Canadian Institute of Actuaries
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Subject: Updated Guideline E-16 – Participating Account Management and Disclosure to Participating Policyholders and Adjustable Policyholders

The Canadian Institute of Actuaries (CIA) is pleased to provide our comments on this consultation.

Guideline E-16 from the Office of the Superintendent of Financial Institutions (OSFI) is of particular interest to the actuarial profession given the pivotal role that actuaries assume in providing fairness opinions and ensuring that disclosures to policyholders remain robust. This feedback reflects input from many actuaries who serve as an Appointed Actuary and who discharge this obligation for OSFI-regulated life insurance companies.

The CIA is supportive of the direction that OSFI is taking in updating the guideline and we appreciate that OSFI has already incorporated some of our earlier comments into the proposed revisions.

Recent consultation with OSFI personnel has provided us with further reassurance as to the appropriate interpretation of the revisions to the guideline in respect of fairness opinions. The feedback provided in this letter is simply intended to clarify the wording and align it with what we understand to be OSFI's intent.

The CIA proposes to update the existing professional educational guidance for actuaries in support of Guideline E-16. These updates would be done in consultation with actuaries at OSFI to ensure that detailed interpretation of the guideline pertaining to the actuarial fairness opinions remains consistent across companies and over time.

1. Do you agree that the updated E-16 taken as a whole provides greater clarity as to how the requirements of the ICA and Regulations should be interpreted? If not, please identify areas where additional clarity is needed.
3. Do you agree that the updated wording provides more clarity on OSFI's expectations? If not, what would you recommend and why?

In general, we agree that the updated guideline provides greater clarity as to how the requirements of the Insurance Companies Act and Regulations should be interpreted. We also agree that the updated wording provides more clarity on OSFI's expectations.

Nevertheless, there are some aspects of the wording within the updated guideline which may leave room for different and potentially problematic interpretations, and it would be helpful if this wording could be clarified accordingly.

One such area of concern pertains to the section dealing with policyholders with similar characteristics being treated consistently, where wording has been added to refer to the classification of policyholders into dividend classes or cohorts at issue. Such language could be interpreted to suggest that fairness tests within a dividend class or cohort need to be applied retroactively and that actuarial methods applied to dividend classes or cohorts over time, such as risk pooling or credibility weighting, would no longer be acceptable.

This might result in the rationale for fairness opinions being inconsistent with past practice and established precedents. Application of this language might also be impractical to administer over time as it may fail to acknowledge changes that have been made since policy issue to reflect changing circumstances, many of which may have been beneficial to policyholders.

Based on our consultation with OSFI personnel, we are reassured that such interpretation was not intended. We are proposing changes to this wording which would allow the actuary to reflect changing circumstances and to adapt to situations which may have been unforeseen or unforeseeable when dividend classes or cohorts were established at issue.

Consistent with our recommended wording on this item, we are proposing that the wording “not be disadvantageous to participating policyholders” be replaced with “be fair to participating policyholders” wherever it appears elsewhere in the guideline.

Current wording	**OSFI proposed wording**	**CIA proposed wording**
Policyholders with similar characteristics, at issue and projected, should be treated consistently.	Policyholders with similar characteristics and classified in the same dividend class or cohort, at issue and projected, should be treated consistently.	Policyholders with similar characteristics and classified in the same dividend class or cohort, at issue and projected, should be treated consistently. Post-issue changes to classifications of policyholders or treatment of policyholders in the same dividend class or cohort, if any, should be justified and be fair to participating policyholders.
Dividend experience factors should be consistent with the associated underlying experience of each participating account.	…Post-issue changes to dividend experience factors (if any) should be justified and not be disadvantageous to participating policyholders.	…Post-issue changes to dividend experience factors (if any) should be justified and be fair to participating policyholders.

2. Do you agree that the additional guidance on policyholder disclosures promotes greater consistency amongst companies? If not, what would you recommend and why?

While there are elements of the updated guideline which will promote greater consistency amongst companies, we believe that the precept of fairness to policyholders should take precedence over such consistency. We note that there may be valid reasons for differences across companies.

One element of consistency, as noted in our previous informal submission, would be to set an industry-wide implementation date of December 31, 2023. This will allow companies to align the implementation with their governance cycle and ensure that the appropriate approvals and processes are in place in advance of any changes. Early adoption could be permitted.

We note that the updated guideline introduces wording related to the "contribution to surplus" of a cohort of policies. This wording is new to Guideline E-16 and may be hard to interpret, and it may be difficult if not impossible to demonstrate across in-force blocks on a historical basis.

In our discussion with OSFI personnel, they acknowledged that this terminology is not intended to have the same meaning under all circumstances and they would encourage companies to define what is meant by this terminology in their management of participating accounts. We agree that any attempt to use a narrow definition of "contribution to surplus" could introduce constraints that may be impractical or may impede fairness overall. For example, such a constraint might imply that every policy would need to have the same level of new business strain.

Current wording	OSFI proposed wording	CIA proposed wording
N/A	There should be no material, planned or systemic cross-subsidization, such as dividends or contributory amounts (e.g. contribution to surplus), of one cohort by another. The contribution to surplus (if applicable) should be similarly defined for all policies within a dividend class to promote fairness to participating policyholders.	There should be no material, planned or systemic cross-subsidization, such as dividends or contributory amounts, of one cohort by another. Contributory amounts, including contribution to surplus if applicable, should be defined by each company so as to be consistent within each dividend class or cohort and so as to promote fairness to participating policyholders.

For consistency, we would suggest that revisions to the guideline's principles for adjustable insurance be updated, where appropriate, similar to the revisions made to the principles for participating insurance.

In recognition that fairness and transparency to policyholders may be just as important as consistency in disclosures, we remain concerned about the new/enhanced disclosure requirement related to fund returns. While the addition of the footnote ("investment rate of return should be expressed as market yield without smoothing") may appear to promote comparability, it is not necessarily consistent with what the policyholder experiences and may result in confusion in times of changing market conditions. From the policyholder perspective, disclosure of the portfolio yield, which includes long-term smoothing, may be more indicative of their actual credited returns. We propose a more pragmatic approach – to remove the footnote from the guideline and include a discussion of the derivation of these comparative metrics in CIA educational material, to be developed in consultation with OSFI.

Conclusion

As noted, we would be pleased to work with OSFI to ensure that CIA educational guidance related to fairness opinions and policyholder disclosures is updated appropriately to reflect these changes to Guideline E-16. This could include addressing topics such as disclosures related to rates of return and terminal dividends, setting appropriate policies related to smoothing of dividends, the avoidance of tontines, (the avoidance of) cross-subsidization across policy cohorts, the appropriate use of experience factors in fairness opinions (including commentary on how these may change over time), and the use of approximations in determining dividends.

Finally, we note the continued importance of the use of actuarial judgment in assessing fairness to policyholders and the difficulty of developing a single set of rules to maintain fairness across all possible situations. The judgment of the actuary is continually tested through the requirement that the actuary comply with the Rules of Professional Conduct, Standards of Practice, and relevant educational guidance as maintained by the CIA, and is regularly challenged through an active peer review process.

The CIA appreciates the opportunity to provide feedback on these issues, and we would welcome further discussion with you throughout this process.

If you have any questions, please contact Chris Fievoli, FCIA, Actuary, Communications and Public Affairs, at 613-236-8196 ext. 119 or chris.fievoli@cia-ica.ca.

Sincerely,

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