

# Market Conduct Compliance Amidst all Those Regulatory Changes:

## Featuring:

- **Kathy Donovan**  
*Senior Regulatory Counsel, Wolters Kluwer*
- **Carla Strauch**  
*SVP – Compliance & Ethics, CEFLI*



# CEFLI 2024 Premier Partners



# CEFLI 2024 Affiliate Members

**Gold:**



**Bronze:**



# CEFLI Reminders

## We Will Provide

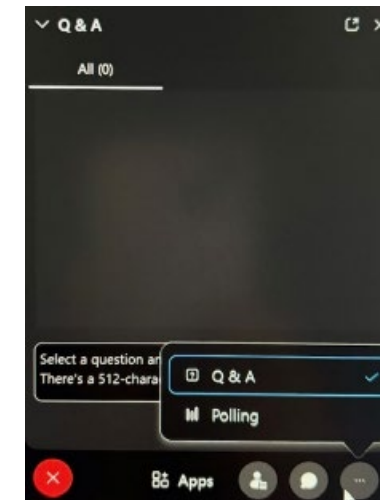
- A link to the recording.
- A copy of the slides.
- A Certificate of Attendance template (to attendees of the live event).

## Regarding Questions

- We welcome your submission of questions during the Webinar event.

## If Submitting Questions:

- Please use the **Q&A Function** (not the Chat function).



# Antitrust Reminder

The Compliance and Ethics Forum for Life Insurers (CEFLI) is committed to adhering strictly to the letter and spirit of the antitrust laws. Meetings conducted under CEFLI's auspices are designed solely to provide a forum for the expression of various points of view on topics described in the programs or agendas for such meetings.

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# Webinar Agenda

1. Introductions
2. CEFLI Benchmarking Data: Market Analysis and Examination Experience
3. Examinations: Recent Finding and Determinations
4. Regulatory Change: Managing the Volume of Information
5. Regulatory Update: Potential Market Conduct Issues
6. Q&A
7. CEFLI Reminders

# Presenters



**Kathy Donovan**  
*Senior Regulatory Counsel*  
Wolters Kluwer

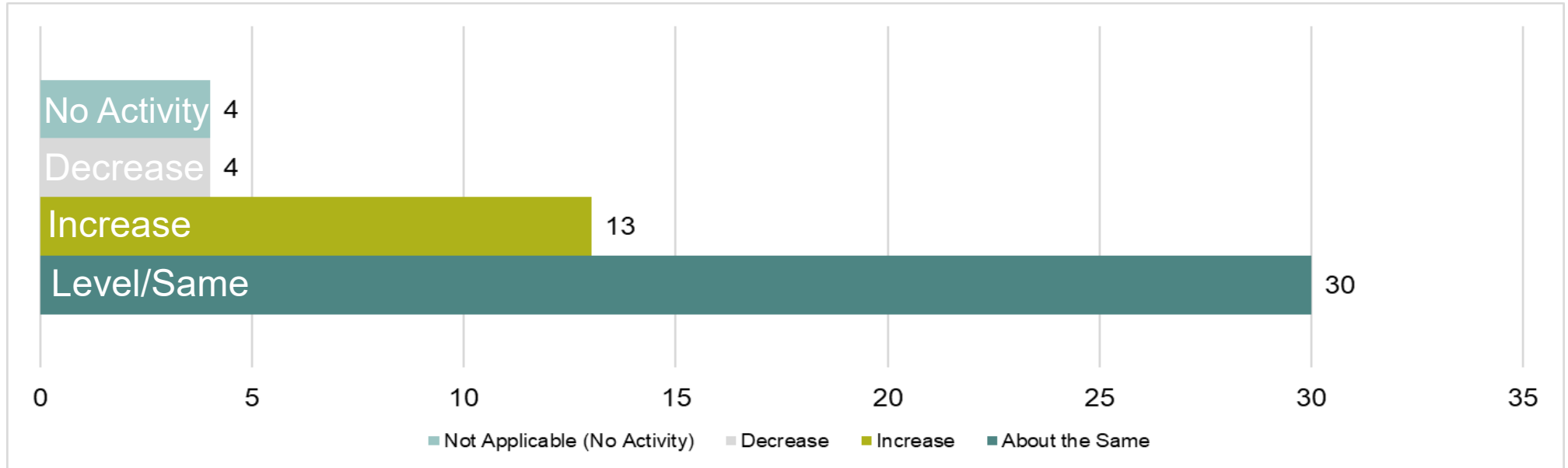


**Carla Strauch**  
*AVP, Compliance & Ethics*  
CEFLI

# CEFLI Benchmarking Data: Market Analysis and Examination Experience

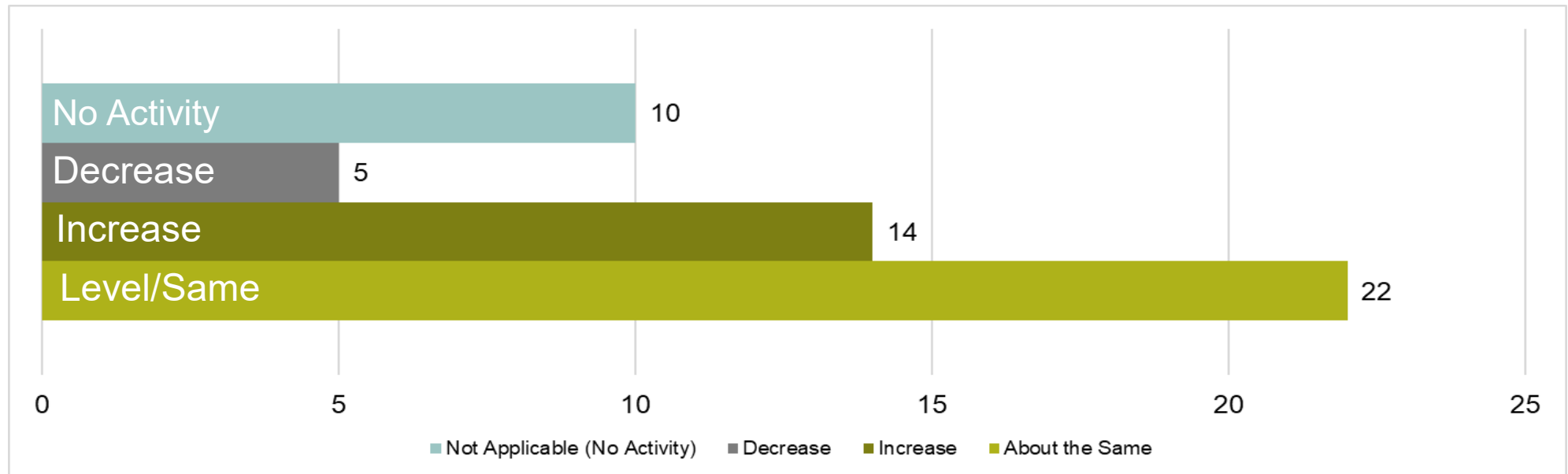


# Recent Market Analysis Activity



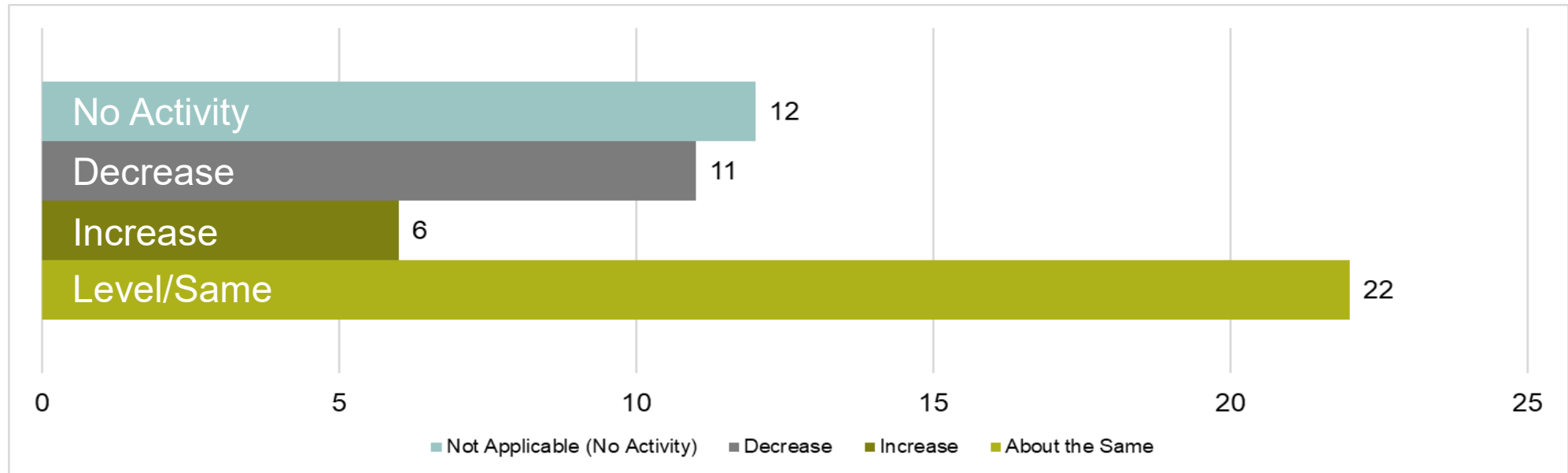
- Most Members reported level market analysis activity compared to the prior year's experience.
- Companies that experienced a change in activity were three times more likely to experience an increase, rather than a decrease, in the volume of market analysis requests.

# Recent Targeted Examination Activity



- Most Members reported level targeted examination activity compared to the prior year's experience.
- Companies that experienced a change in activity were almost three times more likely to experience an increase, rather than a decrease, in the number of targeted examinations.
- Considering market analysis, targeted examination and comprehensive examination activities, the most significant increase in activity pertained to targeted examinations.

# Recent Comprehensive Examination Activity



- Most Members reported level comprehensive examination activity compared to the prior year's experience.
- Companies that experienced a change in the level of activity were twice as likely to experience a decrease vs. an increase in the number of comprehensive examinations.



# Experience by Company Size

## SMALL-SIZED COMPANIES

### Key Take Aways (Small-Sized Companies = Up to 500 Employees):

Small companies, when compared to medium and large companies, were significantly more likely to indicate the question did not pertain to their organization due to a lack of recent regulatory activity. When the question did apply, small companies indicated:

- **Comprehensive Exams** – They were 2X more likely to experience a decrease.
- **Targeted Exams** – They were 2X more likely to report level or increased activity.
- **Market Analysis** – They were 2X more likely to experience the same level of activity.



# Experience by Company Size

## MEDIUM-SIZED COMPANIES

### Key Take Aways (Medium-Sized Companies = 501 – 10,000 Employees):

- **Overall** – Most medium-sized companies reported experiencing the same volume of market analysis requests and comprehensive examinations compared to prior years.
- **Targeted Exams** – Medium-sized companies reported experiencing a nearly 50% increase in Targeted Exams.



# Experience by Company Size

## LARGE-SIZED COMPANIES

### Key Take Aways (Large-Sized Companies = > 10,000 Employees:

- **Overall** – Most large-sized companies reported experiencing the same volume of market analysis, targeted and comprehensive examinations as in prior years.
- Companies that did not experience the same volume of market analysis, targeted and comprehensive examinations indicated the following:
  - **Comprehensive Exams** – 3X more likely to report a decrease in activity.
  - **Market Analysis** – 2X more likely to report an increase in activity.



# Policyholder Service

## Missouri

July 2024



- Processed automatic premium loans and executed non-forfeiture actions when individuals without valid ownership rights ceased making premium payments, and failed to notify the rightful owner of these actions, in violation of §§ 375.445.1(2), 375.936(13), and 375.934(2).
- Did not effectuate timely change of group certificate holder/ policy ownership according to the age of majority (“AOM”) provision found in whole life insurance policies.

## New York

December 2023



- Company violated Section 3230(d)(1) and Section 3230(d)(4) of the New York Insurance Law by failing to provide the required illustration within five days of receipt of an application to accelerate death benefits that has a cash value and policy loans, and by failing to provide a notice to the policy owner that other means may be available to achieve the intended goal, including a policy loan.

# Advertising

## Virginia

November 2023



- The review revealed 5 violations due to the use of statistical information without identified sources and the use of statistics that did not accurately reflect recent and relevant facts.
- The review revealed 7 violations of 14 VAC 5-41-30 C due to the omission of material information by failing to include a disclaimer specifying that premium payments are required to maintain coverage when advertising the policy would provide “lifetime coverage”, “permanent coverage”, “permanent lifetime protection”, “lifetime protection” or any such similar language.
- The review revealed 19 violations of 14 VAC 5-41-80 B due to the use of the term “affordable” for products that are marketed by direct response techniques or a life insurance policy containing graded or modified benefits.

## Washington

April 2024



- By offering a sweepstakes with a whole life insurance policy as a prize valued in excess of \$100, the Company violated RCW 48.30.140(1) and RCW 48.30.150(1)(c) justifying the imposition of a fine under RCW 48.05.185.

# Illustrations

## New York

June 2024



- Alternative indices are not addressed in either the disclosure or the basic (sales) illustration...The Company did not describe the alternate index that would be used should an index no longer be publicly available

## New York

May 2024



- Company uses a hybrid approach to satisfy the preliminary information required in Section 53-2.1 of 11 NYCRR 53 (Insurance Regulation 74). On the first page, the Company labels the document, “A Universal Life Insurance Proposal” and “Preliminary Information”; however, the Company did not exercise care to remove references to the word “illustration” throughout the remainder of the document...In addition, the following appears on page 3 of the preliminary information: “Because these non-guaranteed elements are not included in this proposal, this proposal is not considered an illustration under the applicable state insurance regulation.”

# Illustrations (Continued)

**Delaware**

May 2024



- Failed to include the business address of the producer or insurer's authorized representative on the illustration used in the sale of the life insurance policy.
- Failed to provide the proof that a signed certification and acknowledgement that no illustration was used in the sale of the life insurance policy at the time of application and that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery.

# Replacements

## Illinois

June 2024



- Companies did not send the existing insurer the mandated policy summary when the replacement of a life insurance policy involved a 1035 exchange
- Producer failed to list or to provide the contract number or numbers which were to be replaced to the replacing insurer in the Notice Regarding Replacement of Life Insurance consistent with Exhibit B

# Replacements (continued)

## New York

June 2024



- In 3 out of 20 (15%) internal life replacement files reviewed, the Agent/Broker's Statement of the Disclosure Statement stated, the only advantage of continuing the existing life insurance policy without changes are low premiums. The agent failed to disclose that another advantage of continuing the existing policy is that the suicide and contestable periods have expired. Therefore, stating low premiums as the only advantage is deemed inaccurate.
- In 2 out of 23 (8.7%) external life replacement files reviewed, the Agent/Broker's Statement of the Disclosure Statement stated that the advantage of the new life insurance policy is the lower cost of the insurance structure. The proposed policies have surrender charges and in one case for the proposed policy, with the same face amount as the existing policy, the proposed policy's annual premium was more than five times the premium of the existing policy.

# Replacements (continued)

## New York

February 2024



- Failed to examine and ascertain that the Disclosure Statement was accurate and complete.
- Failed to make available in the Disclosure Statement full and clear information on which applicants for life insurance or annuities can decide in their own best interest.
- Failed to furnish the insurer whose coverage is being replaced with a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed Disclosure Statement within ten days of receipt of the application or delivery of the contract.

# Replacements (continued)

## New York

December 2023



- In 12 out of 30 life replacement transactions reviewed (40%), the Agent's Statement section of the Disclosure Statement contained responses that provided inaccurate information, particularly the failure to disclose in question #3 that the contestability and suicide clauses of the existing coverage were either expired, or for the instances in which the existing policy has been in force for less than two years failure to disclose that the clauses were partially expired.

# Suitability

## Minnesota

November 2023

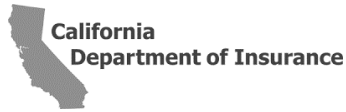


- Company either directly or through its insurance producers, failed to:
  - Follow its suitability review guidelines.
  - Take appropriate action for noncompliance by some insurance producers.
  - Ensure the policy and any riders met the consumer's financial goals.
  - Consider rider fees and the loss of other benefits when recommending the replacement of an existing policy.
- Did not adequately maintain a system of supervision to ensure that there were reasonable grounds for believing that recommendations made to applicants for life insurance, long-term care insurance, and annuity contracts were suitable.
- Did not have adequate policies and procedures for the effective supervision and monitoring of its insurance producers, particularly when transactions involved the replacement of life insurance and annuity contracts.

# Claims

## California

December 2023



- Did not provide any written information regarding all available settlement options for Group Life beneficiaries
- Failed to cooperate with the Department of Child Support Services to identify claimants who are also obligors who owe past due child support and report those claimants to the Department of Child Support Services

## Illinois

June 2024



- Failed to provide the claimants with a letter explaining why the claim remained unresolved within 45 days from the date it was reported
- Failed to provide claimants with the notice of availability of the Department of Insurance on letters regarding delay

## Pennsylvania

February 2024



- For most of the Sample, documentation received by the Company does not contain a date stamp; examples are death certificates and claim's statements. This presents a concern when determining the timeliness of actions

# Total Life & Annuity Actions by State: (Actions Issued in 2024)



# Regulatory Change: Managing the Volume of Information

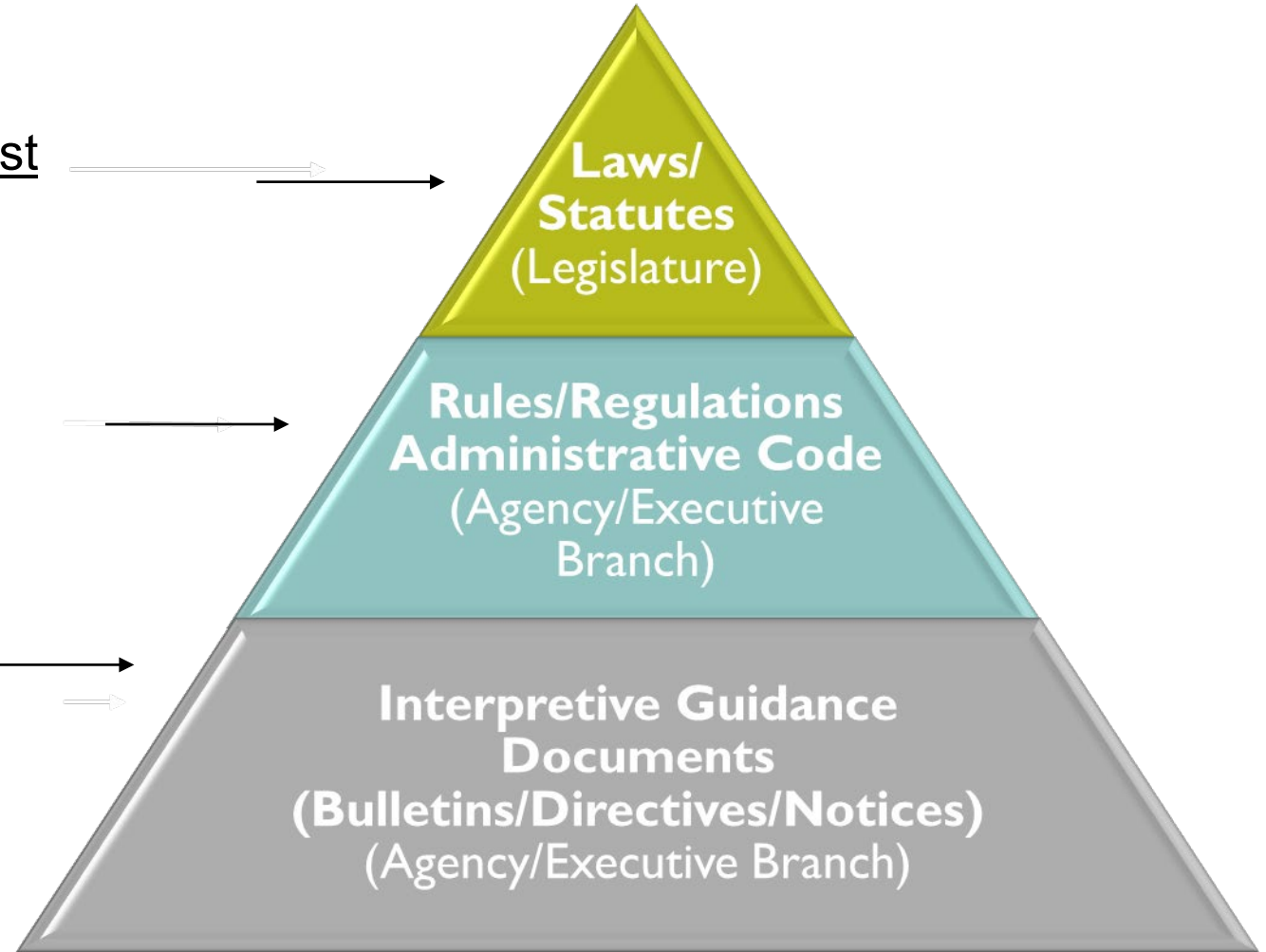


# Understanding Regulatory Content

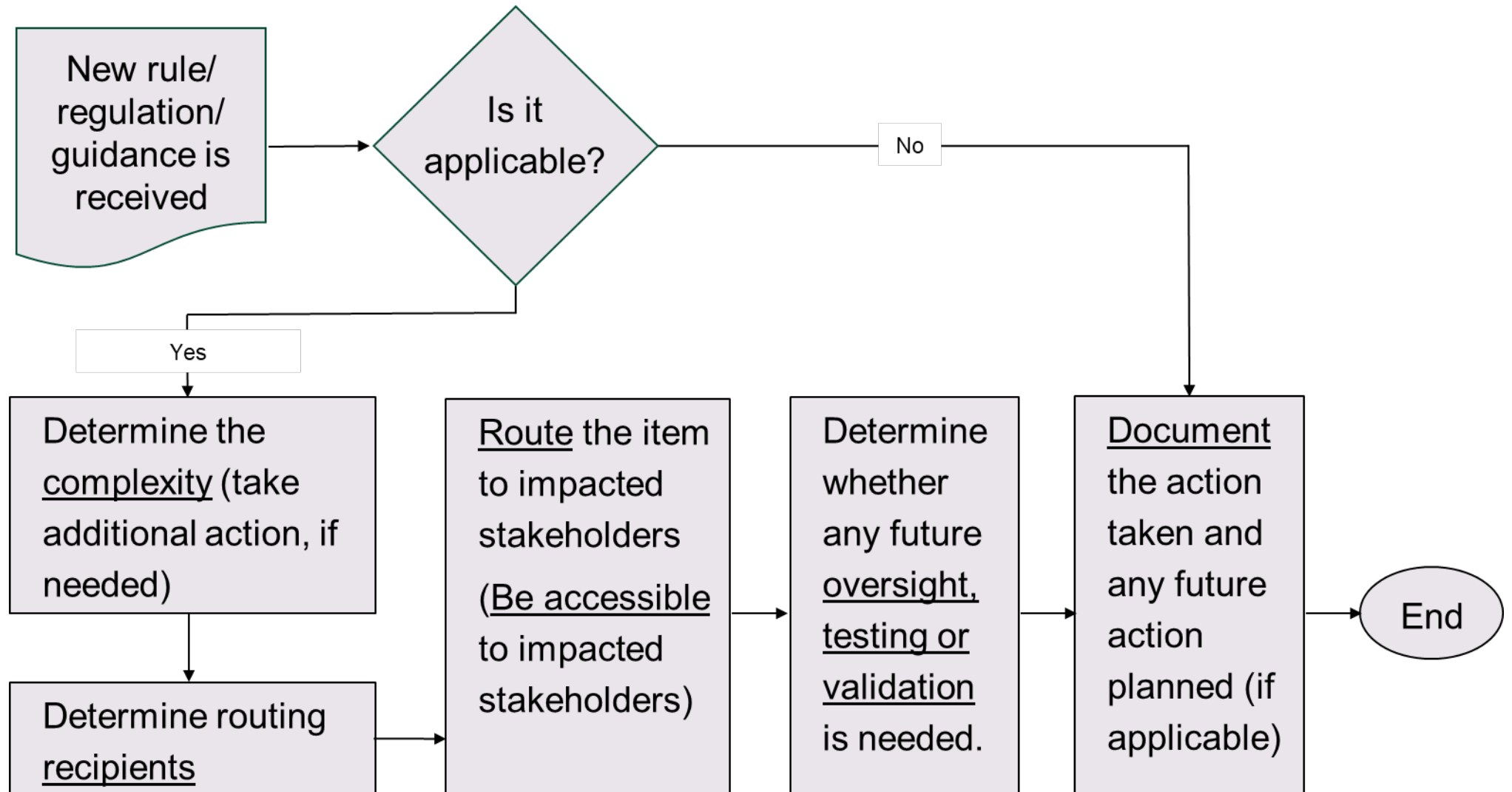
**Laws/statutes** are the highest level of regulation.

**Rules/regulations** provide more detailed requirements regarding a law/statute.

**Bulletins** interpret rules/regulations or laws/statutes. Lowest level of regulation.



# Regulatory Change Workflow



# Working with Business Partners

- Keep them informed – score points with proactiveness.
- Help them understand what's required or how they are impacted.
- Set realistic expectations.
- Coach, don't mandate.
- Establish appropriate timelines.
- Check-in with them.
- Trust, but verify, when appropriate.



# Regulatory Update: Potential Market Conduct Issues





# Suitability/Best Interest

**To date, 46 states have adopted the 2020 version of the NAIC's Suitability in Annuity Transactions Model Regulation:**

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

**Material, non-model regulatory requirements:**

New York



# Artificial Intelligence

**To date, 16 jurisdictions have adopted the NAIC's Bulletin on the Use of AI Systems by Insurers:**

Alaska, Arkansas, Connecticut, District of Columbia, Illinois, Kentucky, Maryland, Michigan, Nebraska, Nevada, New Hampshire, Pennsylvania, Rhode Island, Vermont, Washington, West Virginia.

**Additional States with regulatory requirements or guidance:**

Colorado, New York



# Other State Activity

- **Colorado SB 68:**

Effective August 7, 2024, creates 10-7-103 which mandates that “A life insurance company doing business in Colorado shall not deny or alter benefits otherwise available to an individual with a terminal disease based on the availability of medical aid-in-dying pursuant to article 48 of title 25.”

- **Minnesota: SF 4097:**

Effective January 1, 2025 - Annual notice required creates 61A.012 which mandates that for each policy of individual life insurance issued or delivered in Minnesota, a life insurance company must provide a written notice to the policyholder that contains the following information, as applicable: (1) the policyholder; (2) the policy number; (3) the insured life; and (4) the current contact information for the life insurance company. The notice required under this section must be provided by the life insurance company to the policyholder at least once per calendar year, sent via United States mail to the policyholder's last known address or electronically to the policyholder's last known email address. This section's annual notice requirement is satisfied by an annual report provided by a life insurance company to a policyholder pursuant to and in compliance with section 61A.735.



# Other State Activity

- **New York:**

The Life Bureau Filing Guidance of July 16, 2024 addresses the submitting of wellness programs to the Life Bureau for use with life insurance. Both Chapter 768 of the Laws of 2023 and Chapter 3 of the Laws of 2024 revised Insurance Law § 3239 provide that insurers licensed to write life insurance may establish a wellness program in conjunction with the issuance of life insurance policies. This recently issued Life Bureau Filing Guidance includes topics on voluntary and non-discriminatory participation in the wellness program, wellness programs definition, preparation of policy forms and submission of policy forms to the Life Bureau.



# Other State Activity

- **Louisiana:**  
SB 49 effective August 1, 2024 enacts R.S. 9:2449.1.

Revocation upon divorce; deferred compensation plan.

- A. A divorce of an individual from the individual's spouse revokes any benefit payable to the former spouse by reason of the individual's death under any pension, profit-sharing, retirement, or similar benefit plan, provided the divorce occurs after the beneficiary is designated, the parties remained divorced from each other at the time of death, and no judgment or property-settlement agreement expressly provides otherwise. If revocation occurs, the proceeds of the plan are payable as if the former spouse had predeceased the decedent.
- B. A payor is not liable for having made payment in good faith reliance on the validity of a beneficiary designation affecting any pension, profit-sharing, retirement, or similar benefit plan before the payor has received written notice of the divorce, judgment, or property-settlement agreement at its home office or principal office with notice that the beneficiary designation has been revoked under this Section, and has had a reasonable time within which to act.

# Other State Activity

- **Wyoming:**

SF 5, effective July 1, 2024, amends § 26-20-803 to add consumer protections related to organ transplant recipients.

- a) No individual or group life insurance policy or long-term care insurance policy shall:
  - (i) Deny or cancel coverage to a covered person solely on the basis of the person's status as a living organ donor or as an organ transplant recipient without any unique and material actuarial risks in accordance with sound actuarial principles and without any actual and reasonably anticipated and expected experience of a person on the basis of their status as a living organ donor or as an organ transplant recipient;
  - (ii) Deny a covered person eligibility or continued eligibility to enroll or to renew coverage under the terms of a policy, contract or certificate, solely on the basis of the person's status as a living organ donor or as an organ transplant recipient without any unique and material actuarial risks in accordance with sound actuarial principles and without any actual and reasonably anticipated and expected experience of a person on the basis of their status as a living organ donor or as an organ transplant recipient;



# Other State Activity

- (iii) Reduce or limit coverage or benefits, increase the premiums or otherwise adversely affect the coverage or cost for a covered person's policy, contract or certificate solely on the basis of the person's status as a living organ donor or as an organ transplant recipient without any additional separate actuarial risk involved;
- (iv) Preclude a covered person from donating all or part of an organ or tissues as a condition of receiving or continuing to receive coverage under a policy, contract or certificate;
- (v) Preclude a covered person from receiving all or part of an organ or tissue through transplantation or transfusion as a condition of receiving or continuing to receive coverage under a policy, contract or certificate;
- (vi) Preclude a covered person from receiving medical services or other services related to organ transplantation, including diagnostic services, evaluation, surgery, counseling or post-operative treatment or services.

# Primary Examination Triggers



- Market Analysis Outcomes
- One-Offs

# Enforcements (01/01/24 – 06/15/24):



“If you think that compliance is expensive, try non-compliance.”

- Former US Deputy Attorney General Paul McNulty

Approximately

**\$4.9 Million**

# Questions



# Thank You, Kathy!



**Kathy Donovan**

*Senior Regulatory Counsel*  
Wolters Kluwer



# Important Reminders

# Reminders

1. Please complete our **1-minute post event survey** when you receive the email, shortly.
2. The **presentation deck** and **recording link** will be emailed to you within 24-48 hours.
3. A **Certificate of Attendance** template will be included in the email. Note: CEFLI's materials are not filed for CLE or CE with any State Bar or other organizations.

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- Participants are required to register to join CEFLI's events.
- CEFLI provides a Certificate of Attendance form only to individuals who attended a live event.
- We do not provide bios for Webinar speakers though speaker names, titles and affiliations are included within the presentation.
- We do not have a way of knowing how many attorneys attend a CEFLI event.
- While we do provide a timed agenda for CEFLI's one-hour events.
- Participants may ask questions of the speakers during webinar event by clicking on the Q&A feature in the Webex.
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