

DRAFT

**Minutes
Meeting of the
CEFLI Compliance & Ethics Committee
May 13, 2020**

A meeting of the CEFLI Compliance & Ethics Committee (the “Committee”) was held via conference call on Wednesday, May 13 at 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT.

The following CEFLI member company representatives participated in the meeting:

Ro Adebisi, Thrivent
Molly Akin, Ohio National
Dwain Akins, American National
Derek Albanese, UNUM
Marcie Allen, Texas Life
Jenna Austin, Guggenheim Life and Annuity Company
Brendan Bakala, Catholic Order of Foresters
Lauren Barbaruolo, Oxford Life Insurance
Ann Binzer, Cincinnati Life
Kate Blalock, Western & Southern
Matteo Boettger, Lombard International
Emmanuelle Brooks, Pacific Life
Jason Broussard, American National
Donna Brown, Lombard International
Vickie Bulger, Primerica
Amy Burggraff, Securian Financial
Sheila Burton, Athene
Matthew Chisholm, Erie Insurance
Harvey Chu, Symetra Life
Deb Cooper, Securian Financial
Steve Corbly, The Cincinnati Life
Jacquie Crader, CUNA Mutual
Nicholas Criscitelli, Voya Financial
Rebecca Criswell, Americo
Kathy Deputy, State Farm
Latrina Edwards, AAA Life
Jill Fiddler, Assurity Life
Kris Fischer, Thrivent
Toba Fryer, John Hancock
Patrick Garcy, Sagacor Life

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Tracy Gardner, RiverSource
Paula Gentry, The Cincinnati Life
Jennifer Gibb, Pacific Life
Jim Golembiewski, Sagacor Life
Rachel Gomez, State Farm
Meagan Gonzales, Oxford Life
Steve Harris, Lincoln Financial
Craig Hopkins, Pacific Life
Donna Hough-Zukas, Sunlife
Belinda Howard, Principal Life
Nathan Huss, Sammons
Martin Karp, Oxford Life
Jennifer Knabe, Ohio National
Megan Knapp, American Enterprise
Steve Koslow, Allianz Life
Hannah Krone, Western & Southern
Marla Lacey, Homesteaders Life
Brian Leary, Fidelity Investments
Dan LeBlanc, SBLI
Khrystie Lee, RiverSource
Laurie Lewis, Amica Life
Allison Martinson, Western & Southern
Kevin Mechtley, Sammons
Dave Milligan, American Equity
Morgan Milner, Modern Woodmen
Matt Missik, Pacific Life
Valerie Murray, Lombard International
Ryan Meehan, Ameriprise Financial
Monique Pascual, Pacific Guardian Life
Liza Perry, USAA Life
Megan Phillips, Principal Life
Tony Poole, AAA Life
Tamiaka Porter, AAA Life
Sandy Ray, Symetra Life
Sally Roudebush, Lincoln Heritage
Keith Schroeder, American Amicable
Ryan Schwoebel, Protective Live
John Sharp, Assurity Life
Leslie Smith, Southern Farm Bureau Life
Alison Soderberg, Lombard International
Lori Straight, Sammons
Stephanie Teater, Western & Southern
Kristen Thomas, Jackson Life
Bill Turner, American Fidelity
Jane Uselis, Catholic Order of Foresters

Laura VanLaningham, Illinois Mutual
Bart Vitou, Jackson Life
Rochelle Walk, WiltonRe
Lais Washington, SunLife
Jaime Waters, EquiTrust Life
Larry Welch, Citizens
Tracy Whitaker, Homesteaders Life
Emily Wilburn, Illinois Mutual
Christopher Wilkie, Baltimore Life

Donald J. Walters, President & CEO, Carla Strauch, Vice President - Compliance & Ethics, and Mallory Bennett, Director of Member Relations, Communications and Meetings, also attended the meeting.

I. Welcome and Introduction.

The meeting began with a recitation of CEFLI’s anti-trust statement.

II. Approval of Minutes – April 15, 2020.

On motion, duly made and seconded and unanimously carried, the Committee: RESOLVED, that, the Minutes of the April 15, 2020 meeting are hereby approved.

III. Issues for Review.

A. Coronavirus (COVID 19).

CEFLI’s COVID-19 Networking Forum continues to meet every two weeks to explore various compliance-related issues associated with the COVID-19 pandemic. Our thanks to Chad Eslinger of VOYA Financial and Jason Broussard of American National for their willingness to serve as moderators for our most recent Networking Forum discussions.

Committee members were reminded that the next meeting of the COVID-19 Networking Forum is scheduled to take place on Thursday, May 21 at 3 PM EDT. Members may contact Nancy Perez (NancyPerez@cefli.org) to be added to the COVID-19 Networking Forum.

Committee members were asked to discuss current compliance challenges associated with issues arising out of the COVID-19 pandemic and, specifically, whether their companies have imposed a ban on non-essential travel and whether their companies have announced plans regarding “return to work” strategies over the weeks and months ahead.

Several Committee members noted travel bans. One member noted a travel ban

until further notice, with any exceptions requiring approval from the CEO. Another Committee member noted a travel ban until at least Labor Day. Another member indicated the company's President must approve all travel and that employees are asked to self-quarantine for 14 days following any personal travel.

Committee members also shared insight regarding their "return to work" plans. One Committee member noted current efforts to develop a plan. Another member noted it will have staff return to work in stages. One member indicated it would begin slowly sending staff back to the office on a voluntary basis beginning next week. The member further indicated the company had enhanced its onsite safety and sanitation efforts and that it had established distancing requirements. Another Committee member indicated its employees would be sent back in four (4) weekly tranches, each comprising 25% of the workforce; meaning, only a quarter of the workforce would be in the office at the same time.

B. *AMICA v. Wertz*.

Since the Committee's last meeting, a decision was rendered by the Colorado Supreme Court in the case of *AMICA v. Wertz*.

In *AMICA v. Wertz*, a question was presented concerning a conflict between a Colorado statute and the standards of the Interstate Insurance Product Regulatory Commission (IIPRC) (the "COMPACT") related to a suicide exclusion clause within the applicable policy. While the COMPACT utilizes a two-year exclusion standard, Colorado law limits the exclusion to one year. The Colorado Supreme Court ruled in favor of the one-year Colorado suicide exclusion law. Subsequently, the COMPACT held a conference call to discuss the decision and suggested that the decision should be interpreted narrowly to only cover situations in which there was a state statute that included a provision that was more favorable to the consumer than the provision in COMPACT standards.

Committee members were asked to discuss their reaction to the *AMICA v. Wertz* decision and whether it may have an impact on insurers' willingness to submit policy application forms for approval by the COMPACT.

The Committee was also reminded of the *New York Life vs. Ortiz* case in which a Rhode Island court had ruled that interest should be paid consistent with the Compact's 3% interest rate, not the state's 9% interest rate.

One Committee member indicated that Illinois market conduct examiners had taken the position that the calculation of interest payable on death claims and the payment period for such claims should align with Illinois's standards even though such standards are less favorable to consumers than Compact standards.

It was noted that the General Counsel for the Rhode Island Insurance Department is developing a list of state statutes that conflict with Compact standards regarding interest payments. It was noted that two states (Missouri and Colorado) were identified and that there are 4-5 states with different reinstatement provisions compared to the COMPACT's 3-year standard. State requirements regarding free look provisions also vary from Compact standards.

C. Payment of Interest on Death Benefits – CEFLI Quick Poll.

CEFLI recently conducted a Quick Poll on the calculation of the payment of interest on death benefits for life insurance policies. Of the 16 respondents, 75% (12 companies) pay the higher of the state interest rate or the rate indicated in the insurer's contract when processing death claims payments while 25% of respondents (4 companies) pay interest at a rate consistent with the state's interest rate at date of death. No companies responding to the Quick Poll indicated that interest was paid at a rate consistent with the rate specified in the insurance contract.

Committee members were asked to share their perspectives on the results of the Quick Poll (i.e., to confirm whether the Quick Poll's results are consistent with general industry practice) and to discuss whether they have experienced recent market conduct examination activity in this area and, if so, whether any state insurance departments have provided recent guidance on this issue. No Committee members offered insight in this area.

D. Policies and Procedures Regarding How "Agents/Producers" May Characterize Themselves.

In late April, the SEC issued additional guidance to its list of frequently asked questions concerning the implementation of Regulation Best Interest. The updates included guidance for firms regarding whether individuals that may be affiliated with a broker-dealer but not also registered as an investment adviser may use the terms "adviser" or "advisor" to describe their role. The SEC opined that use of the terms "adviser" or "advisor" in a name or title broker-dealer who is not also registered as an investment advisor is a violation of the requirement to disclose the broker-dealer's capacity under Regulation Best Interest's Disclosure Obligation. The SEC further clarified that a broker-dealer that is also a state-registered investment adviser may use the title "adviser" or a "advisor" in describing the broker-dealer.

The Committee was asked to discuss the extent to which life insurance companies have policies and procedures in place to limit the use of terms or various titles such as "agent" or "producer" (or other acceptable titles) for individuals selling life insurance company products.

Generally, Committee members noted that agent and producer titles, including those referencing Advisor or Adviser are based on the producer's specific credentials. From an oversight perspective, Committee members noted that their advertising and social media reviews often identified any situations in need of further exploration. One member indicated it requires its insurance-only producers to disclose the limitations in the services they can offer as an insurance-only producer. A few Committee members indicated they moved away from the use of the word Advisor or Adviser in producer titles, in favor of more generic titles such as Financial Professional or Financial Representative.

E. Suspicious Activity Reports (SARs):

Life insurance companies must comply with a variety of federal regulations including, as applicable, the submission of Suspicious Activity Reports (SARs) related to suspected fraudulent activities. A series of questions was posed, related to the filing of SARs:

- *What is the frequency of reporting to your company's Board of Directors, Audit Committee or other appropriate Board Committees pertaining to the filing of SARs?*
- *For internal SARs reporting, are supporting written materials provided in addition to a verbal report?*

The Committee was asked to discuss their practices with respect to reporting the filing of SARs information to the company's Board of Directors, Audit Committee or other appropriate Board Committees.

A few Committee members shared company practices in this area, indicating that SARs reporting was generally conducted annually and in written form, with some verbal updates, to the company's Board, or to a Board Committee, and to appropriate senior management.

F. Design of Antifraud Programs.

A series of questions was presented with respect to the design and governance of life insurance company antifraud programs. The questions included:

- *Does your company have a formal corporate antifraud governance structure? If yes, does your antifraud program cover the entire enterprise or only specific entities or lines of business?*
- *Does your company have an individual designated as an Antifraud Officer and/or a Management Committee responsible for managing antifraud risk?*

- *Do you have one or more compliance staff with the Certified Fraud Examiner (CFE) designation?*
- *What is the average length (number of pages) of corporate antifraud plans required to be filed with the states?*

The Committee was asked to discuss their knowledge of the design and governance of their company's antifraud programs.

One member noted its SIU function is part of the company's Claims Department and that antifraud reports vary in length based on differing state laws specifying the content to be included in such reports. Another Committee member noted its use of a quarterly fraud review team for the purpose of identifying potential policy and procedure changes, future training needs, etc. The member indicated that at least one senior fraud examiner on the company's team has an advanced designation.

One Committee member shared insight regarding the company's efforts to integrate internal fraud (e.g., employee fraud) into the company's existing antifraud policy.

G. Idaho House Bill 526.

The State of Idaho recently enacted a new law which requires prior approval from the Idaho Director of any advertisement of interest-indexed annuity contracts, regardless of the advertising medium, before its use. Several questions were presented concerning how insurers plan to comply with the requirement, including:

- *Will companies be submitting solely customer-facing advertisements for prior approval?*
- *Will companies submit only advertisements related to a specific product for prior approval?*
- *Will companies submit advertisements for products approved by Idaho on an individual basis as opposed to products approved through the COMPACT?*

The Committee was asked to discuss their company's strategies to comply with the prior approval requirement for indexed annuity advertisements in the State of Idaho. Committee members did not offer comments in this area.

H. Oversight and Supervision of "Wholesalers."

Life insurance companies may utilize "wholesalers" to promote the sale of their products with various distribution systems. When "wholesalers" promote the sale

of a company's products, unique compliance issues may arise with respect to the oversight and supervision of "wholesalers."

The Committee was asked to discuss the extent to which their company may rely upon "wholesalers" to promote the sale of their company's products and, if so, to describe the types of oversight and supervision practices related to "wholesalers" activities.

One Committee member indicated its oversight program results in 25% of wholesalers being reviewed each year as part of a four (4) year rotation schedule. The member also indicated it maintains a compliance manual for wholesalers and that it provides related training. Further, internal wholesalers are subject to call reviews, Compliance attends wholesaler meetings, annual interviews are conducted, and the company requires an annual certification or assertion from each wholesaler.

Another Committee member indicated they conduct virtual office inspections every year for their external wholesalers and that their internal sales calls are supervised and subject to regular oversight by the Compliance Department.

I. Iowa Adopts – Best Interest Rule – Based on Revised NAIC Suitability in Annuity Transactions Model Regulation.

The State of Iowa, who took a leadership role in developing the recent revisions to the NAIC Suitability in Annuity Transactions Model Regulation, has adopted its own "Best Interest Rule" which is based upon the revised version of the Model Regulation. The new Iowa Rule becomes effective January 1, 2021.

The Committee was asked to discuss their knowledge with respect to other states' plans to introduce any other versions of the revised NAIC Suitability in Annuity Transactions Model Regulation for adoption in selected states.

One Committee member referenced Arizona's past legislative efforts to enact a state-specific law containing provisions similar to the revised version of the Model Regulation. Enactment of this legislative proposal was hampered as a result of the pandemic.

IV. Reporting Items.

CEFLI Staff.

A. Regulation Best Interest Lawsuit to Be Heard in Early June.

A lawsuit filed by seven states as well as a network of investment advisers regarding the SEC's Regulation Best Interest will be heard by the US Court of Appeals for the Second Circuit during the week of June 1 with a decision likely to

be rendered prior to the end of June in order to precede the June 30 effective date for Regulation Best Interest.

Industry observers suggest that the SEC will be likely to prevail in this lawsuit. Nevertheless, companies should continue to plan their compliance strategies with the June 30 effective date for Regulation Best Interest in mind.

A. DOL Fiduciary Rule Still Anticipated.

The DOL recently announced that Preston Rutledge, the DOL Assistant Secretary and head of the Employee Benefits Security Administration, is going to leave his position at the end of May. Mr. Rutledge was leading the effort to rewrite the DOL Fiduciary Rule which was vacated by the Fifth Circuit Court of Appeals in 2018.

Recent news reports from the DOL suggest that work on a revised Fiduciary Rule continues and that the new rule is anticipated by the end of the year. It is likely that the new rule will be designed to complement the key provisions of the SEC's Regulation Best Interest.

B. CARES Act Waives 2020 Required Minimum Distributions.

The Coronavirus Aid, Relief and Economic Security Act (the "CARES Act") included a waiver of the requirement to take Required Minimum Distributions (RMDs) from IRAs, 401(k) and 413B plans. A similar waiver was granted during the 2009 financial crisis.

Earlier this year, we had discussed the fact that the SECURE Act signed into law at the end of 2019 also impacted RMD requirements. We also discussed whether companies would be sending notices regarding the change in RMD requirements.

Now, given the waiver from having to take RMDs in 2020, retirement plan participants will no longer be required to take RMDs in 2020.

C. FINRA Warns of Phishing Scam.

FINRA recently issued Regulatory Notice 20-12 which warns firms of a possible fraudulent phishing email scheme. The emails request immediate attention to an attachment related to your firm which purports to be sent from senior FINRA officials.

The emails, which are sent from an email address with the domain "broker-FINRA.org" is not connected to FINRA and firm should delete all emails originating from this domain name.

D. COVID-19 Pandemic Delays New Jersey’s Final Fiduciary Rule.

The New Jersey Securities Bureau introduced a proposed fiduciary rule last year. Under New Jersey law, rule proposals expire after one year if a final rule is not promulgated.

New Jersey Governor Phil Murphy recently issued an Executive Order extending the deadline for proposed rules issued on or after April 15, 2020 until 90 days after the state’s health emergency is lifted.

Though the New Jersey Securities Bureau has not released a final fiduciary rule, the delay of a possible New Jersey fiduciary rule adds additional uncertainty as to whether a fiduciary rule may be forthcoming after the COVID-19 pandemic health emergency may be lifted in the state of New Jersey.

E. Personnel Issues - New Maryland Insurance Commissioner – Kathleen Birrane.

It was recently announced that the Maryland Insurance Administration will have a new Commissioner.

Al Redmer, Jr., who served as the Maryland Insurance Commissioner most recently from January 2015, has announced he will step down in order to lead the Maryland Auto Insurance Fund; a state-sponsored entity that provides automobile insurance to Maryland residents.

Maryland Governor Larry Hogan has appointed attorney Kathleen Birrane as the new Maryland Insurance Commissioner. Ms. Birrane was the former principal counsel to the Maryland Insurance Administration and will require Maryland Senate confirmation to assume her new duties.

V. CEFLI Activities.

A. CEFLI Virtual Summit Meeting - Now Available Online.

Earlier this year, CEFLI planned to conduct an Educational Summit Meeting in Des Moines, Iowa, to review the recent revisions to the NAIC Suitability in Annuity Transactions Model Regulation and their potential implications for current compliance practices related to annuity distribution.

In light of the COVID-19 pandemic, CEFLI opted to provide the information that would have been shared at the Educational Summit Meeting by conducting a “Virtual Summit Meeting” containing the same sessions, faculty members and information that would have been provided at the in-person Educational Summit Meeting.

Last month, CEFLI launched its Virtual Summit Meeting which includes five different segments to provide insights offered by company representatives, regulators and industry experts regarding the key compliance provisions of the new version of the NAIC Suitability in Annuity Transactions Model Regulation.

Key topics include:

- An Overview of the **Emerging and Dynamic Sales Standards** that led to the revisions to the NAIC Suitability in Annuity Transactions Model Regulation;
- A review of the **Disclosures** required by the Model Regulation;
- Insurer **Training** requirements posed by the Model Regulation;
- Insurer **New Business Processes** in light of the Model Regulation; and
- **Oversight and Supervision** practices required by the Model Regulation.

The Virtual Summit Meeting sessions are now available “on demand” [on this page](#) of CEFLI’s website (www.CEFLI.org) along with several summary and reference documents developed by CEFLI.

- B. Joint Webinar - *Digital Transformation: How Insurers Land on Top As a Result of COVID-19* - CEFLI/Guidehouse (formerly Navigant) -
Wednesday, June 10 - 1 PM EDT/12 Noon CDT/11 AM MDT/10 AM PDT.

CEFLI is pleased to announce it will be conducting a Joint Webinar with CEFLI Affiliate Member organization Guidehouse (formerly Navigant) on the subject of *Digital Transformation: How Insurers Land on Top as a Result of COVID-19.*

The COVID-19 pandemic presents numerous compliance-related issues including taking applications remotely, pursuing effective compliance strategies in a work-from-home environment and managing underwriting needs at a time when insurance fraud may be more prevalent than ever.

Please mark your calendars and plan to join us on Wednesday, June 10 at 1 PM EDT/12 Noon CDT/11 AM MDT/10 AM PDT for this important discussion.

- C. CEFLI COVID-19 Networking Forum – Thursday, May 21 and Thursday, June 4 – 3 PM EDT/2 PM CDT/1 PM MDT/12 Noon PDT.

The next meetings of CEFLI’s new Networking Forum to explore COVID-19 operational issues will take place on Thursday, May 21 and Thursday, June 4 at 3 PM EDT/2 PM CDT/1 PM MDT/12 Noon PDT. Please contact Nancy Perez (NancyPerez@cefli.org) if you or your colleagues would like to be added to the new COVID-19 Networking Forum.

VI. Next Meeting.

The next meeting of the Committee is scheduled to take place:

Wednesday, June 17, 2020 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

Please mark your calendar and plan to join us!

The remaining Committee meeting dates for 2020 will be as follows:

Wednesday, July 22, 2020 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

Wednesday, August 19, 2020 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

Wednesday, September 16, 2020 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

Wednesday, October 14, 2020 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

Wednesday, November 11, 2020 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST

Wednesday, December 16, 2020 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST

VII. Other Business.

There being no additional business the meeting was adjourned.