

LISTING OF COMMENTS FOR CONSIDERATION

COMMENTS FROM THE CONSUMER ADVISORY COMMITTEE

1. The first is the formation and involvement of “groups” in multiple action items. The Plan proposes . . . (Priority I, Action Item 7); and . . . (Priority III, Action Item 4).

The CAC urges you to ensure these proposed “groups” will have no role in the policy decision making of the IIPRC, including no “advisory” committee role. We support the draft Strategic Plan’s proposals to increase access to expert and substantive assistance to support informed and rational decision-making.

We are concerned that if these groups are not carefully structured they will invite industry dominance and advocacy rather than expertise and information. Industry nominated group members should be selected for their substantive expertise only, such as actuaries, contract specialists or other relevant background.

SUGGESTIONS FOR CHANGE:

Priority I, Action Item 7: Develop groups within the Compacting States, state legislators, consumer representatives and industry / company representatives to provide product-specific or issue-specific expertise and feedback to the member regulators in the Uniform Standards development process.

Priority III, Action Item 4: Develop a program to create product line discussion groups coordinated by Insurance Compact Office staff composed of interested regulators, industry, legislators, and company representatives, consumer representatives and interested parties to discuss current activities and items of interest on a regular basis for the purpose of exchange of information and informed decision making by Compact members.

2. The second area is around revisions to the five-year review process . . . Priority I, Action Item 5.

The CAC would ask that as the IIPRC review changes to make the process more iterative, more flexible, and more efficient that it maintain the elements that have made the review process meaningful to date, namely transparency and opportunities for all parties to provide input. In the strategic background for Priority I, the Plan notes that “input from legislators, consumers and their representatives, company filers and industry representatives is a key strength of this transformative regulatory paradigm.” We recognize that the Plan proposes to streamline the five-year process and we appreciate the effort to do so; however, we would be remiss if we didn’t mention how important transparency has been and will continue to be in the review process.

SUGGESTIONS FOR CHANGE:

Priority I, Action Item 5: Review current five-year review process and activities to recommend changes, while ensuring continued transparency and wide opportunities for member and public input, to make it a more iterative, flexible and efficient review of the Uniform Standards focused on the robust, relevant and reasonable objectives.

COMMENTS FROM THE AMERICAN COUNCIL OF LIFE INSURERS

1. We are particularly grateful to see that the following Action Item [4] is included in Priority I (*Uniform Standards States Support and Companies Willingly Use*) since it would expand the application of the group standards to groups other than employer groups, and as a result, increase participation by group insurers in the Compact . . .

SUGGESTIONS FOR CHANGE: No changes requested or suggested to Priority I, Action Item 4 in response to this comment. Keep as is:

Priority I, Action Item 4: Develop procedures to expand the Uniform Standards to accommodate group types available in the Compacting States for the authorized product lines (other than the existing employer-employee group type).

COMMENTS FROM COLORADO DIVISION OF INSURANCE

1. Providing guidance to compacting states and interested parties would be very useful and is much needed as suggested with [Priority I] item #3. Likewise, development of guidance or criteria would be valuable for systematically prioritizing the development of new product standards contemplated in [Priority I] item #6.

SUGGESTIONS FOR CHANGE: No changes requested or suggested to Priority I, Action Item 3. Proposed change to incorporate the concept of development of a system for identifying and prioritizing Uniform Standards or Priority I, Action Item 6 as follows:

Priority I, Action Item 6: Develop a system for identifying listing and prioritizing the development of new Uniform Standards including for new product lines (~~i.e., group whole life~~) and emerging products and benefit features for existing product lines (~~i.e., indexed-linked variable annuities~~) to reflect product offerings accepted by the majority or more of Compacting States.

COMMENTS FROM THE TEXAS DEPARTMENT OF INSURANCE

1. Reassess Governance: With any maturing organization, it is important to periodically assess whether its current operations continue to reflect the expectations of its members. This is especially true for the Compact, where over a quarter of the current member states have joined since the original bylaws were adopted. The Compact's governance, which consists of officers, the Management Committee, voting members, and Compact staff, is particularly

complex. In such a complicated arrangement, clear communication and control is essential. It is important to periodically determine whether the officers, Management Committee, and voting members have timely access to information that they need to make their decisions and whether control of the Compact is appropriately delegated to the officers, Management Committee, and staff.

Recently, for instance, the Compact appeared as an amicus in litigation in Colorado and, even though Texas is on the Management Committee, it was difficult to obtain timely information and participate fully in developing the brief to the court. Obviously, when staff, officers, and the Management Committee are all working on an issue, communications and coordination are essential, and all members should be comfortable with the delegation of authority to run the Compact. As another example, we note that the current bylaws of the Compact prohibit a member of the Management Committee from being a member of the Audit Committee. The strategic planning process is an opportune time to reassess governance decisions like this, perhaps by hiring an outside consultant as the NAIC did in 2014.

Accordingly, Texas suggests a new action item:

Review the current governance structure, including delegation of authority to the officers and to staff, to evaluate the effectiveness of the current structure, procedures for communications from staff and officers, and opportunities for improvement.

SUGGESTIONS FOR CHANGE:

New Priority III, Action Item 9: Conduct review of the Insurance Compact Bylaws to assess consistency with current governance structure and with governance best practices of membership organizations and solicit feedback from the Compacting States to develop a report and recommendation regarding the effectiveness of the current structure, procedures, communications and opportunities for improvements.

2. Explore ways to strengthen the Compact's legal foundation: The recent Colorado litigation is notable for its attempt potentially to call into question the very legal foundations of the Compact. Given this attack on the Compact, the current strategic planning initiative is a good opportunity to initiate a new evaluation of the Compact's legal structure and whether there might be ways to strengthen it against such litigation. For instance, should the Compact pursue approval at the federal level that might give industry greater confidence that the Compact will not face state by state challenges to the legality of Compact approved forms and rates? Should the Compact explore contingency plans in case it receives an adverse court decision in Colorado or another state?

Accordingly, Texas suggests a new action item:

Explore ways to strengthen the legal foundation of the Compact.

SUGGESTIONS FOR CHANGE:

Priority III, Action Item 6: Engage members and state and federal partners to explore ways to strengthen the legal foundation of the Insurance Compact and ~~Partner with NAIC, NCOIL, NCSL and Council of State Governments (CSG) to~~ develop a reference materials regarding the Insurance Compact to be used as a ~~guide~~ resource for executive, legislative and judicial branches of government ~~Compacting States and courts in understanding the Insurance Compact under when working with Compact approved products.~~

3. Explore new ways the Compact can assist the states: Texas noted with interest [Priority II] Action Item 8 on page 10 of the draft strategic plan. That item currently reads:

Develop a process for working with Compacting States willingly wanting to incubate a product filing through the Insurance Compact filing process where aspects of the product (benefit or actuarial) are novel to determine if they can be filed under existing or future Uniform Standards.

This item seems to be based on the fact that the Compact will never have uniform standards for every innovation that industry may come up with, and yet the Compact staff have a great deal of expertise to offer states, many of which have limited staff. Texas has concerns about the legal ability of the Compact to issue approvals that only apply to certain states. However, Texas agrees that it would be very useful for Compact staff to assist states in their review of nationwide filings. Compact staff are already assisting with issues such as long-term care rate reviews. If Compact staff could provide the states the results of their independent review of forms or rates, this could greatly expedite the state approval process.

Accordingly, Texas suggests revising Action Item 8 as follows:

Develop a process for Compact staff to work with Compacting States to assist with state review of product filings where aspects of the product (benefit or actuarial) are not able to be approved under current Uniform Standards.

SUGGESTIONS FOR CHANGE:

Priority II, Action Item 8: Study and provide a recommendation regarding the pros, cons and considerations for the development of ~~develop~~ a process for working with Compacting States willingly wanting to assist in a coordinated state review of a product filing ~~to incubate a product filing through the Insurance Compact filing process~~ where aspects of the product (benefit or actuarial) are novel to determine if they can be filed under existing or future ~~may not able to be approved under current~~ Uniform Standards.

4. Explore ways to improve consumer understanding of Compact approved forms: Currently, the Compact has little in the way of plain language requirements in its product standards. For instance, the Compact appears to only have the following readability standards for individual immediate non-variable annuities:

READABILITY REQUIREMENTS

(1) *The contract text shall achieve a minimum score of 50 on the Flesch reading ease test or an equivalent score on any other approved comparable reading test. See Appendix A for Flesch methodology.*

(2) *The contract shall be presented, except for specifications pages, schedules and tables, in not less than ten point type, one point leaded.*

(3) *The style, arrangement and overall appearance of the contract shall give no undue prominence to any portion of the text of the contract or to any endorsements or riders.*

(4) *The contract shall contain a table of contents or an index of the principal sections of the contract, if the contract has more than 3,000 words printed on three or fewer pages of text or if the contract has more than three pages regardless of the number of words.*

...

FAIRNESS

(1) *The contract shall not contain inconsistent, ambiguous, unfair, inequitable or misleading clauses, nor contain provisions that are against public policy as determined by the Interstate Insurance Product Regulation Commission, nor contain exceptions and conditions that unreasonably affect the risk purported to be assumed in the general coverage of the contract.*

Texas is working to strengthen its own form review requirements to make insurance more clear and understandable for consumers, but the Compact has the ability to impact far more consumers. Texas suggests considering the creation of a uniform product standard applicable to all lines that would impose minimum plain language requirements.

Accordingly, Texas suggests adding a new action item to Priority I on page 7 of the draft:

Develop standards applicable to all products to promote the use of plain, understandable language in forms.

SUGGESTIONS FOR CHANGE:

By way of clarification, all Uniform Standards with respect to policies or contracts across individual and group annuities, life, long-term care and disability income insurance product lines include Readability Requirements with minimum Flesch Score of 50 and Fairness requirements similar to the ones referenced above in the Individual Immediate Non-Variable Annuity Contract Standards.

Priority I, Action Item 3: Provide guidance for Compacting States and interested parties to be used in the Uniform Standards development process for drafting, submitting and considering proposals or changes to Uniform Standards to focus on the robust, relevant and reasonable objectives and to the extent possible, promote the use of plain, understandable language in forms.

Priority II, Action Item 6: Provide samples of simplified forms or provisions deemed to be consistent with the Uniform Standards and to the extent possible, promote the use of plain, understandable form language for use by company filers when submitting a Compact filing.

5. Explore ways to quantify the quality work done by Compact staff

The Compact continues to grow. According to the 2018 Annual Report, the Compact approved 829 products in 2015. This number rose to 1,226 in 2018. Currently, there is no systematic review or audit of the work of Compact staff. Most states, including Texas, do not have the resources to review every Compact approval to ensure that the states have no concerns. To be clear, Texas can point to no specific form that we believe was erroneously approved. However, the comfort of state consumers, regulators, and legislators with the Compact would be increased if there was some independent review of the approval decisions made by Compact staff.

Accordingly, Texas recommends adding a new action item to Priority II on pages 9-10 of the draft:

Implement an audit process either through an outside party or through participation of state regulators to confirm that products approved by the Compact are compliant with Compact product standards.

SUGGESTIONS FOR CHANGE:

New Priority II, Action Item 9: Implement an audit process either through an outside party or through participation of regulators in Compacting States to verify that randomly selected Compact-approved product filings across product and filing types and companies are subject to consistent, thorough quality reviews for compliance with the applicable Uniform Standards.

COMMENTS FROM OREGON DIVISION OF FINANCIAL REGULATION OF DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

1. *Priority I, Action Item 4:* The Division does not support Action Item 4, which seeks to expand group types approved by the Commission. The Division experiences ongoing issues with some non-employer groups and feels strongly that these groups, and the products they offer, should be monitored and controlled at the state regulator level.

SUGGESTIONS FOR CHANGE: No changes requested or suggested to Priority I, Action Item 4 other than Oregon does not support. Please see ACLI comment regarding reasons it supports this item. Suggestion is to keep as is:

Priority I, Action Item 4: Develop procedures to expand the Uniform Standards to accommodate group types available in the Compacting States for the authorized product lines (other than the existing employer-employee group type).

2. *Priority I, Action Item 6:* The Division does not support Action Item 6, which seeks to move approval of emerging products to the Commission. Originally the Commission indicated any emerging or innovative products would be directed back to state regulators for consideration. This is a substantial change in Commission function, and likely not anticipated by state legislative bodies. The Division has recently developed an Innovation Hub to explore new and emerging products in Oregon's insurance market. State regulators have a responsibility to monitor emerging products and work with state legislators to enhance consumer protection when necessary. We feel Action Item 6 may prevent state regulators from regulating new and emerging risks.

SUGGESTIONS FOR CHANGE: No changes requested or suggested to Priority I, Action Item 6 other than Oregon does not support. See suggested changes in response to Colorado's comments regarding this action item:

Priority I, Action Item 6: Develop a system for identifying listing and prioritizing the development of new Uniform Standards including for new product lines (~~i.e., group whole life~~) and emerging products and benefit features for existing product lines (~~i.e., indexed-linked variable annuities~~) to reflect product offerings accepted by the majority or more of Compacting States.

3. *Priority II, Action Item 5:* The Division supports Commission efforts to create resource groups to serve as a resource for the Commission office and staff. However, the Division has been discouraged from providing feedback that contradicts the Commission's preferred result. Regulator staff are key to providing historical feedback on why certain products have been disallowed by states. The Division believes Action Item 5 should include clarification that dissenting opinions provided by regulator staff will be given equal attention, including development of approved product monitoring for potential compliance concerns noted during product standard development.

SUGGESTIONS FOR CHANGE: No specific wording changes requested or suggested to Priority II Action Item 5. See suggested changes in response to the Consumer Advisory Committee's comments regarding a related action item.

Priority I, Action Item 5: Review current five-year review process and activities to recommend changes, while ensuring continued transparency and wide opportunities for member and public input, to make it a more iterative, flexible and efficient review of the Uniform Standards focused on the robust, relevant and reasonable objectives.

4. *Priority II, Action Item 8:* As currently proposed, the Division does not support Action Item 8. It is the Division's understanding that the Commission was not designed to address emerging or innovative products, as such these products should be handled by individual

state regulators. State regulators are best positioned to evaluate additional impacted programs or applicable regulations.

SUGGESTIONS FOR CHANGE: No changes requested or suggested to Priority II, Action Item 8 other than Oregon does not support. See suggested changes in response to Texas' comments regarding this action item:

Priority II, Action Item 8: Study and provide a recommendation regarding the pros, cons and considerations for the development of develop a process for working with Compacting States willingly wanting **to assist in a coordinated state review of a product filing** to incubate a product filing through the Insurance Compact filing process **where aspects of the product** (benefit or actuarial) are novel to determine if they can be filed under existing or future **may not able to be approved under current** Uniform Standards.

5. *Priority III, Action Item 1:* The Division supports regular and ongoing communication with member states; however, the Division believes that Action Item 1 needs to be amended to require “redline” documents so regulators can easily track changes to proposed standards. Current communication to member states lack sufficient clarity for regulators to identify changes or areas of potential concerns. Additionally, member states should be provided additional time to collect internal feedback on new product standards, including the option to delay the advancement of product standards while additional information can be collected on market behavior.

SUGGESTIONS FOR CHANGE: No changes requested or suggested to Priority III, Action Item 1 other than requiring redlines for uniform standards. This is a training item as detailed redlined versions including discussion history is included in drafts considered and published by the Product Standards Committee. Upon promulgation, the Record includes redlined version of all amendments made to Uniform Standards. Suggestion is to keep as is:

Priority III, Action Item 1: Provide regular and ongoing information to Compacting States through weekly, monthly, and quarterly communications and reports about its committee and product operations activities.

6. *Priority III, Action Item 4* The Division supports the development of product line groups to discuss current activities and items of interest on a regular basis. However, the Division does not believe these meetings should be facilitated by Commission staff resources. When developed, product specific committees should be comprised of state regulators with varying opinions of the product line in question to ensure that Insurance Commissioners and regulatory staff are apprised of market changes and insurer proposals. A committee structure similar to the structure employed by the NAIC would encourage regulatory collaboration by member states to develop product line policy initiatives. Insurers wishing to approach the Commission with suggested changes should be required to contact state regulators on the committee to ensure that state Insurance Commissioners have an opportunity to address specific regulatory concerns and staff issues at the state level.

SUGGESTIONS FOR CHANGE: No changes requested or suggested to Priority III, Action Item 4 other than not supporting the Insurance Compact Office taking a coordinating role. See suggested changes in response to the Consumer Advisory Committee's comments regarding this action item.

Priority III, Action Item 4: Develop a program to create product line discussion groups coordinated by Insurance Compact Office staff composed of interested regulators, legislators, industry and company representatives, consumer representatives and interested parties to discuss current activities and items of interest on a regular basis for the purpose of exchange of information and informed decision making by Compact members.

7. *Priority III, Action Item 6* The Division is concerned that the development of a reference book on this unique system may understate the regulatory challenges of state versus Commission product approval. Regulatory challenges include (but are not limited to) years of opaque product standard committee calls that restricted regulator participation; insufficient protections against “forum shopping” from insurers seeking approval of previously disallowed products; insufficient compliance safeguards to monitor insurer conduct; and unclear product standard development processes that did not sufficiently track changes or member state input. The Division encourages the Commission to address these issues prior to moving forward with any type of compliance guide.

SUGGESTIONS FOR CHANGE: No changes requested to Priority III, Action Item 6. See suggested changes in response to the Texas comments and clarifications to make clear it is a resource and not a compliance guide.

Priority III, Action Item 6: ~~Engage members and state and federal partners to explore ways to strengthen the legal foundation of the Insurance Compact and Partner with NAIC, NCOIL, NCSL and Council of State Governments (CSG) to~~ develop a reference materials regarding the Insurance Compact to be used as a guide resource for executive, legislative and judicial branches of government ~~Compacting States and courts in understanding the Insurance Compact under when working with Compact approved products.~~

8. *Priority III, Action Item 8* The Division supports more transparent communication between Commission staff and NAIC committees. The division would like to see Commission staff focus reports on areas where Commission product standards deviate from NAIC Model laws and the reason for doing so; filings that may present unique regulatory challenges for states regulators; areas that insurers have identified as more appropriate to file through the Commission; and shifts in the types of products filed through the Commission that may be indicative of market changes.

SUGGESTIONS FOR CHANGE: No changes requested or suggested to Priority I, Action Item 4 other than Oregon does not support. Suggestion is to keep as is:

Priority III, Action Item 8: Working with the NAIC, provide regular updates to Committees, Task Forces and Working Groups with jurisdiction over product lines

authorized by the Insurance Compact regarding its activities. Working with other state-based organizations including NCOIL, NCSL and CSG, provide regular updates on the Insurance Compact at its meetings or through other forms of targeted communication.

ADDITIONAL CONSIDERATIONS FROM NAIC AND INSURANCE COMPACT STAFF

- 1) NAIC CEO Mike Consedine suggested adding wording similar to that in NAIC's State Ahead emphasizing the flexible and adaptable nature of the strategic plan. (See page 11 of [State Ahead](#))

SUGGESTIONS FOR CHANGE: At the end of the Strategic Planning Process Overview section add:

Upon implementation, the Insurance Compact Office management is tasked with working closely with the Officers, Management Committee and Commission members to implement the action items contained in the Strategic Plan. This includes providing the Officers, the Management Committee and members with regular status reports, as well as year-end reports. The Insurance Compact Office management will coordinate with the Officers and the Management Committee to conduct an annual review of this Strategic Plan to confirm the priorities, objectives and action items are still on point.