DRAFT UNIFORM STANDARDS DEVELOPMENT GUIDELINES

Uniform Standards development process for drafting, submitting, and considering proposals or changes to Uniform Standards to focus on the robust, relevant, and reasonable objectives

INTRODUCTION

The Interstate Insurance Product Regulation Compact is a statute adopted by Compacting States which forms an agreement to develop Uniform Standards to promote and protect the interest of consumers of individual and group annuities, life insurance, disability income insurance and long-term care insurance. The Insurance Compact and its state member-driven Commission (collectively referred to as the “Compact”) have developed a robust Uniform Standards development process, i.e. rulemaking process, which encourages regulatory collaboration and input of valuable expertise. This process also promotes transparency and input from all constituents including company filers, state legislators, consumers and their representatives and industry representatives. In its strategic plan, Insurance Compact Compass: Strategic Plan 2020 – 2022, the members have identified the need to provide written, consistent guidance for the Uniform Standards development process.

PURPOSE

The purpose of the Uniform Standards Development Guidelines (USD Guidelines) is to provide a reference guide for regulators, legislators and others in Compacting States as well as representatives of companies, consumers, industry and others involved in drafting, submitting and considering new proposals or changes to Uniform Standards. Uniform Standards that Compacting States support and companies willingly use has been a long-standing priority and value proposition of the Insurance Compact and its Commission. The focus in this guidance is on the development of Uniform Standards that are robust in that the Uniform Standards reflect strong consumer protections; that are relevant in that the Uniform Standards reflect product offerings available in the Compacting States; and, that are reasonable in that the Uniform Standards reflect product requirements not unduly prescriptive.

The USD Guidelines is intended to explain the steps involved in the process of developing, reviewing, amending, commenting, considering, and adopting Uniform Standards. It outlines the ways Uniform Standards can be drafted or amended through new development, an annual identification and prioritization system, emergency rulemaking, and five-year review. An explanation is provided of where to find the Uniform Standards, how to navigate the Docket and Record and how to follow and provide input into the development process. The USD Guidelines suggest guiding principles in the drafting, submitting, and considering of proposals or changes during the development and rulemaking processes for Uniform Standards development.
AUTHORITY

Article II of the Compact statute, and its state enactments, provides the authority to exercise rule-making powers and establish reasonable Uniform Standards for Products covered under the Compact. Article VII of the Compact statute, and its state enactments authorizes the development of processes and procedures to exercise this rulemaking authority.

The Rule for Adoption, Amendment and Repeal of Rules for the Interstate Insurance Product Regulation Commission (“Rulemaking Rule”) defines the type of rulemaking and outlines the steps involved. The Compact publishes Uniform Standards under development on the Docket Developing Standards section of its insurancecompact.org website. The Compact publishes adopted Uniform Standards and supporting information including rulemaking history on the Record Adopted Standards section of the insurancecompact.org website.

Prior to the initiation of rulemaking by the Management Committee for the consider of Uniform Standards, the Product Standards Committee (PSC) develops a recommendation for the consideration of a new or amended Uniform Standard. The PSC process does not generally fall under the Rulemaking Rule other than when it initiates Notice of Proposed Rulemaking under Section 103.

The Compact Office provides staffing to the Uniform Standards development to facilitate the work of the Compact, its committees and its members.¹

DEFINITIONS/ACRONYMS FOR PURPOSES OF THIS MANUAL

Compact – refers to the Interstate Insurance Product Regulation Compact and its Commission

Compact Office – refers to the Compact staff/team

CAC – refers to the Consumer Advisory Committee

IAC – refers to the Industry Advisory Committee

PSC – refers to the Product Standards Committee

Manual – refers to this Uniform Standards Development Procedures Manual

Rulemaking Rule – refers to the Rule for Adoption, Amendment, Repeal of Rules for the Interstate Insurance Product Regulation Commission

¹ Drafts of new or amended Uniform Standards developed internally by Compact staff are developed working with subject matter experts (regulators, industry, and Compact reviewers). Research tools used in development include review of current standards with similar requirements, applicable state statutes and regulations, state check lists, product review via SERFF Filing Access (SFA), and review of the Compact’s prefile communication database.
TYPES OF UNIFORM STANDARDS DEVELOPMENT

New Uniform Standards Development

As of October 1, 2020, the Compact has adopted 102 Uniform Standards for products and benefit features in the following product lines – individual annuities, life, long-term care and individual disability income insurance and group annuities, term life and group disability income insurance. While the bulk of new development has occurred, new Uniform Standards will be developed to fill in the group product lines as well as for filling in the gaps for individual products and benefit features widely accepted by the Compacting States.

The PSC generally commences the process for the development of a new Uniform Standard, with the support of the Compact Office and with the goal of presenting a recommendation to the Management Committee for notice, comment, and consideration.

New Uniform Standards development generally occurs in one of two ways. The first process involves developing an initial draft of a new Uniform Standard through researching state laws and checklists, state-approved/filed forms, and provisions in other Uniform Standards. A practical example of this process was the preparation of the group annuity Uniform Standards in 2018. The second process is conducting advanced rulemaking pursuant to §103 of the Rulemaking Rule. A practical example of this process was the solicitation of comments for possible group annuity Uniform Standards in 2012.

The Compact Office will facilitate development of an initial draft for review and input by the PSC. The PSC will expose the initial draft for notice and comment with at least one public conference call for further comment and discussion.

Before developing an initial draft, the PSC may conduct advanced rulemaking by issuing a Notice of Proposed Rulemaking. Under §103 of the Rulemaking Rule, the notice will contain a description of the scope of the Uniform Standard, a request for comments, both general and specific, on the need for the potential rule and the provisions, and possible outline or language of the Uniform Standard. The PSC will issue the Notice of Proposed Rulemaking for a minimum 60-day written comment period and with at least one public conference call for further comment and discussion. Upon submission of comments pursuant to the Notice of Proposed Rulemaking, the Compact Office will facilitate the development of an initial draft as described above.

During the development of a new Uniform Standard, the PSC will post versions of the draft Uniform Standard on the Docket under the heading “Uniform Standards Under Construction”. The PSC will seek wide input from members and regulators, members of the Legislative Committee, IAC, and CAC, and interested parties. Once the PSC has finalized its draft of a new Uniform Standard, it will prepare and make a transmittal to the Management Committee to commence the official rulemaking process under Section §104 of the Rulemaking Rule.
**Amendments**

The Uniform Standards can be amended at any time. Outside the five-year review process described below, amendments can generally occur in one of two structured ways. First, the Compact has emergency rulemaking powers under §108 of the Rulemaking Rule. Second, the Compact is in the process of developing an annual identification and prioritization system for development of Uniform Standards.

Section 108 permits the Compact to engage in emergency rulemaking when the Management Committee finds for good cause emergency circumstances exist where it is in the public interest to suspend Sections 103 – 107 of the Rulemaking Rule. While both new and amendments to Uniform Standards can be done through emergency rulemaking in exigent circumstances, such Uniform Standard is only valid for 180 days while the Compact pursues the applicable Rulemaking Rule requirements to make the new or amended Uniform Standard permanent.

The proposal for an annual process for identification and prioritization of Uniform Standards will be considered by the PSC for further recommendation to the Compact members. Upon adoption, this section will be updated.

**Five-Year Review Process**

Section 118 of the Rulemaking Rule provides the Compact will review each of its rules, including Uniform Standards, within five years of the rule’s original effective date or within five years of the filing of the last five-year review, whichever is later. Further, any substantial review of a rule, including a Uniform Standard can be considered a five-year review.

In 2011, the Commission adopted the *Rulemaking Procedures for 5-Year Review of Rules, Operating Procedures and Uniform Standards* (Five-Year Review Procedures). The current Five-Year Review Procedures as applied to Uniform Standards are as follows:

1. The PSC reviews Uniform Standards on yearly basis on or around January 1 (or on a semi-yearly basis of January 1 and July 1 if there are several Uniform Standards subject to five-year) to include Uniform Standards that will reach their five-year adoption mark in the coming year (if semi-yearly, for Uniform Standards reaching their five-year adoption mark six months following January 1 and then six months following July 1).

2. The scope of review under §118 focuses on the need for continuation, repeal or amendment of the rule based primarily on whether circumstances or underlying assumptions have changed since the last time the rule was adopted, amended, or reviewed.

3. The Compact Office will initiate the process of review:

   a. The Compact Office will issue notice of Uniform Standard(s) scheduled for periodic review. The notice will identify the applicable Uniform Standard(s) by title, scope, and
effective date, including dates of previous amendments. The notice shall describe the scope of review, as stated above.

b. Notice will be sent to interested parties, the Legislative Committee, the Consumer Advisory Committee, and the Industry Advisory Committee and will be posted to the Docket of the Compact website. The notice period will be sixty (60) days unless the notice states specific circumstances for reducing the notice period provided it can be no less than thirty (30) days.

c. Within sixty (60) days after the end of the public notice period, the Compact Office will prepare a report and recommendation to the committee of jurisdiction that includes:

i. A detailed description of questions, comments, suggested changes or concerns that have been raised by member states, company filers, the Legislative or Advisory Committees, non-compacting states or other interested parties regarding the Uniform Standards(s) through the notice and comment process.

ii. Operational issues or concerns faced by the Compact Office in applying or implementing the pertinent rules, operating procedures or uniform standards when carrying out the mission of the Commission.

iii. Changes or amendments proposed by the Compact Office and proposed implementation or effective date of proposed changes or amendments.

iv. Economic or other impact of proposed changes or amendments for member states, consumers, industry, and the Compact Office.

v. Any other relevant information.

4. Within sixty (60) days following the receipt of the report prepared by the Compact Office, the PSC will consider the report and recommendation from the Compact Office.

5. The PSC will hold at least one public meeting to receive comments from other member states, the Legislative Committee, the advisory committees and other interested parties on the Committee’s report and recommendation.

6. The PSC will present a report and recommendation to the Management Committee outlining its review process and any recommended changes or amendments. The report will include the following:

a. A summary of the PSC’s recommendation regarding the continued need for the rule and whether or not proposed changes are recommended. If changes are recommended, the summary shall include a description of the change and an explanation of the change in circumstances or underlying assumptions since the rule was last adopted, amended, or reviewed.

b. A summary of the written and oral comments including any proposed changes, amendments or issues raised but not recommended by the committee with the reasons, if any, for not recommending these items.
7. Upon the PSC’s recommendation to the Management Committee, the Management Committee will determine whether continuation, repeal or amendment is appropriate. If the recommendation is to repeal or amend the rule, the Management Committee shall commence the formal rulemaking process pursuant to the Rulemaking Rule to receive comments on the Committee’s recommendations including proposed amendments to the applicable rules, operating procedures and uniform standards.

To date, the Compact has conducted 9 separate five-year review periods.

As part of its current strategic plan, the members of the Compact have an action item with respect to the five-year review process as follows: 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. (Priority I, Action Item 6). The Rulemaking Committee is scheduled to consider this action item in the first half of 2021.

RULEMAKING REQUIREMENTS

Upon receipt of a recommendation from the PSC with respect to a new Uniform Standard or amendments to an existing Uniform Standard, the Management Committee, by majority vote, initiates the rulemaking procedures under §104 of the Rulemaking Rule.

Within ten (10) business days after the Management Committee adopts the motion to initiate rulemaking process, the Compact Office issues a general notice in accordance with § 104(a) of the Rulemaking Rule. The Compact Office also posts the information identified in §104(a) to the Docket section of the Insurance Compact website. The notice provides for a minimum 60-day comment period.

Pursuant to §105 of the Rulemaking Rule, a public hearing for a Uniform Standard is scheduled as a matter of course during a meeting of the Management Committee. Another practice of the organization is to hold the meeting where the Management Committee acts on a Uniform Standard at a meeting subsequent to the Management Committee meeting where the public hearing for the Uniform Standard is on the agenda. Note the public hearing may be scheduled within or outside the (sixty) 60-day written comment period required by §104 (a).

If written comments are submitted or oral comments are made during the public hearing, the Management Committee, or the Chair of the Management Committee, may ask the PSC to review the comments and provide input on whether these comments, requests, and concerns were discussed. The PSC will follow a similar process to its original process by holding regulator-only and public meetings to develop and vet its recommendation to the Management Committee with respect to the comments and suggested further changes, if any, to the Uniform Standard.

At a meeting of the Management Committee, the PSC will present its recommendation for further changes in response to the comments. The Management Committee will then consider the approval of the Uniform Standard, including further amendments recommended by the PSC. If the meeting is a joint meeting with the Commission, the Commission may also consider whether to adopt the
Uniform Standard as approved by the Management Committee. Please note both voting requirement for the adoption of a Uniform Standard is two-thirds in favor of the entire the Management Committee and two-thirds in favor of the entire Commission.
DRAFTING PRINCIPLES

For purposes of drafting Uniform Standards, the following principles should guide those regulators and interested parties involved in the Uniform Standards development process:

1. It is a Compact priority to draft Uniform Standards in a manner Compact States support and insurance companies willingly use.

2. The Uniform Standards are robust and reflect strong and detailed consumer protections.

3. The Uniform Standards are relevant and reflect product offerings available today in the several Compact States.

4. The Uniform Standards reflect reasonable product requirements and are not unduly prescriptive or restrictive.

5. When developing or amending provisions for Uniform Standards, consistency with comparable provisions in adopted Uniform Standards is desirable.

6. The NAIC Model Laws and Regulations should serve as a starting point for the development of Uniform Standards.

7. Language in the Uniform Standard should follow language in the model law or regulation in circumstances where the model language has been adopted by a majority or more of Compact States whether in statute or regulation.

8. State statutes, regulations and rules which address a provision similar to a provision in a Uniform Standards should be considered and should be followed where a majority or greater than majority of Compact States has a similar statute, regulation, or rule.

9. When a Compact State requests consideration of its state requirement to be the provision in a Uniform Standard, there should be consideration as to whether a majority or greater than majority of Compact States have a similar state requirement.

10. When there is a Uniform Standards provision under consideration that 10 or fewer Compact States require or apply and the majority of Compact States do not have such a requirement or have a different requirement, consideration should be given to wording the provision in a manner where the provision reflects the majority requirement unless the requirement is more restrictive in the state and if so, then the requirement follows applicable state law.

11. Consideration will be given to allow Uniform Standards and provisions therein to be in accordance with provisions found in a wide array of approved forms available through SERFF Filing Access in a majority or more of the Compact States.
12. Consideration will be given to the goal of achieving meaningful uniformity through detailed and comprehensive Uniform Standards which will have an overall balance of robust and nationwide consumer protections while promoting flexible and sensible product development.

13. Exceptions to these drafting principles are permitted and the reasons for an exception are encouraged to be well-documented and will be considered during the development process.

GUIDELINES FOR SUBMISSION OF COMMENTS AND SUGGESTIONS

For purposes of providing requested comments and suggestions during the Uniform Standards development process, consideration should be given to the following guidelines:

1. During all stages of the Uniform Standards, priority given to creating Uniform Standards that Compacting States support and insurance companies willingly use.

2. Comments and suggestions are constructive and when possible, describe how they satisfy the Compact’s strategic objectives for Uniform Standards development to be 1) Robust – reflect strong consumer protections; 2) Relevant – reflect product offerings available in Compacting States; and 3) Reasonable – reflect product requirements that are not unduly prescriptive.

3. Comments and suggestions for provisions in the Uniform Standards geared towards developing Uniform Standards with provisions that are generally allowed or acceptable to a wide number of Compacting States and a wide array of company filers.

4. Comments and suggestions focus on the items or questions that are the subject matter of the comment period.

5. Comments that express concerns with a proposed Uniform Standard or provision or language within a Uniform Standard provide alternative language, examples, or solutions to address the concerns.

6. Comments focus on concerns based on current regulatory law and compliance, product filing activity, consumer complaints or market actions rather than anecdotal concerns.

7. Comments and suggestions previously discussed and resolved should address the reasons the comments and suggestions should be considered or reconsidered.

8. Comments and suggestions for specific language disclose if it is based on a specific state requirement(s) or a specific policy, contract, or form.

9. Comments and suggestions for specific language accompanied by context, if available, of how many Compacting States have such language in their state law or permit such language in forms issued in their respective jurisdiction.
GUIDELINES FOR DEVELOPMENT AND CONSIDERATION

For purposes of development and consideration of Uniform Standards, the following guidelines are offered:

1. Development and consideration of Uniform Standards should be guided by collective priorities and objectives of the Insurance Compact membership and its regulated industry with an ever-present focus on providing consumer access, choice, and protection.

2. Development and consideration of Uniform Standards should account for the laws, requirements and position of the respective jurisdictions and landscape of the insurance marketplace.

3. Development and consideration should be focused on views or positions supported by the member’s Commissioner or senior staff and/or senior leadership within an interested parties’ organization or group.

4. Compacting States that see a concern with a Uniform Standard or provision of a Uniform Standards which would lead to the Compacting State exercising its sovereign right to opt out are encouraged to bring these concerns to the Commission, Management Committee and PSC.

5. Companies that file insurance products within the scope of a Uniform Standard, and see a concern with a Uniform Standard that would prevent them from filing through the Compact in a similar fashion to their filings with Compacting States, are encouraged to provide comments with concerns and suggestions to the Commission, Management Committee and PSC.

6. When it comes to consideration of a Uniform Standard, Compacting States with opt out concerns are encouraged to vote in a manner that demonstrates their concern with the adoption and implementation of the Uniform Standard.

POST ADOPTION OF A UNIFORM STANDARD

Upon adoption of a Uniform Standard, the Compact Office will send a promulgation notice to the Commission members providing notice of the date the Uniform Standard will be adopted (at least 90 days after the adoption date) and instructions for Compacting States wishing to exercise to opt-out of the Uniform Standard by regulation. As a matter of practice, this notice is sent out no less than ten (10) business days after the date that the Uniform Standard is adopted.

Before issuing the promulgation notice, the Compact Office adds the Uniform Standard with the Standards History to the Record Adopted Standards section of its website. The Standards History contains the applicable information required by §113 of the Rulemaking Rule.

A Compacting State has the right at any time to opt out of a Uniform Standard by legislation. A Compacting States can opt out by regulation by providing written notices of its intent to the Executive Director within ten (10) days of the promulgation notice (the promulgation notice
prominently shows the due date for written notice). The Compacting State is not required to have a regulation in place within the 10-day notice period or even once the 90-day promulgation period is completed and the Uniform Standard becomes effective. The Compacting State may request a stay of the effectiveness of the Uniform Standard until its regulation is effective. The Compact Office will work with a Compacting State who has expressed an interest to opt out by regulation or legislation to facilitate the exercise and preservation of its rights under the Compact statute, Bylaws and Operating Procedures.

The Compact Office will develop a checklist for the Uniform Standard which will be published with the Uniform Standard on the Record Adopted Standards and will be used by the Compact reviewers to review product filings for compliance. The Compact Office may publish other instructions with respect to the implementation of the Uniform Standards in its SERFF General Instructions or through a Filing Information Notice. If a Compacting State has exercised its right to opt out, the Compacting State cannot be selected when preparing a Compact product filing submission which includes the opted-out Uniform Standard.

**HOW TO FOLLOW UNIFORM STANDARDS DEVELOPMENT**

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The Uniform Standards development process requires deliberation of the Commission members and their designated representatives as well as wide input from the Legislative Committee, CAC, and IAC as well as state legislators, consumer representatives, company filers, industry representatives and other interested parties.

The Uniform Standards development process generally starts at the PSC. Please note the PSC may ask for technical assistance from the Actuarial Working Group. Regulators in Compacting States
can sign up to receive notices of both regulator-only and public calls of the PSC. Public calls of the PSC are scheduled and noticed at least fifteen (15) days in advance. Public calls and comment periods of the PSC will be sent to a general distribution list which includes all interested members and parties. The Events Calendar, a link on the Compact home page, provides a list of all scheduled regulator-only and public calls of the PSC.

Activities of the PSC can be followed by reviewing the PSC Call Summaries on the About the Compact webpage. When the PSC is working on new Uniform Standards or amending existing Uniform Standards outside the five-year review process, it will post its discussion drafts and submitted comments on the Docket Developing Standards webpage under the “Standards Under Construction” category. When the PSC is working on a five-year review of Uniform Standards, it will post its discussion drafts and submitted comments on the Docket Developing Standards webpage under the “Five-Year Review of Uniform Standards, Operating Procedures and Rules” category.

The PSC will present its recommendation for a new Uniform Standards or amendments to Uniform Standards at a meeting of the Management Committee. Materials regarding the recommendation will be posted to the Events Calendar and sent in advance of the meeting of the Management Committee. At this meeting, the Management Committee considers a motion to initiate the rulemaking process.

Upon commencement of the Management Committee’s rulemaking process, the Uniform Standards and relevant rulemaking information are posted on the Docket Developing Standards webpage under “Rulemaking” category. A Uniform Standard is given a rulemaking number to denote whether it is a new Uniform Standard (RNUS) or an amended Uniform Standard (RAUS). The rulemaking number includes the current year rulemaking is commenced and an ordinal number based on the number of previous new or amended Uniform Standards in the rulemaking process for the current year. The Docket will also show key dates including when the Uniform Standard was issued for notice and comment; when written comments are due; and when a public hearing is scheduled.

The Management Committee will hold public hearings during a meeting of the Management Committee or a joint meeting of the Management Committee and Commission. This information will be published on the Events Calendar and notice will be sent to the general distribution list.

The Management Committee has generally asked the PSC for input on written or oral comments received during the rulemaking process. The PSC will review the comments to respond to the Management Committee as to whether they would suggest further changes to the pending Uniform Standard. The PSC will have at least one public call to receive comments on its proposed feedback before providing it to the Management Committee. The PSC materials, at this stage, will be published on the Docket Developing Standards Rulemaking Section for the particular Uniform Standard at issue.
Once the Management Committee has concluded the rulemaking process, the action to consider the new or amended Uniform Standards for adoption will be placed on the agenda for action by the Management Committee and Commission. Once the Management Committee approves a Uniform Standard by a two-thirds vote by the entire Management Committee in favor, the Commission will consider the approved Uniform Standard for adoption by two-thirds vote of the entire Commission. Materials for the action items will be those published on the Events Calendar and on the Docket Developing Standards Rulemaking Section for the particular Uniform Standard at issue.

What is on the Docket? -- TO BE COMPLETED

What is on the Record? – TO BE COMPLETED