

Agenda

CEFLI Compliance & Ethics Committee Meeting
Wednesday, October 14, 2020
2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT
Dial In: (800) 239-9838
Passcode: 5690858

- I. Welcome and Introduction. Donald J. Walters**
 - A. Antitrust Statement.
- II. Approval of Minutes – September 16, 2020 Meeting. The Committee**
- III. Issues for Review. The Committee**
 - A. Coronavirus (COVID-19).

CEFLI's COVID-19 Networking Forum continues to meet on a regular basis and has agreed to meet monthly over the weeks ahead.

The next meeting of CEFLI's COVID-19 Networking Forum is scheduled to take place on Thursday, November 12 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 COVID-19 Networking Forum.

CEFLI Affiliate Member Wolters Kluwer provides a free daily email that outlines significant COVID-19 related regulatory changes. For those who may be interested, the link to sign up is: http://www.wolterskluwerfs.com/COVID-19-updates.aspx?wkcid=20.04_AM_CS_EN_WKFS_RCM

Additionally, CEFLI Affiliate Member Locke Lord provides a complimentary COVID-19 subscription option covering a variety of legal aspects (not just insurance-related impacts). The link to sign up is: <https://www.lockelord.com/newsandevents/subscribe> Locke Lord also maintains a comprehensive COVID-19 Resource Center, which is linked here: <https://www.lockelord.com/covid19resourcecenter>

The Committee will be asked to discuss any operational compliance challenges associated with issues arising out of the COVID-19 pandemic. Also, the Committee will be asked to discuss whether their companies have announced plans regarding “return to work” strategies over the weeks and months ahead.

B. Revised NAIC Suitability in Annuity Transactions Model Regulation:
Producer Training

The NAIC recently revised its NAIC Suitability in Annuity Transactions Model Regulation to, among other issues, incorporate key elements of the SEC's Regulation Best Interest. The revised version of the Model Regulation has been adopted in Arizona and Iowa to date.

Among its revisions, the Model Regulation updated various producer training requirements. The revised Model Regulation requires an existing producer to either:

- Complete a new one-time four (4) hour credit training course; or
- Rely on their prior completion of a four (4) hour credit training course plus completion of a new one (1) hour credit course.

Existing producers must satisfy these training requirements within six (6) months of the effective date of the revised Model Regulation being adopted by a state.

Given that states are likely to adopt the revised Model Regulation with different effective dates, the revised Model Regulation's training requirements may present timing challenges for life insurers and their producers.

For example, if State A adopts the revised Model with an effective date of January 1, 2021 and State B adopts the revised Model with an effective date of March 1, 2021 can a producer who sells products in both states rely on completion (in December 2019 or January 2021) of training to satisfy State A and also apply that same training to satisfy the requirements of State B when the producer's training was completed *prior to* the effective date of State B's version of the revised Model Regulation?

The Committee will be asked to discuss their strategies with respect to communicating the training requirements of the revised Model Regulation to their producers and confirming producer compliance with those requirements.

C. Retained Asset Accounts.

Life insurers have offered life insurance and/or annuity beneficiaries the option to receive death benefits through the use of retained asset accounts. These retained asset accounts accrue interest for the beneficiaries and are designed to offer beneficiaries full and immediate access to their death benefit proceeds while they decide what to do with their benefits.

The NAIC developed a Model Bulletin which outlines disclosure standards associated with the use of retained asset accounts by insurers. (See copy attached.) However, state insurance departments may have unique requirements which may include requiring a beneficiary to affirmatively opt-in to the use of such accounts.

The Committee will be asked to discuss state insurance laws and regulations governing the use of retained asset accounts by insurers.

D. Death benefits “held at interest.”

Insurance companies exercise various means of adjudicating death claims. Claims are paid based on the settlement option allowed under a contract or policy, and as elected or chosen by the beneficiary of a policy or contract.

To the extent that a contract or policy allows, a beneficiary may elect to have death proceeds retained by a life insurance company for purposes of receiving interest on the proceeds.

In the event a beneficiary elects to have death proceeds retained by a life insurance company, questions may arise with respect to the manner in which death proceeds retained by a life insurance company may be managed.

Examples of questions that may arise include:

- *Do companies deposit the funds into a Retained Asset Account (meeting any state requirements for RAA)?*
- *Do companies move the funds to the company’s General Account and add interest at the deposit rate?*
- *Do companies move the funds to the company’s General Account and send the beneficiary periodic statements concerning the value of their benefit, including interest?*
- *Do companies handle such funds differently if the beneficiary is an unrepresented minor (no guardian has come forward)?*

The Committee will be asked to company practices with respect to the manner in which death proceeds retained by a life insurance company may be managed.

E. Supervision of Producers - Gifts and Entertainment.

Insurance producers must comply with laws, regulations and rules pertaining to the use of gifts and entertainment with prospects and clients.

For example, insurance producers who are selling fixed life insurance and annuity products must comply with state insurance department requirements pertaining to the value of gifts and entertainment they may offer to prospects and clients as part of business development activities. Laws and regulations concerning these issues vary by state to state.

Additionally, producers who sell variable life insurance and annuity products are also subject to [FINRA Rule 3220](#) and [related notices](#) pertaining to limitations on gifts and entertainment with prospects and clients.

As life insurers supervise producer compliance with these gift and entertainment requirements, the following questions have been presented:

- *Does your company rely upon state insurance laws and regulations to determine producer compliance with gift and entertainment requirements?*
- *Does your company rely upon FINRA rules to determine producer compliance with gift and entertainment requirements? or*
- *Does your company rely upon the type of transaction under review (i.e., fixed life and annuity products - state insurance laws and regulations/variable life and annuity products-FINRA rules) to determine producer compliance with gift and entertainment requirements*

The Committee will be asked to discuss their company's policies and procedures related to the supervision of producer activities concerning gifts and entertainment and whether companies supervise these activities under state insurance department laws and regulations or FINRA rules, as applicable.

F. Adoptions of the Revised NAIC Suitability in Annuity Transactions Model Regulation.

CEFLI continues to monitor developments related to possible adoptions of the revised NAIC Suitability in Annuity Transactions Model Regulation in various states.

During our September meeting, the Committee identified activity to adopt the revised version of the Model Regulation in the following states: Arkansas, Alabama, Idaho, Kentucky, Michigan, Nevada, Ohio, Maryland and Wisconsin. Arizona and Iowa have been two leading states to be early adopters of the revised version of the NAIC Suitability in Annuity Transactions Model Regulation.

It is anticipated that other states will be introducing similar legislation/regulations over the next several months.

The Committee will be asked to discuss any updated developments with respect to plans by states to introduce legislation/regulations to adopt the revised NAIC Suitability in Annuity Transactions Model Regulation.

IV. Reporting Items.

CEFLI Staff.

A. “Cross Border Sales.”

During the Committee’s September meeting, the Committee reviewed compliance issues associated with “cross border sales.”

Subsequent to the Committee’s September meeting, a member of the Committee identified states in which their company prohibits “cross border sales.”

These states include:

Arkansas, Idaho, Massachusetts, Minnesota, Mississippi, New York, Utah, Washington and Wisconsin.

Some additional state-specific information is set forth below:

- Idaho (Idaho Code §§ 41-1941, 41-1942, and 41-1943): The DOI issued [Bulletin No. 20-11](#) on June 19, 2020, regarding annuities.
- Minnesota (Minnesota Stat. Section 61A.02 subd. 2 & 45.027).
- New York (Sections 1101, 1102, 2110, 2117, 2122, 3103, 3201, 7703, and Article 24 of the New York Insurance Law): The NYDFS issued [Circular Letter No. 6](#) on in 2011 and [OGC Op. No. 01-01-22](#).
- Utah (Utah Code Annotated (UCA) Section 31A-21-201): On July 19, 2019, the Utah DOI published [this guidance](#).

While this list is an example of one company’s approach to the question of “cross border sales,” CEFLI member companies are advised to conduct their own legal research when making decisions regarding “cross border sales.”

B. FINRA to Issue Guidance on Regulation Best Interest Compliance.

FINRA CEO Robert Cook recently reported on FINRA plans to issue guidance in the coming months on areas that broker-dealer should focus on regarding Regulation Best Interest compliance. Mr. Cook indicated that FINRA will partner with the SEC on its guidance.

In addition, Mr. Cook also indicated that there may be some changes to cycle exams which have almost always included some in-person element. Going forward, FINRA will take a look at a more “risk-based framework” to decide in a

case-by-case basis whether or not it makes sense to include an in-person component.

FINRA is also considering developing a rule filing through the SEC to allow firms to conduct remote inspections for 2020 and 2021.

C. SEC to Conduct Roundtable - Monday, October 26 - 1 PM-3 PM EDT

The SEC's Standards of Conduct Implementation Committee recently announced that it will be conducting a virtual Roundtable on October 26 to discuss initial observations on Regulation Best Interest and Form CRS implementation.

The Roundtable will be open to the public via live webcast and will be archived for later viewing. The event will take place from 1 PM-3 PM EDT on Monday, October 26.

D. SEC Risk Alert - Cybersecurity - Credential Compromise.

The SEC's OCIE recently issued a Risk Alert to report that the SEC has observed in recent examinations an increase in the number of cyber-attacks against investment advisers and broker-dealers using credential stuffing which is a method of cyber-attack to client accounts that uses compromise client login credentials resulting in the possible loss of customer assets and unauthorized disclosure of sensitive personal information. (See copy attached.)

E. Chief Compliance Officer Barred for Altering Reports to Mislead SEC Staff.

The SEC recently announced that a Chief Compliance Officer who altered documents in an attempt to mislead SEC examination staff and failed to comply with enhanced policies and procedures adopted as a result of her prior examination by FINRA has been barred from the securities industry.

While it is somewhat unusual for CCO's to face regulatory liability for their actions, this case is an example of how it is possible for SEC enforcement staff to charge a Chief Compliance Officer individually which is consistent with [guidance](#) provided by the Division of Enforcement previously regarding when CCO's will be investigated and charged.

Moreover, firms are well advised to take examination findings by FINRA and the SEC examination staff seriously and follow through on efforts related to responses to examination findings.

V. CEFLI Activities.

- A. Joint Webinar - CEFLI Affiliate Member Maynard Cooper and Gale - Attorney-Client Privilege - Wednesday, October 28.

On Wednesday, October 28, CEFLI will be conducting the next installment in its Educational Webinar Series with a Joint Webinar with CEFLI Affiliate Member law firm Maynard Cooper and Gale to discuss the application of Attorney-Client Privilege within life insurance companies.

Concepts related to attorney-client privilege go beyond simply labeling documents “attorney-client privilege.” The webinar will explore the application of attorney-client privilege concepts for use by compliance and other business professionals within the context of life insurance company operations.

Please mark your calendar and plan to join us for this informative webinar on this important subject matter!

- B. Regulatory Forum - Tuesday, October 6.

CEFLI recently conducted the initial meeting of its Regulatory Forum (previously known as our Advisory Committee) comprised of representatives from the NAIC, FINRA, SEC, NAIFA and AARP to discuss current regulatory concerns in the marketplace.

Our special guest for the initial Regulatory Forum meeting was Carrie O’Brien of the SEC who reported on the SEC’s examination plans to confirm compliance with the requirements of Regulation Best Interest and Form CRS.

Meetings of the Regulatory Forum are open to CEFLI Premier Partner companies and Gold Level Affiliate Member organizations.

A copy of the agenda for the Regulatory Forum meeting is available via CEFLI’s website.

- C. Advertising Review Networking Forum - Tuesday, October 13.

CEFLI recently conducted the initial meeting of its Advertising Review Networking Forum.

If you may have an interest in participating in meetings of the Advertising Review Networking Forum, please contact Nancy Perez at NancyPerez@cefli.org to indicate your interest.

CEFLI staff will provide a brief report concerning the initial meeting of the Advertising Review Networking Forum.

- D. Joint Webinar - CEFLI Affiliate Member Lock Lorde – Market Conduct -
Wednesday, November 18.

On Wednesday, November 18, CEFLI will be conducting the next installment in its Educational Webinar Series with a Joint Webinar with CEFLI Affiliate Member law firm Locke Lord to discuss the topic of market conduct and how COVID-19 may change how market regulation is conducted in the future.

Please mark your calendar and plan to join us for this informative webinar on this important subject matter!

- E. Compliance Fundamentals Training Conference - November 19 and 20.

Registration for CEFLI's 2020 Compliance Fundamentals Training Conference is open! The 2020 Compliance Fundamentals Training Conference is scheduled to take place virtually on November 19 and 20. Registration is available free of charge to all CEFLI member company representatives.

The Compliance Fundamentals Training Conference is designed for individuals who are new to the life insurance industry or new to the compliance function within a life insurance company.

Additional information concerning the 2020 Compliance Fundamentals Training Conference is available via CEFLI's website [here](#).

VI. Next Meeting.

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

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

Please mark your calendar and plan to join us!

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

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

VII. Other Business.

The Committee will be asked to identify and discuss any other business to be brought before the Committee.

DRAFT

**Minutes
Meeting of the
CEFLI Compliance & Ethics Committee
September 16, 2020**

A meeting of the CEFLI Compliance & Ethics Committee (the “Committee”) was held via conference call on Wednesday, September 16, at 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT.

The following CEFLI member company representatives participated in the meeting:

Norm Von Seggern, AAA Life Insurance Company
Keith Schroeder, American-Amicable Life Insurance Company
Michele Kulish Danielson, American Enterprise Group
Dave Milligan, American Equity Investment Life Insurance Company
Bill Turner, American Fidelity Assurance Company
Jason Broussard, American National Insurance Company
Laurie Lewis, Amica Life Insurance Company
Jill Fiddler, Assurity Life Insurance Company
Marie Ryan, Athene
Jill Jones, Bankers Fidelity Life Insurance Company
Kim Langdon, Brighthouse Financial
Brendan Bakala, Catholic Order of Foresters
Larry Welch, Citizens Inc
Craig Stille, Country Life Insurance Company
De Keimach, Delaware Life Insurance Company
Matthew Chisholm, Erie Insurance Group
John Cunningham, Fidelity Investments Life Insurance Company
Brian Leary, Fidelity Investments Life Insurance Company
Jenna Austin, Guggenheim Life and Annuity Company
Emily Wilburn, Illinois Mutual Life Insurance Company
Tony Dowling, Jackson National Life Insurance Company
Kristen Thomas, Jackson National Life Insurance Company
Bart Vitou, Jackson National Life Insurance Company
Amy Mulligan-Capocci, John Hancock
Kelly Ireland, Legal & General America
Geoff Gentilucci, Legal & General America
Stephen Harris, Lincoln Financial Group
Sally Roudebush, Lincoln Heritage Life Insurance Company
Donna Brown, Lombard International
Valarie Murray, Lombard International

Michele Dungworth, National Life Group
Pete Rock, Oceanview Life and Annuity Company
Lauren Barbaruolo, Oxford Life Insurance Company
Martin Karp, Oxford Life Insurance Company
Andrea Horrobin, Pacific Life Insurance Company
Rania Sarkis, Pacific Life Insurance Company
Vickie Bulger, Primerica Life Insurance Company
Belinda Howard, Principal Life Insurance Company
Megan Phillips, Principal Life Insurance Company
Scott Creutzmann, Protective Life Insurance Company
Stephen Smith, Protective Life Insurance Company
Kevin Sullivan, Protective Life Insurance Company
Mark Lasswell, RiverSource Life Insurance Company
Ryan Meehan, RiverSource Life Insurance Company
Patrick Garcy, Sagicor Life Insurance Company
Nathan Huss, Sammons Financial
Lori Straight, Sammons Financial
Jill Williams, Sammons Financial
Dan Leblanc, SBLI
Deb Cooper, Securian Financial
Erich Axmacher, Securian Financial
Kassia Holt, Securian Financial
Nate Kolle, Securian Financial
Lisa Holland, State Farm Life Insurance Company
Sandy Ray, Symetra
Marcie Allen, Texas Life Insurance Company
Emily Jordan, The Amalgamated Life Insurance Company
Ann Binzer, The Cincinnati Life Insurance Company
Steve Corbly, The Cincinnati Life Insurance Company
Paula Gentry, The Cincinnati Life Insurance Company
Jill Terry, The Cincinnati Life Insurance Company
Jennifer Knabe, The Ohio National Life Insurance Company
Michael Schwallie, The Ohio National Life Insurance Company
Andrea Golis, Thrivent
Jim Odland, Thrivent
Ashlee Pena, Thrivent
Craig Desimone, TIAA
Liza Perry, USAA Life Insurance Company
Nicholas Triscitelli, VOYA Financial
Landon Trudell, VOYA Financial
Patrick Wallen, VOYA Financial
Kate Blalock, Western & Southern Financial Group
Carly Kleiman, Western & Southern Financial Group
Carol Wanstrath, Western & Southern Financial Group
Krystal Jones, Wilton Reassurance Company

Rochelle Walk, Wilton Reassurance Company

Donald J. Walters, President & CEO, Carla Strauch, Vice President - Compliance & Ethics, and Mallory Hart, 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 – August 12, 2020.

On motion, duly made and seconded and unanimously carried, the Committee: RESOLVED, that, the Minutes of the August 12, 2020 meeting are hereby approved.

III. Issues for Review.

The Committee

A. Coronavirus (COVID-19).

CEFLI's COVID-19 Networking Forum continues to meet on a regular basis and has agreed to meet monthly over the weeks ahead.

The next meeting of CEFLI's COVID-19 Networking Forum is scheduled to take place on Thursday, October 8 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 COVID-19 Networking Forum.

CEFLI Affiliate Member Wolters Kluwer provides a free daily email that outlines significant COVID-19 related regulatory changes. For those who may be interested, the link to sign up is [included here](#).

Additionally, CEFLI Affiliate Member Locke Lord provides a complimentary COVID-19 subscription option covering a variety of legal aspects (not just insurance-related impacts). The link to sign up is [included here](#). Locke Lord also maintains a comprehensive COVID-19 Resource Center, which is [linked here](#).

The Committee was asked to discuss any operational compliance challenges associated with issues arising out of the COVID-19 pandemic and to share their companies' plans regarding "return to work" strategies over the weeks and months ahead.

While Committee members did not raise COVID-19 related compliance issues, many members shared insight regarding their return-to-work plans. A few Committee members noted they have remained in "Phase I" of their company's

return to work plan, with limited staff onsite. A few companies shared their plans to revisit the issue toward the end of 2020 or in early 2021.

A Committee member indicated that their company's "Phase I" effort has 25% of company staff currently onsite. Another Committee member indicated that their company's staff would not be asked to return to the office in 2020 but that the subject would be re-evaluated in early 2021 (likely with a phased in approach).

A Committee member noted their company's sensitivity regarding families with young children attending online schooling from home, indicating the company may opt not to require that its employees to return to the office until August of 2021.

One Committee member indicated the company was currently in "Phase I" with about 5% of the workforce onsite, but that more employees would be returning to the office (about 20%) in late September. The company also indicated it was sensitive to any geographic considerations related to COVID-19 experience in the local communities where it has its offices.

B. Cross Border Sales.

The topic of "cross border sales" has been a perennial subject of compliance discussions.

These issues often arise in localities with access to adjacent jurisdictions where an agent may be registered in State A but solicits a transaction in State B though he/she may not be appropriately licensed to conduct business with residents of State B. "Cross border sales" issues may also arise in instances in which an application for a life insurance company product is signed in a state other than the resident state of the applicant.

Recognizing that sales in today's COVID-19 pandemic environment may involve individuals who may have been dislocated from their permanent residence and also recognizing that companies are increasingly pursuing electronic measures to conduct business using DocuSign or another electronic signature platforms, the Committee was asked to discuss whether their practices with respect to "cross border sales" have been modified to accommodate the changed circumstances of the COVID-19 pandemic environment.

One company indicated that due to the closure of the border between Canada and the US, the company does not accept cross border business due to challenges related to subsequent contract delivery.

With respect to state cross border issues, one Committee member indicated they were aware of several states with specific requirements, noting that some state DOIs have fined life insurance companies for cross border sales.

One Committee member noted it has a separate New York life companies and that it does not allow cross border sales for that entity since the entity is only licensed in the state of New York.

Another Committee member indicated cross border sales would only be allowed when all producer licensure and product approval requirements were satisfied in the states involved (i.e. solicitation state, application state, resident state, contract delivery state).

C. Cannabis-Related Business Issues.

Several months ago, the Committee discussed issues associated with conducting life insurance company product business with cannabis-related businesses. The Committee's prior discussions indicated that most life insurers do not accept business from cannabis-based businesses due to federal government guidelines that continue to list cannabis as a Schedule I controlled substance notwithstanding state laws to the contrary.

Because life insurance companies continue to receive inquiries concerning the purchase of individual life insurance products by individuals who are growing cannabis legally under state law (in some cases, under a state sanctioned medical marijuana program), Committee members were asked to share current practices in this area. Specifically:

- *Does your company accept applications for individual life insurance policies from individuals engaged in cannabis-based businesses which are deemed to be legal under applicable state law?*
- *Does your company accept applications for disability income insurance products from individuals engaged in cannabis-based businesses which are deemed to be legal under applicable state law?*

Committee members had no comments to offer.

D. Lapse Notices - Checks Returned for Insufficient Funds.

A question was presented to the Committee concerning company practices with respect to issuing lapse notices when a premium check is returned for insufficient funds. In these circumstances, unpaid premium handling does not occur until the check is returned which may not allow enough time to meet requirements for providing a lapse notice unless the company extends the grace period for the policy.

This presents additional questions concerning whether providing longer grace periods to policyholders who write “bad checks” may be deemed to be unfair to other policyholders and may incentivize unwanted behavior.

State laws and regulations provide specific guidelines with respect to the timely issuance of lapse notices. Exceptions to these laws and regulations are generally not available.

The Committee was asked to discuss their practices with respect to issuing lapse notices to policyholders if they receive a premium check that is returned for insufficient funds.

One Committee member indicated they measure the grace period based on the original premium due date and shared that they send manual notices, when necessary, to communicate such information to impacted policyowners.

One Committee member indicated they have not seen an increase in the volume of policies entering a grace period, further noting that the incidence of such activity has gone down since COVID-19 began.

E. Washington Senate Bill 5165 - Amending Washington’s “Law against Discrimination.”

In 2019, Washington enacted Senate Bill 5165 to amend sections of Washington’s Law Against Discrimination making it is an unfair practice for any person in connection with insurance transactions to cancel insurance, or to fail or refuse to issue insurance or to fail or refuse to renew insurance because of citizenship or immigration status.

However, Section 3 of Senate Bill 5165 states:

“It is not an unfair practice when a distinction or differential treatment based on citizenship or immigration status is authorized by federal or state law, regulation, rule or government contract.”

The Committee was asked to discuss whether their companies have identified any federal or state law, regulation, rule, or government contract that would serve as a “carveout” to the Washington law that deems it an unfair practice to cancel insurance, fail or refuse to issue insurance or fail to refuse to renew insurance because of citizenship or immigration status.

Committee members had no comments to offer.

F. Maintaining a Culture of Compliance in a Work-at-Home Environment.

Over the past several months, most life insurance companies have offered opportunities for their employees to work-at-home considering the COVID-19 pandemic environment.

These developments may impact the sense of camaraderie that may be available when individuals are working closely in an in-person setting at a life insurance company. For example, many compliance leaders report that one of their most effective tools is the ability to “walk the floor” and have discussions with their compliance colleagues concerning contemporary compliance challenges facing their company.

Accordingly, questions were presented concerning steps companies may be taking to continue to promote and maintain a culture of compliance among members of their staff who may be operating in a work-at-home environment.

Issues presented for discussion included:

- *Has your company instituted any new or unique strategies to continue to foster a culture of compliance in a work-at-home environment?*
- *Are you continuing to take steps to promote a culture of compliance notwithstanding the challenges of the COVID-19 pandemic environment?*
- *Are there any concerns regarding increased instances of fraud or other questionable activities from employees or agents forced to operate in a work-at-home environment?*

One Committee Member shared their company’s plan to conduct a “Compliance Week” virtually. The weekly activities will include specific topics each day, games, giveaways, etc. with a goal of engaging employees for purposes of maintaining a focus on compliance.

Another Committee member shared that their while their company had not seen an uptick in fraud-related issues with employees, they have seen a notable uptick in fraudulent activity overall (not involving employees).

G. New NACHA Web Debit Account Validation Rule.”

As of March 19, 2021, the NACHA Web Debit Account Validation Rule will contain enhanced fraud prevention validation requirements and companies may be working to develop solutions to support compliance with the new requirements. The revised rule may impact companies in different ways. For example, do companies believe they already comply with the [revised rule](#)? Or are companies

planning to enhance their current processes to meet the new requirements by March of 2021? And, if so, in what way?

The Committee was asked to discuss the extent to which they have reviewed the new requirements and assessed current procedures, to determine future action that may be needed.

Two Committee members indicated they would need to review the issue in more detail off-line, to understand any impacts and potential future compliance needs. Another Committee member shared that there are several NACHA rule enhancements that will come on-line at some point next year and indicated that the changes will impact insurers if they are accepting payments via an automated clearinghouse process (e.g., debit premium payments, debit payments with distributors, etc.). The Committee member indicated that recipients of such payments, should review the NACHA rule changes to understand how they may be impacted.

IV. Reporting Items.

CEFLI Staff.

A. Adoptions of the Revised NAIC Suitability in Annuity Transactions Model Regulation.

CEFLI continues to monitor developments related to possible adoptions of the revised NAIC Suitability in Annuity Transactions Model Regulation in various states.

Arizona and Iowa have been two leading states to be early adopters of the revised version of the NAIC Suitability in Annuity Transactions Model Regulation and it is anticipated that other states will be introducing similar legislation/regulations over the next several months. More recently, Rhode Island introduced its version of the revised Model Regulation.

CEFLI will continue to monitor further adoptions of the revised NAIC Suitability in Annuity Transactions Model Regulation in states over the months ahead.

One Committee member shared a list of states with some form of activity in this area, as follows:

- Arkansas has proposed the revised version of the Model Regulation. A hearing will be held on October 22. The Arkansas proposal tracks the Model Regulation very closely. The effective date of the proposal is undetermined. The regulation will become effective once it is approved by the Commissioner.

- Michigan has introduced four individual bills. (This is unique to the process in the State of Michigan.) These four bills will be similar to the Model Regulation. These laws, if enacted through the General Assembly, will become effective six months after the Governor's signature.
- Nevada has proposed a regulation that replaces its previous Best Interest/Fiduciary Rule. The Nevada version of the regulation has significant differences from the Model Regulation. It adds the concept of "prudence" and also requires additional monitoring and oversight as well as a requirement for companies to supervise a best interest standard (and not just the factors that are used to arrive at a best interest recommendation).
- Rhode Island recently proposed adoption of the revised NAIC Model Regulation. While the proposal inadvertently left out the section on Agent Education and Reciprocity, Division officials have indicated the drafting error will be corrected in the final draft of the rule, following the Division's review of all comments received in response to the proposal. Rhode Island has proposed a 1/1/21 implementation date.
- Other states are in the process of introducing their versions of the revised Model Regulation. These states include: Idaho, Alabama, Kentucky, Maryland, Wisconsin, and Ohio. Regarding Ohio, Director Jillian Froment (who led the NAIC's Annuity Suitability (A) Working Group that developed the revisions to the Model Regulation) has resigned. Tynesia Dorsey has been named as the interim Director in Ohio. It is uncertain whether Ohio will introduce its proposed version of the Model given the leadership change at the Department of Insurance.

B. NAIC Annuity Suitability (A) Working Group Seeks Comments on Frequently Asked Questions - Revised NAIC Suitability in Annuity Transactions Model Regulation.

The NAIC Annuity Suitability (A) Working Group is seeking comments on the most recent draft of Frequently Asked Questions concerning implementation of the revised version of the NAIC Suitability in Annuity Transactions Model Regulation.

Comments on the Frequently Asked Questions document must be submitted to Jolie Matthews (jmatthews@naic.org) at the NAIC on or before Friday, October 2, 2020.

V. CEFLI Activities.

A. Webinar - 2020 CEFLI Compliance & Ethics Benchmarking Survey.

On August 26, Carla Strauch, CEFLI's Vice President-Compliance & Ethics,

conducted a webinar to review the highlights of CEFLI's 2020 Compliance & Ethics Benchmarking Survey. Thank you, Carla!

A copy of the [slides and audio](#) from the webinar as well as a copy of CEFLI's [2020 Compliance & Ethics Benchmarking Survey](#) can be found on CEFLI's website.

B. Advertising Review Networking Forum.

CEFLI recently conducted a preliminary meeting to determine possible interest in reconstituting its Advertising Review Networking Forum.

If you may have an interest in reconstituting an Advertising Review Networking Forum which may meet periodically to discuss compliance challenges related to Advertising Review issues, please contact Nancy Perez at NancyPerez@cefli.org to indicate your interest.

C. 2020 CEFLI Annual Conference.

CEFLI will be conducting its 2020 Annual Conference on September 23-25 virtually via Cisco Webex. Registration is open and available via CEFLI's website [here](#).

There is no registration fee for Member company or Affiliate Member representatives to participate in the 2020 CEFLI Annual Conference.

The Annual Conference will include sessions to review:

- COVID-19 Compliance Issues;
- Compliance Risk - Tools, Techniques and Strategies;
- SEC Regulation Best Interest;
- NAIC Suitability in Annuity Transactions Model Regulation;
- Big Data;
- Antifraud;
- Market Regulatory Activities and Future Trends;
- Innovations; and
- Ethics.

You may participate in individual sessions or the entire Annual Conference. More information concerning the CEFLI Annual Conference will be provided to all registered attendees during the week of September 21.

VI. Next Meeting.

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

Wednesday, October 14, 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:

- Thursday, November 12, 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.

**RETAINED ASSET ACCOUNTS
SAMPLE BULLETIN**

TO: All Life Insurers Licensed to Write Business in [State]

FROM: [Commissioner, Director, Superintendent]

DATE: [Insert Date]

RE: Use of Retained Asset Accounts

The purpose of this bulletin is to establish disclosure standards regarding the payment of life insurance benefits to a beneficiary by means of a “retained asset account.” “Retained Asset Account” means any mechanism whereby the settlement of proceeds payable under a life insurance policy is accomplished by the insurer or an entity acting on behalf of the insurer depositing the proceeds into an account with check or draft writing privileges, where those proceeds are retained by the insurer, pursuant to a supplementary contract not involving annuity benefits.

Section 1. Explanation of Settlement Options

The insurer shall provide the beneficiary, at the time a claim is made, written information describing the settlement options available under the policy and how to obtain specific details relevant to the options.

Section 2. Supplemental Contract

If the insurer settles benefits through a retained asset account, the insurer shall provide the beneficiary with a supplemental contract that clearly discloses the rights of the beneficiary and obligations of the insurer under the supplemental contract.

Section 3. Disclosures for Retained Asset Accounts to Beneficiaries

The insurer shall provide the following written disclosures to the beneficiary before the account is selected, if optional, or established, if not:

- A. Payment of the full benefit amount is accomplished by delivery of the “draft book”/ “check book”.
- B. One draft or check may be written to access the entire amount, including interest, of the retained asset account at any time.
- C. Whether other available settlement options are preserved until the entire balance is withdrawn or the balance drops below the insurer’s minimum balance requirements.
- D. A statement identifying the account as either a checking or draft account and an explanation of how the account works.
- E. Information about the account services provided and contact information where the beneficiary may request and obtain more details about such services.
- F. A description of fees charged, if applicable.
- G. The frequency of statements showing the current account balance, the interest credited, drafts/checks written and any other account activity.

- H. The minimum interest rate to be credited to the account and how the actual interest rate will be determined.
- I. The interest earned on the account may be taxable.
- J. Retained asset account funds held by insurance companies are not guaranteed by the Federal Deposit Insurance Corporation (FDIC), but are guaranteed by the State Guaranty Associations. The beneficiary should be advised to contact the National Organization of Life and Health Insurance Guaranty Associations (www.nolhga.com) to learn more about the coverage limitations to his or her account.
- K. A description of the insurer's policy regarding retained asset accounts that may become inactive.



September 15, 2020

Cybersecurity: Safeguarding Client Accounts against Credential Compromise

I. Introduction

This Risk Alert highlights “credential stuffing” — a method of cyber-attack to client accounts that uses compromised client login credentials, resulting in the possible loss of customer assets and unauthorized disclosure of sensitive personal information.

The Office of Compliance Inspections and Examinations (“OCIE”) has observed in recent examinations an increase in the number of cyber-attacks against SEC-registered investment advisers (“advisers”) and brokers and dealers (“broker-dealers,” and together with advisers, “registrants” or “firms”) using credential stuffing. Credential stuffing is an automated attack on web-based user accounts as well as direct network login account credentials.¹ Cyber attackers obtain lists of usernames, email addresses, and corresponding passwords from the dark web² and then use automated scripts to try the compromised user names and passwords on other websites, such as a registrant’s website, in an attempt to log in and gain unauthorized access to customer accounts.

Credential stuffing is emerging as a more effective way for attackers to gain unauthorized access to customer accounts and/or firm systems than traditional brute force password attacks.³ When a credential stuffing attack is successful, bad actors can use the access to the customer accounts to gain access to firms’ systems, where they are able to steal assets from customer accounts, access confidential customer information, obtain login credential/website information that they can sell to other bad actors on the dark web, gain access to network and system resources, or monitor and/or take over a customer’s or staff⁴ member’s account for other purposes.

¹ The views expressed herein are those of the staff of OCIE. This Risk Alert is not a rule, regulation, or statement of the Securities and Exchange Commission (the “SEC” or the “Commission”). The Commission has neither approved nor disapproved the content of this Risk Alert. This Risk Alert has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person. This document was prepared by OCIE staff and is not legal advice.

² The “dark web” is a subset of the Internet, oftentimes used anonymously, that can only be accessed using specialized software.

³ A “brute force” attack is an attempt to guess a password using numerous combinations, such as attempting all of the words in a dictionary.

⁴ The term “staff” includes firm employees and contractors.

II. Summary of Observations

OCIE staff has observed an increase in the frequency of credential stuffing attacks, some of which have resulted in the loss of customer assets and unauthorized access to customer information. The failure to mitigate the risks of credential stuffing proactively significantly increases various risks for firms, including but not limited to financial, regulatory, legal, and reputational risks, as well as, importantly, risks to investors.

Firms' information systems, particularly Internet-facing websites, face an increased risk of a credential stuffing attack. This includes systems hosted by third-party vendors. Firms' Internet-facing websites are vulnerable to attack because they can be used by attackers to initiate transactions or transfer funds from a compromised customer's account. In addition, Personally Identifiable Information (PII) is often available via firms' Internet-facing websites. Obtaining a customer's PII from one firm's website can facilitate an attacker's ability potentially to take over a customer account or attack accounts held by the account owner at other institutions.

Successful attacks occur more often when (1) individuals use the same password or minor variations of the same password for various online accounts, and/or (2) individuals use login usernames that are easily guessed, such as email addresses or full names.

OCIE encourages registrants to consider reviewing and updating their Regulation S-P and Regulation S-ID policies and programs to address the emergent risk of credential stuffing.⁵

III. Firms' Response to Credential Stuffing

OCIE observed a number of practices that firms have implemented to help protect client accounts, including:

- Policies and Procedures. Periodic review of policies and programs with specific focus on updating password policies to incorporate a recognized password standard⁶ requiring strength, length, type, and change of passwords practices that are consistent with industry standards;
- Multi-Factor Authentication ("MFA"). Use of MFA,⁷ which employs multiple "verification methods" to authenticate the person seeking to log in to an account. The strength of authentication systems is largely determined by the number of factors

⁵ Regulation S-P requires firms to adopt written policies and procedures that address certain safeguards for the protection of customer records and information. Regulation S-ID prescribes certain requirements for firms to establish identity theft preventions programs. *See generally*, 17 CFR 248.30(a) and 248.201.

⁶ *See e.g.*, NIST Information Technology Laboratory- Computer Security Resources Center, SP 800-63-3 Digital Identity Guidelines, available at <https://csrc.nist.gov/publications/detail/sp/800-63/3/final>.

⁷ NIST Information Technology Laboratory/Applied Cybersecurity Division, "Back to Basics: Multifactor Authentication (MFA)", available at <https://www.nist.gov/itl/applied-cybersecurity/tig/back-basics-multi-factor-authentication>.

incorporated by the system — the more factors employed, the more robust the authentication system.⁸ In this regard, MFA may provide more robust authentication than two or one-factor methods of authentication.

- Properly implemented, MFA can offer one of the best defenses to password-related attacks and significantly decrease the risk of an account takeover.
 - Although the use of MFA can prevent bad actors from successfully logging into a customer’s account or into a system to which a staff member has access, it cannot prevent bad actors from identifying which accounts are valid user accounts on the targeted website.
 - Identified accounts may become the targets of future attacks and information concerning the existence and validity of the accounts may be sold to other bad actors, who may attempt to pass the final MFA verification step through other means, such as phishing emails, online research of targeted individuals, and social engineering;
- Completely Automated Public Turing test to tell Computers and Humans Apart (“CAPTCHA”). To combat automated scripts or bots used in the such attacks, deployment of a CAPTCHA, which requires users to confirm they are not running automated scripts by performing an action to prove they are human (e.g., identifying pictures of a particular object within a grid of pictures or identifying words spoken against a background of other noise);
- Controls to Detect and Prevent.
 - Implementation of controls to detect and prevent credential stuffing attacks. This can include monitoring for a higher-than-usual number of login attempts over a given time period, or a higher-than-usual number of failed logins over a given time period.⁹
 - Firms then use tools to collect information about user devices and create a “fingerprint” for each incoming session. The fingerprint is a combination of parameters such as operating system, language, browser, time zone, user agent, etc. For example, if the same combination of parameters logged in several times in rapid sequence, it is more likely to be a brute force or credential stuffing attack;
 - Use of a Web Application Firewall (“WAF”) that can detect and inhibit credential stuffing attacks;

⁸ See NIST SP 800-63-3, supra note 6.

⁹ For example, some firms have implemented account monitoring controls to identify and escalate anomalous activity.

- Offering or enabling additional controls that can prevent damage in the event an account is taken over, such as controls over, or limiting online access to, fund transfers and accessing PII; and,
- Monitoring the Dark Web. Surveillance of the dark web for lists of leaked user IDs and passwords, and performance of tests to evaluate whether current user accounts are susceptible to credential stuffing attacks.

IV. Other Considerations in Preparing for Credential Stuffing Attacks

As firms prepare for credential stuffing attacks, OCIE staff encourages firms to consider their current practices (e.g., MFA and other practices described above) and any potential limitations of those practices, and to consider whether the firm’s customers and staff are properly informed on how they can better secure their accounts.

Informed Customers

Most firms require customers and staff to create and use strong passwords. However, the use of passwords is less effective if customers and/or staff re-use passwords from other sites. To be more effective, some firms have informed and encouraged clients and staff to create strong, unique passwords and to change passwords if there are indications that their password has been compromised.¹⁰

Firm Defenses: Multi-Factor Authentication and the Use of Mobile Phones

Mobile phone text messages are often used as a verification method for MFA but this method is not foolproof. Mobile phone text messages rely on the use of proper security by mobile phone providers to authenticate account holders properly when transferring phone numbers between devices. Some firms highlight for account owners and staff that they should be alert to instances where their mobile devices no longer work, as someone may have attempted fraudulently to transfer their phone number to another device.

V. Conclusion

Financial institutions should remain vigilant and proactively address emergent cyber risks. OCIE encourages firms to review their customer account protection safeguards and identity theft prevention programs and consider whether updates to such programs or policies are warranted to address emergent risks. In addition, firms are encouraged to consider outreach to their customers to inform them of actions they may take to protect their financial accounts and personally identifiable information.

¹⁰ Recent NIST password guidelines note that password changes are not required unless there is evidence that an account has been compromised. See e.g., NIST Special Publication 800-63-B, Digital Identity Guidelines: Authentication and Lifecycle Management, available at <https://pages.nist.gov/800-63-3/sp800-63b.html>.

This Risk Alert is intended to highlight for firms risks and issues that OCIE staff has identified. In addition, this Risk Alert describes risks that firms may consider to (i) assess their supervisory, compliance, and/or other risk management systems related to these risks, and (ii) make any changes, as may be appropriate, to address or strengthen such systems. Other risks besides those described in this Risk Alert may be appropriate to consider, and some issues discussed in this Risk Alert may not be relevant to a particular firm's business. The adequacy of supervisory, compliance and other risk management systems can be determined only with reference to the profile of each specific firm and other facts and circumstances.
