all aspects of the *Separate Account* with respect to its operation, maintenance, insolation and producer licensing will be governed by applicable state law (both domiciliary and if applicable, state of issue). Upon a company receiving Interstate Insurance Product Regulation Commission approval that a policy or contract complies with the applicable Uniform Standards, the company shall ensure it has the necessary authorizations to use the *Separate Account* in the Compacting States based on state law requirements for *Separate Accounts*.

**Drafting Note:** The Interstate Insurance Product Regulation Commission will maintain a comprehensive listing of member states with requirements before an insurer may use an Interstate Insurance Product Regulation Commission approved contract or other product component with *Separate Accounts* which are guaranteed in whole or in part by the *General Account*.

Under §4 Contract Provisions, the PSC made the following recommendations:

4B- Annuity Purchase Rate Tables: In response to the Oregon comment that the proposed standard allows the annuity purchase rate to be changed annually rather than new premium, the PSC members did not have specific requirements or prohibitions on annual purchase rates and did not have any recommended changes for this provision.

4C Arbitration: The PSC agreed to make clarifying changes, consistent with the PRT standards.

4I Distributions: Oregon had commented that the draft does not require that the contract address notification and timing issues for withdrawals. The PSC members did not have specific requirements for notification and timing issues for withdrawals for group annuity products and did not have any recommended language revisions.

4J Entire Contract: The PSC agreed to make the following change, consistent with the PRT standards:

- (1) The contract ~~may shall~~ contain a provision regarding what constitutes the entire contract between the insurance company and the contractholder, which ~~that the contract issued to the contractholder, may incorporate any riders, endorsements, amendments-to the contract, schedules, exhibits and tables.~~ No document except pension plan documents may be included by reference.

- (2) If an application is to be a part of the contract, the entire contract provision shall state that the application is a part of the contract if attached. All statements made by the applicant for the issuance of the contract shall, in the absence of fraud, be deemed representations and not warranties.

The PSC next addressed comments on items not in the current draft. They agreed that incontestability was not applicable for these standards. They discussed a comment from National Life requesting that the standards include language that contemplates index-linked crediting features as is provided in the standards for individual non-variable annuities. They concluded that they were not aware at this time of GICs that would include index-linked crediting features; however, if there are and Industry would like standards for them, they could be considered at some future date as additional standards, as with the individual annuity standards, not within these core contract standards.

The PSC agreed to add an optional Form of Annuity provision, similar to language found in the proposed PRT standards, and seek input on whether it was applicable in certain circumstances for GICs.

#### **Form of Annuity**

- (1) The contract may identify the Forms of Annuity available to the Annuitant and a description of each Form of Annuity.
- (2) If the contract includes Deferred Annuitants, the contract shall include information as applicable on the normal (default) form of annuity, any optional forms of annuity available to the Annuitant and impact on benefits in the event of early or deferred retirement or employment termination.

The Chair noted that the Compact staff would update the draft and it would be exposed for public comment during the July 23<sup>rd</sup> public PSC call.

#### **Agenda Item 4. Any Other Matters.**

The Compact staff provided an overview of proposed revisions to the group policyholder application standards, so the provisions apply to group annuity contracts. The group policyholder application standards were designed to apply to all group products filed with the Insurance Compact; however, it was determined that there were certain provisions that may not be applicable to group annuity products. The PSC agreed to expose the proposed revisions for public comment on a future call.

The Chair noted that the next call would be a public call on July 23<sup>rd</sup>.