

Product Standards Committee (PSC)
Public Call Summary
March 1, 2022

Agenda Item 2. Receive Comments on Report of Five-Year Review Changes for Group Term Life and Incidental Guaranteed Minimum Death Benefits for Individual Deferred Non-Variable Annuities

There were no written comments. Jason Lapham asked if there were any oral comments. There were no comments. The PSC will refer the report to the Management Committee.

Agenda Item 3. Receive comments on ACLI drafts for Individual Disability Key Person (KPR) and Buy-Sell Uniform Standards

Jason Lapham asked the ACLI to provide the PSC with an overview of the ACLI Buy-Sell and Key Person Replacement (KPR) draft standards. Ed Carter, Principal; Ron Graff, Munich Re; and Michael Palmieri, Guardian Life; went over the types of disability products and responded to the written questions from the PSC. These products (Disability Overhead Expense (DBOE), Buy-Sell, KPR) are geared toward small businesses and owners, such as law firms or medical practices. The Disability Overhead Expense (DBOE) policy covers business expenses when the insured is disabled. The buy-sell policy funds the buy-sell agreement if one business owner becomes totally disabled. The other partners or owners use the policy to buy out the shares or portion of the business of the disabled owner. The policy is triggered in the event of total disability that is a long-term disability. A Key Person Replacement Policy (KPR) helps keep the business operating and helps cover costs to replace the disabled person. The policy covers the revenue that would have been brought in by the disabled key person. It keeps the doors open and ensures continuity of the business. It is not paid to the disabled individual and has no effect on the individual's disability income policy.

The presenters explained that a buy-sell agreement creates a framework for the orderly transition of a business. It is a legal document between the owners and/or partners. The buy-sell agreement is usually created when the business is formed. It creates the framework for how the price will be set to value the business and creates the obligation for the transfer of shares. There are several types of buy-sell agreements. A cross purchase agreement lays out the how the partners will purchase the departing owner's interest in the business. An entity repurchase agreement is used when there are shares and sets out how the shares will be transferred and how the price will be set. The disability buy-sell insurance policy provides the funding.

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Jason Lapham asked if the buy-sell agreement needed to be referenced in the policy. The answer was that it depended on the attorney who drafted the buy sell agreement. Insurers have seen it both ways. Some policies require that the buy-sell agreement to be in place when the policy is issued and there are policies that require it to be in place within one year of the agreement.

Wayne Mehlman of the ACLI explained that the ACLI drafts were based on the existing Compact Uniform Standard for DBOE with modifications for each product type. These differences and the reasons for them are noted in the charts. Michael Palmieri said that the benefit payments under buy-sell are typically a lump sum, but there may be installments. These claim payments are very large. The KPR payments are lower amounts. The presenters said that these products are very different from individual disability income policies.

The presenters provided additional comments along with their written response to the questions from the PSC. They explained that buy sell insurance has a long elimination period such as 360 or 540 days and the policy terminates when the maximum sum is paid out. The KPR policy elimination periods may be 90 or 180 days with a benefit period of up to five years. They commented that the definition of occupation for the KPR policy requires that the insured person perform the duties of the key occupation to qualify for benefits.

The presenters explained that KPR is a niche product and is an extension of disability buy-sell. A key person performs a critical function for the business and cannot easily be replaced. The person can have very limited ownership in the business. This person often has his or her own individual disability policy. The KPR policy does not interfere with the benefits under an individual disability income policy.

Jason Lapham asked if there were comments. There were no additional comments. He thanked the presenters and said that the Product Standards Committee will begin the review of the proposed standards at its next regulator-only meeting.

Agenda Item 4. Receive comments on PSC Charter and 2022 Workplan

Jason Lapham asked if there were any comments on the Charter and 2022 Workplan. There were no written or oral comments.

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Agenda Item 5. Any Other Matters

Jason Lapham said that the next meeting of the PSC would be a regulator-only meeting on March 22. Sarah Neil, Compact Communications and Outreach Coordinator, asked the attendees for suggestions for topics for the Compact webinar series.

The Chair said the next meeting of the PSC will be a regulator only call on March 22. There were no other matters.

Attachments: 2/28/2022 ACLI Buy-Sell Chart
2/28/2022 ACLI Key Person Replacement Chart

Buy-Sell ACLI draft compared to DBOE uniform standard
Note: 2/28/2022 ACLI comments on modifications to Payment of Claims added

Added definitions	Meaning	Why is this different from the DBOE uniform standard and necessary for this uniform standard?
Buy-sell agreement	<p>The Buy-Sell Agreement sets forth the terms under which a disabled insured owner's interest in the business entity is to be purchased by the entity/other owners. The Buy-Sell Agreement also ensures that the owner of the Disability Buy-Out policy is obligated to purchase the disabled insured owner's interest in the business.</p> <p>The Disability Buy-Out policy provides funding for the purchase of a business owner's interest under a buy-sell agreement, by one or more other owners in the same firm, in the event of a long-term total disability.</p>	The DBOE policy provide benefits for the operating expenses of an insured while disabled. In contrast, this buy-sell coverage allows for the same disabled person to receive funds for their ownership interest from the other owner(s) of the business in the event of a long-term disability.
Continuable with Guaranteed Premiums	The policy may be terminated only as stated in the termination provision and premiums are guaranteed.	As there are several persons considered in a Buy-Sell Agreement, and several, different triggers for termination, this definition is necessary for this unique coverage.
Fair Market Value	The price the business would sell for under normal market conditions as of the date the Insured is Totally Disabled.	This type of business insurance allows the insured to receive their ownership interest in the firm in the event of disability. This definition allows for the determination of this value.
Insured	The person named as such on the application.	As the Buy-Sell product necessarily involves one or more persons, this distinction is important.

Buy-Sell ACLI draft compared to DBOE uniform standard

Note: 2/28/2022 ACLI comments on modifications to Payment of Claims added

Added definitions	Meaning	Why is this different from the DBOE uniform standard and necessary for this uniform standard?
Maximum benefit amount	The amount payable to the Owner(s). This amount is the lesser of the Aggregate Benefit Amount stated in the policy specifications; and Fair Market Value; and Purchase Price.	This Buy-Sell coverage provide a lump sum and/or equivalent monthly installments, which is different from the DBOE product, which provides a maximum monthly amount while the insured is disabled.
Owner	The person(s) or Business/Company named as the Owner(s) on the application.	There may be several owner(s) of the business entity and the Buy-Sell Agreement.
Purchase Price	The amount the Insured is to be paid for their ownership interest in the Business/Company if they become disabled. This amount may also include other fees incurred in the execution of the Buy-Sell Agreement.	The unique nature of the Buy-Sell agreement requires this definition to ensure the proper amount is paid in the event of disability.

Buy-Sell ACLI draft compared to DBOE uniform standard
Note: 2/28/2022 ACLI comments on modifications to Payment of Claims added

Deleted definitions	Meaning	Why is this different from the DBOE uniform standard and necessary for this uniform standard?
Business income Cost of Living Index		These provisions are important in the DBOE policy as the insurance reimburses key business expenses during a disability, and these terms are relevant and defined to determine the reimbursable amount. In contrast, the Buy-Sell benefit provides for payment of the purchase of the disabled business owner's interest, and this amount is determined by the added definitions on the previous page. (Maximum benefit amount, owner and purchase price)
Cost of sales or services		
Covered disability overhead expense		
Maximum covered Monthly Expense benefits		
Prior business income or pre-disability business income		
Partial or residual disability	Due to an Injury or Sickness, the insured is unable to perform one or more, but not all of the Substantial and Material Duties of an Occupation or is able to perform all duties but not for as long as usually required.	Only Total Disability is covered under this unique coverage.
Presumptive disability		Not applicable in disability buy-sell coverage.

Buy-Sell ACLI draft compared to DBOE uniform standard
Note: 2/28/2022 ACLI comments on modifications to Payment of Claims added

Modified definitions	Meaning	Why is this different from the DBOE uniform standard and necessary for this uniform standard?
Active full-time work	Specifies that the insured is working a specific occupation for the business, and may also require that they be working a specific number of hours in that occupation	The definition in the Buy-Sell Agreement is more particular to the insured's ability to work in a very specific capacity for the business.
Aggregate Benefit Amount	The aggregate amount of benefits for which the owner or assignee can be paid (usually monthly) for Disability Buy-Out.	This definition is key in Disability Buy-Sell coverage as the benefits may be paid in a lump sum and/or monthly installments.
Benefit Period – added Benefit Factor	The length of time which can be used to calculate periodic Disability Buy-Out payments under the policy.	This is a provision which is unique to the Disability Buy-Sell agreement, allowing for flexibility in the payment period.
Business – added /Company	The business or professional entity(ies) in which the insured has an ownership interest.	Due to the uniqueness of this coverage, the term was expanded to allow for both.
Total disability		This term is defined and utilized throughout the recommended insurance policy standards as it is key to this type of coverage.

Deletions		
Deleted Accumulation “carryover” benefit		There are no carry-over benefits in this coverage, as the full benefit is paid in the event of Total Disability.
Permissible limitations or exclusions – deleted normal pregnancy, workers compensation		The focus in this standard is on prohibited limitations or exclusions as opposed to permissible limitations or exclusions.
Benefit provisions – deleted cost of living index guarantee, Required total disability benefit		Not applicable provisions to this type of coverage.
Incidental Benefit provisions section deleted		As this coverage is intended to fund the ownership interest, incidental benefits are not applicable.

Buy-Sell ACLI draft compared to DBOE uniform standard
Note: 2/28/2022 ACLI comments on modifications to Payment of Claims added

Modifications	Meaning	Why is this different from the DBOE uniform standard and necessary for this uniform standard?
Modified Payment of claims	The policy shall include a provision stating to whom benefits shall be paid and the terms and conditions for the payment under the policy.	Disability Buy-Sell benefits can be structured several different ways, and so, these different methods are specifically defined in the proposed Standards. The BOE standards are based on a monthly benefit payment, and so, this specific provision allows for a payment other than monthly. In addition, beneficiary provisions are still appropriate and covered elsewhere in the proposed Disability Buy-Sell Standards.
why the majority of the Payment of Claims text from the BOE standards was not included in our proposed standards (Note -added to chart from 2/28/2022email from ACLI)		-The majority of BOE standards in paragraph 12(a) speaks to how indemnities are paid as the result of loss of life. For Buy-Sell and Key Person policies, this is not applicable for several reasons: Benefits may be lump sum only and so there is additional payment due in the event the insured dies after the disability benefit is triggered For Buy-Out or Key Person policies with a monthly benefit component, benefits may stop as a result of death of the insured since a life insurance buy-out or key person policy would then be triggered The insured does not receive the benefits under either policy, so DBO/KPR standards do not need to address who receives payments in the event the insured dies Paragraph 12(b) speaks to the ability of the company to

Buy-Sell ACLI draft compared to DBOE uniform standard
Note: 2/28/2022 ACLI comments on modifications to Payment of Claims added

		include a provision allowing the offer a lump sum payment in lieu of future periodic payments. This is not applicable to DBO and KPR since they are either lump sum benefits already, or only pay periodically for a short period of time, so the option to offer a lump sum is not necessary
Permissible limitations or exclusions – benefit reduction on account of other coverage		This benefit reduction is necessary to ensure that the maximum benefit payable is the insured’s ownership interest in the Company.
Benefit provisions – added Exchange privilege	This optional provision allows the Insured to exchange the Disability Buy-Sell policy for a disability income policy if there is no longer an ownership interest.	This is a feature unique to Disability Buy-Out policies and is beneficial to the Insured.
Termination of policy – added provisions		By the very nature of the Disability Buy-sell Agreement, there are several triggers that could warrant a termination of the policy. As such these provisions were necessarily added.

Key Person Replacement – ACLI draft compared to DBOE uniform standard

Added definitions	Meaning	Why is this different from the DBOE uniform standard and necessary for this uniform standard?
Benefit payment methods	Defines that there are 3 ways a Key Person benefit could be paid: In a lump sum, as a monthly benefit, or a combination of the two	DBOE only pays benefits on a monthly basis since it covers expenses that are incurred monthly. Key Person benefits can be structured several different ways and so those different methods are defined.
Continuable with Guaranteed Premiums	The Key Person policy may be terminated based on specific provisions outlined in the policy termination provision, but premiums are otherwise guaranteed .	The purpose of Key Person Replacement insurance is to protect the business against the loss of revenue due to the total disability of the individual, as a result, the policy should terminate when the individual is no longer working in their key person occupation, or no longer working for the employer. Because the policy should terminate in those circumstances it is filed as Continuable with Guaranteed Premiums rather than Non-Cancelable. DBOE policies do not contain similar provisions.
Key Person plus drafting note	Defines who is eligible to be covered as a Key Person, specifically that they are someone who directly contributes to the earnings of the company. The Drafting note also provides that the carrier may define specific guidelines around percentage of ownership. A sole owner or majority owner could use funds received from a Key Person policy as supplemental Disability Income benefits rather than the stated purpose of replacing the Company's lost	This concept does not apply to Overhead Expense products as the DBOE insured is someone who is responsible for Business expenses.

Key Person Replacement – ACLI draft compared to DBOE uniform standard

	revenue and replacement expenses	
Insured	The person named as such on the application.	The policy is always owned by someone other than the insured, so it is important to distinguish who the Insured is.
Maximum benefit amount	Note – this term is not defined in the proposed standards for Key Person, only Buy-Sell	
Owner	The entity listed on the application as the Owner of the policy	Key Person policies are always owned by someone other than the insured, so it is important to distinguish the two

Deleted definitions	Why is this different from the DBOE uniform standard and removed for this uniform standard?	
Covered disability overhead expense	The purpose of Key Person Replacement insurance is to protect a business against the loss of income they experience in the event a key employee becomes totally disabled and can no longer generate revenue for the business. As such, the concept of covered overhead expenses does not apply.	
Maximum covered monthly expenses	For Key Person, there isn't a specified monthly expense, rather the coverage amount is generally determined by the amount of revenue the individual generates for the company and/or a multiple of the individual's salary.	
Presumptive Disability	This concept is not used in Key Person Replacement policies	

Modified definitions	Meaning	Why is this different from the DBOE uniform standard and necessary for this uniform standard?
Active Full-Time Work	Specifies that the insured is working a specific occupation for the business, and may also require that they be working a specific number of hours in that occupation	Because Key Person Replacement is tied to the revenue an individual brings to the business in a specific capacity, the definition here is more particular to the insured's ability to work in a very specific capacity for the business
Benefit Period – Added Benefit Factor	Benefit Factor refers to a specific number of periodic payments that can be made	Because of the way Key Person is structured, there may be a set number of benefit payments made

Key Person Replacement – ACLI draft compared to DBOE uniform standard

Occupation	The specific occupation the insured is doing for the business (or a subsequent comparable occupation) that warrants them being identified as a Key Person	More specific definition of occupation because the Key Person replacement is tied to the revenue generated from a specific occupation
Prior business income – deleted reference to cost of living adjustment		Key Person policies do not include cost of living adjustments because the benefit duration is not long enough to warrant it
Business – added /Company	Adds “Company” to the defined term of “Business”	Added for clarification that the term “Company” refers to the entity that owns the Key Person Replacement policy, and not the insurance carrier
Total disability – deleted references to 12 months, added other conditions	Defines Total Disability as the inability to perform the substantial and material duties of the specific Key Person Occupation.	References to 12 months are unnecessary. At no time should the Definition of Disability be more restrictive than the Insured’s inability to perform the Substantial and Material Duties of the Occupation.

	Meaning	Why is this different from the DBOE uniform standard and necessary for this uniform standard?
Deleted sections		
Accumulation “carryover” benefit	With OE it reimburses for expenses as they happen so one month’s benefit may be different than other months so it allows those excess benefits to carry forward to a month that might have greater expenses.	This does not apply to KPR as it is not a reimbursement policy and benefits that are issued are paid out as stated in the policy.
Permissible limitations - Deleted aggregate benefit amount will not be reduced because of other coverage	At the time of a payout we would want to make sure that an employer is not receiving multiple payouts that exceed the revenue the employee was bringing into the company.	We do not want an employer to receive more benefits
Incidental Benefit provisions section deleted	These provisions pay additional benefits for	This does not apply to KPR. The maximum benefit would be

Key Person Replacement – ACLI draft compared to DBOE uniform standard

	accidental death or dismemberment.	paid from the base policy, no additional funds should be paid out.
Modifications		
Modified Notice of Claim and Payment of claims	Removed the section regarding minimum payout for a claim of 2 years.	KPR policies are paid out as a lump sum and/or a short time to help out the company until the aggregate benefit has been paid. This does not drag out over a long period (2 years may be the maximum time frame)
Modified provisions in Payment of Claims section	References to beneficiary	Since the owner of the policy is always a company benefits are paid directly to the company.
	Provision for allowance for a lump sum payout in lieu of monthly payments	This was removed as the monthly benefits are not paid out over a long period of time.
added statement on Required Total disability benefit		Defined that benefits shall at least be payable for Total Disability.
Ownership – deleted reference to insured is owner		The insured cannot own this policy as benefits are meant to provide the company with a way to help replace the insured if they become disabled and cannot work.
Total Disability – deleted reference to first 12 months	Defines Total Disability as the inability to perform the substantial and material duties of the specific Key Person Occupation.	References to 12 months are unnecessary. At no time should the Definition of Disability be more restrictive than the Insured's inability to perform the Substantial and Material Duties of the Occupation.
Permissible limitations – benefits excluded only if paid by Workers' compensation deleted		Should not impact or be impacted by workers compensation as benefits are paid to the employer.
Termination of insurance – added items to when insurance ends	Added to allow termination based on if the insured no longer works for the company, once the benefits have been paid out or if the insured is no longer working in their key occupation or not actively working full time.	If any of these are true then the employer no longer has an insurable interest and the policy should be terminated.
Added provisions		

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Key Person Replacement – ACLI draft compared to DBOE uniform standard

Benefit provisions – added Exchange privilege		Allows the insured to obtain a DI policy if they leave the employer or are no longer considered to be a key employee.
Termination of benefits – added provision		Allows the policy to be terminated if the insured dies as a key person life insurance policy would be assumed to payout if purchased. The disability has ended.