

Agenda

CEFLI Compliance & Ethics Committee Meeting
Thursday, September 21, 2023
2 PM ET/1 PM CT/12 Noon MT/11 AM PT
Via Webex

If you have not already registered to attend the meeting, please click on the link below or cut-and-paste the link into your browser to receive a WebEx calendar invitation with access information to join the meeting.

<https://cefli.webex.com/weblink/register/r6a0f957f8266e717f29bf210ebca03fb>

I. Welcome and Introduction. Donald J. Walters

A. Antitrust Statement.

II. Approval of Minutes – August 10, 2023 Meeting. The Committee

III. Issues for Review. The Committee

A. Death Claims Arising Out of Maui Fires.

The Hawaiian island of Maui, and specifically the town of Lahaina, experienced devastating fires which destroyed a significant amount of property and generated a significant loss of life.

Some CEFLI member companies have experienced an increase in death claims arising out of the Maui fires.

The question was submitted requesting Committee members to provide feedback on their experiences with any rise in death claims arising out of the Maui fires.

The Committee will be asked to discuss their company's experiences with respect to a possible increase in death claims arising out of the recent fires in Maui.

B. Assignment of Commissions and Agent Licensing.

Producers acting on behalf of life insurance companies receive commissions for the sale of life insurance company products.

Depending upon the nature of the sale, other individuals who may have been involved in the transaction may be entitled to receive “override” or other commissions based upon a particular sale or sales activities.

In some instances, a producer may request that all or a certain percentage of the commission derived from a particular sale or sales activities may be assigned to another individual.

A question has been presented to determine the extent to which companies may permit producers to assign commissions to other individuals. If producers may be permitted to assign commissions to other individuals, do the individuals receiving the assigned commissions have to be licensed in all states where the business was written?

The Committee will be asked to discuss their company’s practices with respect to permitting assignment of commissions and whether individuals who may receive assigned commissions have to be licensed in all states where the business was written.

C. Strategies to Comply with the Requirements of NYDFS Circular Letter #6 (2023).

In July 2023, the New York Department of Financial Services issued [Circular Letter #6](#). Circular Letter #6 was designed to remind insurers of their obligations pertaining to unfair discrimination in the sale of life insurance and annuity contracts.

Circular Letter #6 identified that some insurers have developed multiple versions of products within a type of insurance (e.g., universal life insurance policies, fixed annuity contracts, etc.) which may vary depending upon the producer or producer organization that sells the product to a consumer.

As Circular Letter #6 points out, in certain instances, consumers may be receiving “different versions” of products which may have different features and may be sold by producers that may be receiving different levels of compensation.

Accordingly, a question has been presented concerning the strategies companies may be pursuing to comply with the requirements of Circular Letter #6.

It has been reported that the Life Insurance Council of New York (LICONY) is working with the NYDFS to obtain approval of additional product types as well as marketing and distribution channel options used by insurers to sell life insurance and annuity products in the individual marketplace.

In light of these developments, are companies taking a “wait and see” approach to determine whether LICONY’s efforts to obtain approval of additional product types as well as marketing and distribution channel options will be successful or are they

taking steps now to address the requirements of Circular Letter #6 and its Filing Guidance?

The Committee will be asked to discuss their company's strategies to comply with the requirements of NYDFS Circular Letter #6.

D. Authorization to Discuss Customer Account Information with a Third-Party.

Life insurers maintain a wide range of personally identifiable information (PII) to allow consumers to purchase life insurance and annuity products. Companies have taken elaborate steps to protect the disclosure of PII to protect consumer interests and to comply with applicable privacy laws and regulations.

However, there may be circumstances under which a third-party (e.g., estate planning lawyer, accountant, etc.) may want to receive information concerning a life insurance company customer's account.

In instances in which such requests may arise, does your company require written authorization from the consumer to discuss details of the customer's account with the third-party or are there circumstances in which solely a verbal authorization from the customer may suffice to provide third-party access to a customer's account information?

The Committee will be asked to discuss their practices with respect to authorizing access to a customer's account information by a third-party.

E. Iowa Indexed Annuity Product Training.

The state of Iowa maintains specific indexed annuity product requirements for producers that may wish to sell indexed products. These requirements are outlined under Iowa's [Unfair Trade Practices Act](#).

Specifically, Section 191 - 15.82 (507B,552B) of Division VI of Iowa's version of the Unfair Trade Practices Act, contains the following provision:

191—15.82(507B,552B) Special training required. A producer who wishes to sell indexed products in Iowa shall complete at least one four-credit indexed products training course, as described in this division, prior to providing any advice or making any sales presentation concerning an indexed product.

Iowa also adopted the 2010 revisions to the NAIC Suitability in Annuity Transactions Model Regulation which included requirements for product-specific training.

Given that Iowa maintains a section of its Unfair Trade Practices Act devoted specifically to Special Training Required for indexed products and that Iowa also adopted the broader product-specific training requirements associated with the 2010 revisions to the NAIC Suitability in Annuity Transactions Model Regulation, do companies interpret the Special Training Required provision of the Unfair Trade Practices Act to be in addition to the product-specific training required under the 2010 revisions to the NAIC Suitability in Annuity Transactions Model Regulation or do companies interpret the Special Training Required under the Unfair Trade Practices Act to be subsumed within the product-specific training requirements of the Model Regulation?

The Committee will be asked to discuss their company's interpretation of the product-specific requirements of the 2010 version (and its successor versions) of the NAIC Suitability in Annuity Transactions Model Regulation versus the Special Training Required provision under Iowa's Unfair Trade Practices Act and whether they view the Special Training requirement under the Unfair Trade Practices Act to be in addition to or subsumed by the product specific training requirements of the NAIC Suitability in Annuity Transactions Model Regulation.

F. Vendor Solutions to Address and Curtail Account Takeover Activity.

Life insurance companies continue to encounter attempts to conduct account takeover activities as part of overall fraudulent practices against life insurers.

While it appears that account takeover activities have abated somewhat when compared to the experience of several years ago, account takeover activities, nonetheless, continue.

With this in mind, companies are always seeking vendor solutions such as voice recognition technology, incoming phone identification programs and automated screening solutions as ways to address and curtail attempted account takeover activities.

The Committee will be asked to discuss vendor solutions that may have been helpful to their companies in addressing and curtailing attempted account takeover activities.

G. Suitability Reviews of Internal Replacements.

Life insurance companies conduct suitability reviews of their annuity transactions. These transactions, in some instances, may incorporate replacement activities.

Company practices differ with respect to whether companies conduct suitability reviews of replacement transactions that involve another company's products only versus also conducting suitability reviews of replacement transactions that may be

designed to replace an existing product offered by the same company (i.e., an internal replacement).

To the extent that a company may choose to conduct suitability reviews of internal replacements, they may examine certain product features of the recommended product versus the replaced product to determine whether they would consider the recommended transaction to be suitable.

For example, a recommendation for an internal replacement which may offer a premium bonus annuity may be recommended by a producer to offset surrender charges of a product to be replaced. Whether such a recommended transaction would be deemed to be suitable may differ from company to company.

The Committee will be asked to discuss whether their company conducts suitability reviews of internal replacements and, if so, whether “best practices” may exist when conducting suitability reviews of internal replacements.

H. Authentication of Electronic Signatures.

More and more life insurance companies are using electronic applications such as DocuSign to allow consumers to purchase life insurance company products.

One challenge that life insurance companies are facing pertains to authenticating or confirming the identity of the person signing the electronic application or electronic disclosures. Stated specifically, is the person signing the application or disclosure the applicant?

Some companies have encountered scenarios in which an agent or family member creates an email address purporting to be that of the applicant and signs for the applicant or uses their own cell phone number instead of the applicant's cell phone number to receive the text and sign the electronic documents.

Accordingly, several questions have been presented for discussion including:

- *When a DocuSign packet is sent to an applicant's email or cell phone via text, how do companies confirm that the email address or cell phone number belongs to the applicant and, therefore, the applicant (and not someone else) is signing the application?*
- *Does your company use multifactor authentication to confirm the identity of individuals signing electronic applications and documents?*
- *Does your company seek to mitigate potential risk associated with electronic applications through backend reporting of instances in which the same email or phone number has been used on multiple policies?*

The Committee will be asked to discuss their company's practices with respect to authenticating signatures used to sign applications or other disclosures involving electronic applications.

I. Policyholder Service Requests Using Voice Signatures.

Life insurance companies receive numerous requests for policyholder service. These requests can include beneficiary changes, address changes and requests for disbursements from life insurance policies and annuity contracts.

Increasingly, companies are considering whether to permit these types of policyholder service requests to be completed using voice signatures which can be verified using new technologies.

Accordingly, several questions have been presented including:

- *Does your company permit policyholder service requests to be completed using voice signatures?*
- *If so, how do you maintain records of voice signatures used authorized these policyholder service requests?*

The Committee will be asked to discuss the extent to which their company may permit policyholder service requests to be completed using voice signatures and, if so, how they maintain records of voice signatures used to authorize policyholder service requests.

J. Oregon Transmittal and Standards for Life and Annuity Advertisements.

The Oregon Division of Financial Regulation maintains a Transmittal and Standards form to evaluate whether life and annuity advertisements comply with Oregon's life insurance and annuity advertising requirements. Oregon law requires that sales materials for insurance products in the state of Oregon shall not be false, deceptive or misleading.

The Director of the Oregon Department of Consumer and Business Services has required that all advertisements for life insurance and annuity products be filed for approval prior to use.

However, recent discussions suggest that the requirement to file all advertisements for approval prior to use in state of Oregon may be under review.

The Committee will be asked to discuss whether they are aware of any efforts to rescind the requirement to file all life insurance and annuity advertisements for approval prior to use in the state of Oregon.

K. Illinois Informational Filing - In-Force Universal Life Policies - 50 IL Admin. Code tit. § 1411.50.

Several life insurance companies recently received the following message from Illinois via The System for Electronic Rates and Forms Filing (SERFF):

All previously approved universal life insurance policies must be administered in compliance with revised administrative code provision 50 IL Adm. 1411 which was effective December 20, 2022. Revisions and/or amendments to previously issued universal life policies will not be required but an informational filing must be submitted certifying that all in-force universal life policies will be administered in compliance with the revised administrative code provision 50 IL Adm. 1411.

Illinois is a member of the Interstate Insurance Compact (COMPACT). No COMPACT member states have opted out of the Life or Annuity Uniform Standards.

Questions have been presented concerning whether the state of Illinois will require an informational filing for all previously issued universal life insurance policies approved by the COMPACT to be administered according to [50 IL Admin. Code tit. § 1411.50](#).

The Committee will be asked to discuss whether they plan to file an information filing with the state of Illinois (despite the fact that Illinois is a member of the COMPACT and has not opted out of the Life or Annuity Uniform Standards) to confirm that COMPACT approved universal life insurance policies will be administered according to 50 IL Admin. Code tit. § 1411.50.

L. PBI/MOVEit Breach - Social Security Death Master File.

Several life insurance companies have been impacted by the recent PBI/MOVEit Breach.

A question has been presented concerning whether, in light of the PBI/MOVEit breach, your company has restarted its Social Security Death Master File matching process yet.

The Committee will be asked to discuss whether they have restarted their Social Security Death Master File matching process in light of the PBI/MOVEit breach.

M. Requests for Information - Life Settlement Companies.

Life settlement companies maintain an interest in obtaining information about life insurance policies owned by life insurer customers.

To do so, representatives of life settlement companies may ask questions about a particular life insurance company owned by a customer. Often, these requests for information are preceded by delivery of a document called an “Authorization to Release Medical Records and Other Information.”

These authorizations are very broad in scope and often include a long list of authorized representatives. Yet, nowhere in the authorization document are terms such as “life settlement” or “viatical settlement” which would disclose the true purpose behind the questions being asked by the life settlement company.

In some instances, life insurers have received several calls from different representatives of the life settlement company asking questions about life insurance policies as part of their due diligence/review/underwriting of an individual to whom the life settlement company may submit an offer to purchase a customer’s life insurance policy.

As a result, several questions have been submitted for review to determine what requirements do other life insurers have with respect to requests for information from life settlement companies?

- *Does your life insurance company require the policy owner to personally request all information from their insurer until such time that an ownership change has been made and processed?*
- *What documentation/authorization do life insurers require a life settlement company to provide in order to request information concerning a policy?*
- *When will the issuing insurer allow a life settlement company to begin paying the premiums for the policy?*
- *Does your life insurance company allow wire transfers to pay these premiums? If so, does your life insurance company require that the payor name match the life settlement company name?*

The Committee will be asked to discuss their company’s policies and procedures with respect to requests from life settlement companies to obtain information concerning life insurance policies owned by life insurance company customers.

N. MCAS Reporting - “Replacement” Annuity Transactions.

Deferred annuity products may offer different settlement options/distribution elections to pay out annuity benefits. In some instances, annuitants (or their beneficiaries) may want to explore opportunities to extend or “stretch” the

timeframe during which they will receive annuity benefits under their existing deferred annuity contract.

One way to achieve this objective would be to “replace” the existing deferred annuity contract with a new immediate annuity that may have more flexible payout options which would permit the annuitant (or their beneficiary) to extend or “stretch” the timeframe during which they will receive annuity benefits.

A question has been presented concerning whether this type of transaction might be considered a “replacement” transaction for reporting “replacements” for MCAS purposes.

The Committee will be asked to discuss whether their company would consider the “replacement” transaction described above to be deemed a “replacement” for MCAS reporting purposes.

O. Complaints - Policies and Procedures.

Life insurance companies, like any businesses, receive complaints. Under most state laws, a complaint is described as “a written communication primarily expressing a grievance.”

Several questions have been presented concerning complaint handling policies and procedures. They include:

- *How are oral (versus written) complaints processed (e.g., customer service/client relations/legal, etc.)?*
- *Are complaints required to be in writing or does your company also include oral complaints in its complaint handling policies and procedures?*
- *Does your company use a complaint form and, if so, what type of information is obtained?*

The Committee will be asked to discuss their company’s practices with respect to complaint handling policies and procedures.

P. Record Keeping - Phone Call Recordings.

Life insurance company customer service departments will often record all calls to confirm the accuracy of information reported and to review customer service practices.

Though several states have record retention rate guidelines related to electronic records, the definition of “electronic records” may not expressly include phone recordings.

Accordingly, several questions have been presented concerning record-keeping

practices related to phone call recordings. They include:

- *Does your company consider recorded phone calls as “electronic records” with respect to your company’s record retention policy? If so, what retention period is assigned to recorded phone calls?*
- *If recorded phone calls are not considered “electronic records” under your company’s record retention requirements (e.g., annuity suitability), what is the retention period for recorded phone calls not considered “electronic records.” (For example, Iowa requires that annuity suitability record be maintained for 10 years from completion of the insurance transaction.)*

The Committee will be asked to discuss their company’s policies and procedures with respect to record-keeping of recorded phone calls.

IV. Reporting Items.

A. NAIC Activities - State Adoptions - 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.

To date, CEFLI is aware of 40 state adoptions of the revised Model Regulation: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

CEFLI is aware of 7 states with best interest proposals: California, Indiana, Louisiana, Nevada, New Hampshire, Utah and Vermont.

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.

B. DOL Sends New, Proposed Fiduciary Rule to the Office of Management and Budget (OMB).

The Department of Labor (DOL) has sent a new, proposed fiduciary rule to the Office of Management and Budget (OMB) for review.

This is an effort by the DOL to redefine “investment advice” in light of recent court rulings vacating earlier versions of the DOL’s Fiduciary Rule.

Industry observers suggest it will take several months for OMB to conduct its review.

C. SEC Risk Alert - Investment Advisers: Assessing Risks, Scoping Examinations, and Requesting Documents.

The SEC recently issued a [Risk Alert](#) to describe the manner in which the SEC's Division of Examinations selects investment advisers for examination, however identifies examination focus areas and how it identifies documents to be requested.

D. FINRA Adopts Amendments to Arbitration Procedure - Expungement of Customer Dispute Information.

In [Regulatory Notice 23-12](#), FINRA recently adopted changes that could make it more difficult for registered representatives to expunge disputes from their records. Under the revised process, a unanimous vote from a three-person arbitration panel will be necessary to approve an expungement request. The amendments go into effect on October 16.

V. CEFLI Activities.

A. Webinar – Recent DOJ Compliance Developments.

CEFLI conducted a Joint Educational Webinar with CEFLI Affiliate Member **Faegre Drinker** on the subject of recent Department of Justice (DOJ) Compliance Developments. A link to the presentation materials and the recorded session can be found on [this page](#) of CEFLI.org. Please use your CEFLI logon and password to access the content.

B. September Educational Webinar – CEFLI's 2023 Compliance & Ethics Benchmarking Survey

CEFLI developed an on-demand webinar summarizing key findings from the 2023 Compliance & Ethics Benchmarking Survey. A links to the presentation and recording are included here: [Presentation](#) | [Recording](#). Please use your CEFLI logon and password to access the content.

C. CEFLI October Joint Education Webinar: The Legal and Ethical Implications of Insurers' Use of ChatGTP and Other AI in Connection with Policy Administration

CEFLI's October Joint Educational Webinar will take place on Wednesday, October 11 at 1:00 PM ET/ Noon CT/ 11:00 AM MT/ 10:00 AM PT. The Joint Educational webinar will address the legal and ethical implications of insurers' use of ChatGTP and other AI in connection with policy administration. Registration for

the event will open on Wednesday, September 27th.

D. 2023 CEFLI Annual Conference.

CEFLI's recently conducted its 2023 Annual Conference September 10 -13 at The JW Marriott Hotel in Washington, DC. The event included a robust agenda of relevant and contemporary compliance and ethics topics and its faculty featured several state and federal regulators, government agencies, academia and industry experts. A copy of the presentation materials can be [found here](#).

E. CEFLI Advanced Compliance Forum.

CEFLI's Advanced Compliance Forum is an educational and networking opportunity for experienced compliance professionals. The workshop-style event will take place November 12-14 at the Renaissance Chicago Hotel. The event also features an array of networking opportunities to help compliance and ethics professionals develop and deepen their industry networks. [Registration](#) is open and the event is filling up quickly.

VI. Next Meeting.

Registration is required to attend CEFLI's Compliance & Ethics Committee meetings. You may register at *any time* prior to (or during) a scheduled meeting. The registration process automatically adds the meeting (and meeting access information) to your calendar. The next meeting of the CEFLI Compliance & Ethics Committee will take place on: Thursday, October 12th, 2023 at 2:00 PM ET/1:00 PM CT/12:00 PM MT/11:00 AM PT.

Please register using this link: [October Meeting Registration](#)

The remaining 2023 Compliance & Ethics Committee meetings are listed below. All meetings are one hour in duration and take place at 2:00 PM ET/ 1:00 PM CT/ 12:00 PM MT/ 11:00 AM PT.

- Wednesday, November 15, 2023 [November Meeting Registration](#)
- Wednesday, December 13, 2023 [December Meeting Registration](#)

CEFLI encourages you to turn on your camera when joining the meeting (optional) to promote a sense of community and to allow Committee members to connect a face with a name. To enhance the fidelity of the meeting, individuals should remain muted unless speaking.

VII. Other Business.

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

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Minutes

**CEFLI Compliance & Ethics Committee Meeting
Thursday, August 10, 2023**

A meeting of the CEFLI Compliance & Ethics Committee (the “Committee”) was held via Webex on Thursday, August 10, 2023, at 2 PM ET/ 1 PM CT/ 12 Noon MT/ 11 AM PT.

I. Welcome and Introduction.

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

II. Approval of Minutes – July 13, 2023 Meeting.

On motion, duly made and seconded and unanimously carried, the Committee RESOLVED that the Minutes of the July 13, 2023 meeting were approved.

III. Issues for Review.

The Committee

A. State of California Illustrations.

The State of California, like many other jurisdictions, maintains laws specific to types of disclosures that should be contained within illustrations for life insurance and annuity products. These laws describe required practices as well as prohibited practices related to the use of illustrations. Such regulations include the following:

[California Insurance Code Section 10127.11](#); and
[California Insurance Code Sections 10509.950 – 10509.965](#).

Several questions were presented concerning developing appropriate policies and procedures to comply with California illustration requirements. These questions included:

- *Do you show guaranteed values on your illustrations?*
- *Do you show the columns of guaranteed values in bold print?*
- *What do you consider to be a preprinted illustration?*

- *Do you follow similar policies and procedures for “in-force rejections” as well?*

Committee members reported that illustrations contain both guaranteed and non-guaranteed values in columns, without boldface. Illustrations provided at point-of-sale and illustrations provided for in-force business contain the same information presented in the same manner.

B. Department of Insurance “Inquiries” - Complaint Database Management.

Life insurance companies receive “inquiries” from state insurance departments. These “inquiries” may be requests for general information concerning the company’s practices or information specific to a company’s policies and procedures, products and distribution systems.

In recent years, state insurance departments have become more active with submitting “inquiries” regarding a range of matters including policy locator services.

To the extent that your company receives “inquiries” from state insurance departments (that may pertain to policy locator questions), does your company log these “inquiries” into your complaint database (even though the inquiry may have nothing to do with an allegation of violations of laws or regulations) or does your company not log these “inquiries” from state insurance departments into your complaint database?

Committee members reported that they will not generally categorize an inquiry as a complaint unless the communication contains a grievance of some kind.

Several Members advised they have received inquiries (primarily related to lost policyholders) from the California Department of Insurance (“CA DOI”) via the CA DOI’s complaint system. Members advised they believe the CA DOI has no other means for making such inquiries, and that while the members do not count such communications as formal complaints, they note them in the event the issue is raised during an examination or during an annual complaint reconciliation.

C. Best Practices Regarding “On-Site” Audits of TPAs That Operate Virtually.

State laws and regulations require insurers to conduct oversight of Third-Party Administrators (TPAs) who are contracted to conduct duties on behalf of an insurer. Many of these laws and regulations require the insurer to conduct an annual “on-site” audit of the TPA.

During the COVID-19 pandemic, many states relaxed their “on-site” audit requirements. At the same time, some TPAs modified their business model to allow some or all of their staff to work remotely or “virtually.”

Now that the COVID-19 pandemic has largely abated, many states are now requiring “on-site” audits of TPAs but, with some TPAs continuing to operate “virtually,” “on-site” audits of TPAs may be impractical, if not impossible.

This dilemma presents several questions:

- *Are other companies working with TPAs that operate “virtually” on a full or part-time basis?*
- *If so, what modifications have you made to your TPA oversight program in instances in which a TPAs operating virtually?*
- *Are insurers using cameras, FaceTime or other means (e.g., someone walking around with a phone camera to show the auditors the “TPA site” remotely) to “view” remote locations during an audit?*

A Member Company reported that their TPAs operate virtually, and that they conduct an annual virtual meeting to request documentation at that time. The Member includes an explanation regarding this practice on their required North Carolina certification.

D. Data Governance - Artificial Intelligence - Colorado Regulation and NAIC Bulletin.

The proposed [Colorado Artificial Intelligence Regulation](#) (the “Colorado Regulation”) contains requirements for insurers to establish a governance and risk management framework to promote the appropriate (i.e., nondiscriminatory) use of Artificial Intelligence.

Recently, the NAIC also issued an [Exposure Draft of a Model Bulletin](#) concerning the use of algorithms, predictive models and artificial intelligence systems by insurers. The NAIC Bulletin, like the Colorado Regulation, also includes a section describing regulatory expectations concerning governance structures to address insurers’ use of artificial intelligence systems.

As a result of these initiatives, a request was made to engage in a discussion of the steps companies have taken in anticipation of the requirements of the Colorado Regulation as well as the NAIC Model Bulletin.

Member companies reported that they are actively reviewing the requirements of the artificial intelligence communications.

E. Cash and Cash Equivalents.

Life insurers accept premium payments for life insurance and annuity products in a variety of different forms.

In some cases, policyholders may attempt to pay premiums in the form of cash or cash equivalents.

A question was presented concerning whether companies conduct additional due diligence around transactions that may involve payment of premiums in the form of cash or cash equivalents.

Member companies reported having protocols in place for additional due diligence, which range from setting cash value limits for certain cash equivalents, maintaining logs to monitor for benchmarks by policyholder, limiting amounts that may be accepted on a policyholder level, and heightened reviews by Compliance or AML.

F. “Other Pertinent Communications” - New York Claim Regulations.

[Section 216.4 of 11 NYCRR 216](#) of New York Insurance Regulations considers failure to acknowledge pertinent communications as an unfair trade practice.

Section 216.4 reads, in pertinent part, as follows:

*(a) Every insurer, upon notification of a claim, shall, within 15 business days, acknowledge the receipt of such notice. Such acknowledgment may be in writing. If an acknowledgment is made by other means, an appropriate notation shall be made in the claim file of the insurer. Notification given to an agent of an insurer shall be notification to the insurer. If notification is given to an agent of an insurer, such agent may acknowledge receipt of such notice. Unless otherwise provided by law or contract, notice to an agent of an insurer shall not be notice to the insurer if such agent notifies the claimant that the agent is not authorized to receive notices of claims. (b) An appropriate reply shall be made within 15 business days on all **other pertinent communications (bold added)**.*

Recently, it has been reported that the New York Department of Financial Services (or “NYDFS”) has been focusing its attention on the “other pertinent communications” language of subparagraph (b) of Section 216.4. It also has been

reported that violations of subparagraph (b) have been cited in Final Reports issued by the NYDFS.

Accordingly, several questions were presented concerning this development:

- *Have any companies had experience with the New York Department of Financial Services with respect to subparagraph (b) of Section 216.4?*
- *If so, were “consumer complaints” (i.e., not just claims compliance) considered to be “other pertinent communications?”*

Some Member companies advised that while they have not encountered this issue with NYDFS, they do apply the 15-day required to complaints. Another member reported that they have had this experience with NYDFS and complaints were considered as “pertinent communications.”

The discussion raised a question concerning NYDFS noting the 15-day requirement directly or presuming insurers are aware of the requirement. Member companies responded that, in general, departments of insurance typically provide the number of days in their communications while others expect that the insurer is aware of the timing requirements.

G. Unclaimed Property Vendors.

Unclaimed Property has represented a significant issue for the life insurance industry over the past several years. Regulators continue to focus their attention on these issues during examination activities.

Given that Unclaimed Property remains a pervasive and important issue in the life insurance industry, a question was presented concerning various vendors companies may use for Unclaimed Property or Social Security Death Master File matching purposes.

Committee members offered the following vendors:

- Berwyn
- LexisNexis
- Sovos

H. Multi-Year Guaranteed Annuities (MYGA) - Notifications of Guaranteed Period End Date.

Multi-Year Guaranteed Annuities (MYGAs) have become very popular products over the past several years.

When a MYGA product reaches its guaranteed period end date, what notifications, if any, are required to be provided to customers upon expiration of the MYGA product guaranteed period.

The following questions were raised concerning notification requirements:

- *What notifications are required to be sent to customers upon expiration of the MYGA product guaranteed period?*
- *What is the content of the notification (e.g., does it include payout options?)?*
- *When should the notification be sent (i.e., how many days prior to expiration of the guaranteed period?)?*
- *How should the notification be sent (i.e., directly to the consumer or sent via the agent?)?*
- *How much time is allowed for the customer to select a payout option?*
- *Is there a specific timeframe for selecting a replacement option?*

A Committee member reported that they send notifications 30 days prior to expiration of the guaranteed period to the consumer.

I. NAIC Suitability in Annuity Transactions Model Regulation.

The industry has been monitoring state-by-state adoptions of the 2020 revisions to the NAIC Suitability in Annuity Transactions Model Regulation (the “Revised Model Regulation”). As more and more states adopt the Revised Model Regulation, a series of questions was presented to discuss regulatory perspectives with respect to compliance with the Revised Model Regulation.

These questions included:

- *Do most insurers take the position that they are ultimately responsible for compliance with all of the provisions of the Revised Model Regulation, even if they have independent producers?*
- *Do most state regulators take the position that insurers are ultimately responsible for all downstream compliance with their best interest/suitability laws?*
- *Does any company have experience with final market conduct reports that have been issued regarding compliance with the Revised Model Regulation?*
- *Is any company currently undergoing (or recently completed) a market conduct examination related to the Revised Model Regulation? If yes, what has been the focus of these examination activities?*

A Committee member reported that, while not specific to the Revised Model Regulation, they recently received an inquiry from a department of insurance related to MCAS results. The department of insurance was also asked about the producer disclosure introduced in the Revised Model Regulation despite the review time period being prior to the adoption date in that jurisdiction.

Another Member advised that they responded to phase one inquiries as part of a multi-state review, where the objective was on the participating states better understanding the effectiveness of monitoring and supervision.

J. Qualified Plan Endorsements - IRA and Roth IRA Plans.

Life insurers may be required to submit qualified plan endorsements for various types of retirement products. Specifically, in this instance, questions were presented concerning qualified plan endorsements pertaining to IRA and Roth IRA Plans.

These questions included:

- *Do other companies draft their own qualified plan endorsements or do they purchase them from a third-party vendor?*
- *If a company is purchasing endorsements from the third-party vendor, does your company file the endorsements with the IRS or does the third-party vendor take care of the filing with the IRS?*
- *The COMPACT maintains standards for qualified plan endorsements. Has any company conducted a tax qualified endorsement filing with the COMPACT? If so, what was your experience and how long did it take for approval?*

A Committee member advised that they rely on outside counsel to draft and file with IRS and applicable insurance departments and they have outside counsel assist if questions arise during the filing processes. They have not filed through the COMPACT. Another Member reported that they create and file their own through the COMPACT and that the timing (of filings in general) has been favorable.

K. AML Practices - Free Looks.

Consumers purchasing life insurance and annuity products are offered an opportunity to conduct a “free look” of the product and, if deemed to be inappropriate or unsatisfactory, they may return the product to the insurer during the “free look” period.

When consumers purchase life insurance and annuity products, company money-laundering (AML) practices will often include in OFAC check to determine whether the consumer may be subject to restrictions with respect to purchasing life insurance and annuity products from insurers.

A series of questions was presented concerning a scenario in which a consumer purchased a product through an insurer, the source of funds is a U.S. Bank (not currency), an OFAC check has been completed which generated no “hits” and the transaction went through underwriting and was issued.

Under this scenario, if the customer initiated a “free look” of the product:

- *Would that “free look” request trigger any additional AML analyses?*
- *For example, would there be a subsequent re-review of the transaction or would there be reliance solely on the front-end AML review process?*

Member companies reported that they include free look activity in AML reviews. Other Members advised that heightened reviews are conducted based on dollar amounts, and that these reviews may be applied to free looks as well as other types of surrenders. Members also noted that they review consumer and agent activity to identify any patterns in relation to free looks.

IV. Reporting Items.

A. NAIC Activities - State Adoptions - 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.

To date, CEFLI is aware of 40 state adoptions of the revised Model Regulation: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

CEFLI is aware of 6 states with best interest proposals: California, Indiana, Louisiana, Nevada, Utah and Vermont.

A Member of the Committee has also reported that suitability forms used in West

Virginia must be filed with the West Virginia Office of the Insurance Commissioner.

A. New York Circular Letter No. 6 (2023) - Unfair Discrimination.

The NYDFS recently issued [Circular Letter No. 6 \(2023\)](#) pertaining to unfair and unlawful discrimination in the sale of life insurance and annuity products in New York State.

The Circular Letter discusses company practices of providing “different or proprietary products” to different consumers as part of a marketing strategy utilizing different producers.

The Circular Letter notes that consumers may be unaware that other versions of the product may be offered by the insurer and, therefore, these practices may have the potential to violate New York Insurance Law pertaining to unfair discrimination.

B. SEC Proposed Rules - Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers.

The SEC recently issued [proposed rules](#) to address potential conflicts of interest associated with broker-dealers’ or investment advisers’ use of predictive data analytics.

Some industry observers have suggested that these proposed rules, if adopted, would expand the scope of Regulation Best Interest. Others have suggested that the proposed rules go beyond artificial intelligence and other sophisticated technologies to include basic spreadsheets and calculators.

C. SEC Fines - Use of Personal Messaging Apps.

The SEC recently fined nine companies a total of \$549 million over employees’ use of personal messaging apps to discuss deals, trades and other business.

These actions confirm the SEC’s enforcement focus on targeting business communications sent via text and WhatsApp messaging due to the concern that the use of such technologies may circumvent firm rules regarding record retention of work-related communications.

D. SEC Risk Alert - AML Compliance - Examinations of Broker-Dealers.

The SEC recently issued a [Risk Alert](#) to outline key findings as a result of examinations of broker-dealers with respect to their anti-money-laundering (AML) practices.

Two key findings included:

- Firms that did not devote sufficient resources to AML compliance (and staffing) given the volume and risks of their business and,
- Firms that may have had appropriate policies and procedures in place but the effectiveness of those policies and procedures were reduced when firms did not apply them consistently.

V. CEFLI Activities.

A. CEFLI Advertising Review Networking Forum.

CEFLI's quarterly meeting of the Advertising Review Networking Forum took place on Tuesday, July 25, 2023. Forum members discussed current compliance challenges related to advertising review. The final 2023 Forum meeting will take place on October 24, 2023. Individuals interested in joining the Forum may contact Nancy Perez at NancyPerez@CEFLI.org.

B. Webinar – Recent DOJ Compliance Developments.

CEFLI conducted a Joint Educational Webinar with CEFLI Affiliate Member **Faegre Drinker** on the subject of recent Department of Justice (DOJ) Compliance Developments. A link to the presentation materials and the recorded session can be found on [this page](#) of CEFLI.org.

C. September Educational Webinar – CEFLI's 2023 Compliance & Ethics Benchmarking Survey

In lieu of conducting a live webinar in September, CEFLI will sent Members a communication with a link to an on-demand presentation summarizing key findings from CEFLI's 2023 Compliance & Ethics Benchmarking Survey. The live webinar series will return in October.

D. 2023 CEFLI Annual Conference.

CEFLI's Annual Conference will be at The JW Marriott in Washington, DC from September 10-13, 2023.

E. CEFLI Advanced Compliance Forum.

Please save the date! CEFLI's *new* Advanced Compliance Forum is an educational and networking opportunity for experienced compliance professionals. The workshop-style event will take place November 12-14 at the Renaissance

Chicago Hotel. More information about the Advanced Compliance Forum can be found [here](#). Registration will open in the upcoming weeks.

VI. Next Meeting.

Registration is required to attend CEFLI's Compliance & Ethics Committee meetings. You may register at *any time* prior to (or during) a scheduled meeting. The registration process automatically adds the meeting (and meeting access information) to your calendar. The next meeting of the CEFLI Compliance & Ethics Committee will take place on: Thursday, September 21, 2023 at 2:00 PM ET/1:00 PM CT/12:00 PM MT/11:00 AM PT.

Please register using this link [September Meeting Registration](#)

The remaining 2023 Compliance & Ethics Committee meetings are listed below. All meetings are one hour in duration and take place at 2:00 PM ET/ 1:00 PM CT/ 12:00 PM MT/ 11:00 AM PT.

- Thursday, October 12, 2023 [October Meeting Registration](#)
- Wednesday, November 15, 2023 [November Meeting Registration](#)
- Wednesday, December 13, 2023 [December Meeting Registration](#)

CEFLI encourages you to turn on your camera when joining the meeting (optional) to promote a sense of community and to allow Committee members to connect a face with a name. To enhance the fidelity of the meeting, individuals should remain muted unless speaking.

VII. Other Business.

A question was raised in the chat section during the webinar concerning the Revised Model Regulation: *What does your supervision program look like relative to the Model, specifically pertaining to the producer requirement to have written documentation to support suitability?*

Committee members reported that they have updated forms to require rationale supporting annuity placements. Updates range from check boxes to free-form text to assist agents in providing their rationale for recommending specific products.