

BRIEFING SHEET ON PROPOSED EMERGENCY RULE

Prepared by the Compact Office

- At the request of the Officers, the Commission will consider during its December 4th meeting whether to approve the attached emergency rule to stay the immediate effect of the amendment to NAIC Model 805 – *Standard Nonforfeiture Law for Individual Deferred Annuities* currently pending adoption by the National Association of Insurance Commissioner (NAIC).
- The purpose of this emergency rule is to allow the Commission to consider if, when and how the amendment to Section (4)(B)(3) of Model 805 becomes effective for purposes of the Uniform Standards.
- On November 10th, the NAIC’s Life and Annuities (A) Committee adopted the recommendation of the Life Actuarial (A) Task Force to amend Section (4)(B)(3) to revise the minimum nonforfeiture interest rate from 1.0% to 0.15% for new business. Adoption of this amendment is on the NAIC Plenary agenda on December 9, 2020.
- Several Uniform Standards including the [Core Standards for Individual Deferred Non-Variable Annuity Contracts](#) and the [Core Standard for Individual Deferred Variable Annuity Contracts](#) reference NAIC Model 805 and require demonstration of compliance with its terms.
- If the NAIC adopts the amendment to revise the nonforfeiture rate in Model 805, this new rate will become immediately applicable for purposes of review and compliance by operation of the Uniform Standard(s) previously adopted by the Commission.
- The Commission is working through the implications and solutions to address the Colorado Supreme Court opinion in *Amica v. Wertz* that says a conflict between state law and Uniform Standards is not a proper delegation of authority under Colorado’s state constitution where state statute would provide a more beneficial outcome.
- Until this work is resolved, the Officers recommend the Commission not implement the Model 805 amendment until the Product Standards Committee recommends whether and how to incorporate it into the Uniform Standards.
- This is the first time the Commission is using its emergency rulemaking authority under Section 109 of the [Rule for the Adoption, Amendment and Repeal of the Rules of the Interstate Insurance Product Regulation Commission](#), which provides for suspending rulemaking requirements and adopting an emergency rule for good cause upon a majority vote of the Commission. Section 109 states an emergency rule ceases to be effective after 180 days.
- The Commission will accept written comments as well as comments during the December 4th meeting. This matter is item 2 on the Agenda.
- This matter concerns annuity nonforfeiture. In a separate matter, the life insurance nonforfeiture interest rate for new business is changing from 4.5% to 4.0% by January 1st, 2022. This change is a result of a calculation based on Moody’s corporate bond yield indices per the NAIC Valuation Manual. The life nonforfeiture rate is not an NAIC or Commission action item.
- If you have any questions about this emergency rule, please contact [Karen Schutter](#), [Becky McElduff](#) or [Sue Ezalarab](#).

**PROPOSED EMERGENCY RULE FOR CONSIDERATION BY THE
INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION
EMERGENCY RULE TO STAY THE IMMEDIATE EFFECTIVENESS OF
THE AMENDMENT TO NAIC MODEL 805 SECTION 4(B)(3) WHERE
APPLICABLE IN THE UNIFORM STANDARDS**

The purpose of this emergency rule is to maintain the status quo with respect to the Uniform Standards which reference National Association of Insurance Commissioners (NAIC) Model 805 *Standard Nonforfeiture Law for Individual Deferred Annuities* by staying the immediate effectiveness of an amendment to Section 4(B)(3) of NAIC Model 805 currently pending adoption by the NAIC on December 9, 2020.

Pursuant to Section 109 of the [*Rule for Adoption, Amendment and Repeal of Rules for the Interstate Insurance Product Regulation Commission*](#) (“Rulemaking Rule”), the Management Committee, for the following good cause, finds that emergency circumstances exist such that the requirements of Sections 103 through 107 are contrary to the public interest in the process of approving this emergency rule.

1. On December 9, 2020, the plenary of the National Association of Insurance Commissioners will consider for adoption an amendment to NAIC Model 805 *Standard Nonforfeiture Law for Individual Deferred Annuities*, specifically Section 4(B)(3), to change the interest rate amount which the nonforfeiture interest rate cannot fall below from 1% to 0.15% for new business.
2. This amendment has been approved by the NAIC Life Actuarial (A) Task Force in October 2020 and the NAIC Life Insurance and Annuities (A) Committee in November 2020 and is likely to be adopted by the NAIC plenary.
3. The following adopted Uniform Standards include one or more references to compliance with NAIC Model 805, including in certain cases requirements for meeting the minimum nonforfeiture demonstration for compliance with Section 4(B)(3) of NAIC Model 805:
 - *INDIVIDUAL DEFERRED NON-VARIABLE ANNUITY CONTRACT STANDARDS*
 - *INDIVIDUAL DEFERRED VARIABLE ANNUITY CONTRACTS*
 - *ADDITIONAL STANDARDS FOR INDEX-LINKED CREDITING FEATURE FOR DEFERRED NON-VARIABLE ANNUITIES AND THE GENERAL ACCOUNT PORTION OF INDIVIDUAL DEFERRED VARIABLE ANNUITY CONTRACT*
 - *ADDITIONAL STANDARDS FOR BONUS BENEFITS FOR INDIVIDUAL DEFERRED VARIABLE ANNUITY CONTRACT*
 - *ADDITIONAL STANDARDS FOR BONUS BENEFITS (for Individual Deferred Non-Variable Annuities)*
 - *ADDITIONAL STANDARDS FOR MARKET VALUE ADJUSTMENT FEATURE PROVIDED THROUGH THE GENERAL ACCOUNT.*
4. Upon adoption of the amendment to NAIC Model 805, the amendment would become immediately applicable for purposes of compliance under the above-listed Uniform Standards

in the absence of this emergency rule. In contrast, a Compacting State would likely need to amend the state's annuity nonforfeiture statute through the legislative process for the amendment to Model 805 to become effective in the state outside of the Compact and Uniform Standards.

5. The Interstate Insurance Product Regulation Commission ("Commission") is exploring the implications of the Colorado Supreme Court opinion in *Amica v. Wertz* with respect to circumstances when a state statute conflicts with a provision in the Uniform Standards, and the state statute, in certain circumstances, is more beneficial to the policyholder or beneficiary when compared to the provision of the Uniform Standards.
6. The Commission does not have sufficient time before the anticipated adoption of the amendment to NAIC Model 805 by the NAIC plenary to consider whether a conflict between the NAIC Model 805 with the amendment would present a conflict resulting in the Uniform Standards being less beneficial to the policyholder or beneficiary than under current state statute in certain circumstances.
7. The Commission wishes to stay the immediate effectiveness of the amendment to NAIC Model 805 for 120 days and to direct the Product Standards Committee review this matter to provide a recommendation on if, when, and how the amendment to Section 4(B)(3), if adopted by the NAIC, should become effective for purposes of the Uniform Standards.

For good cause as stated above, the Interstate Insurance Product Regulation Commission, by a majority vote pursuant to Section 109 of the Rulemaking Rule, hereby issues this emergency rule to stay the effectiveness of the amendment to Section 4(B)(3) of NAIC Model 805 *Standard Nonforfeiture Law for Individual Deferred Annuities*, currently pending adoption by the National Association of Insurance Commissioners at their plenary meeting on December 9, 2020. This stay shall apply to the following Uniform Standards where NAIC Model 805 is referenced:

- ***INDIVIDUAL DEFERRED NON-VARIABLE ANNUITY CONTRACT STANDARDS***
- ***INDIVIDUAL DEFERRED VARIABLE ANNUITY CONTRACTS***
- ***ADDITIONAL STANDARDS FOR INDEX-LINKED CREDITING FEATURE FOR DEFERRED NON-VARIABLE ANNUITIES AND THE GENERAL ACCOUNT PORTION OF INDIVIDUAL DEFERRED VARIABLE ANNUITY CONTRACT***
- ***ADDITIONAL STANDARDS FOR BONUS BENEFITS FOR INDIVIDUAL DEFERRED VARIABLE ANNUITY CONTRACT***
- ***ADDITIONAL STANDARDS FOR BONUS BENEFITS (for Individual Deferred Non-Variable Annuities)***
- ***ADDITIONAL STANDARDS FOR MARKET VALUE ADJUSTMENT FEATURE PROVIDED THROUGH THE GENERAL ACCOUNT.***

The Commission requests the Product Standards Committee expeditiously review this matter and provide a recommendation on if, when and how the amendment to Section 4(B)(3) of NAIC Model 805 should become effective for purposes of the Uniform Standards.

Under this emergency rule, product filings subject to the above-referenced Uniform Standards shall continue to be reviewed for compliance with Model 805 without regard to the final action taken on the amendment to Section 4(B)(3) currently pending adoption by the NAIC on December 9, 2020.

This emergency rule shall be effective for 120 days unless extended by a majority vote of the Commission pursuant to Section 109 of the Rulemaking Rule.