

Cause to Question...

Researching Safest Available Annuities

Annuity Due Diligence Best Practices/2024



Agenda

- I. Evolution of Insurer Balance Sheet Concerns (ARC & Industry-Wide)
- II. Tom Gober and the TSR Ratio™
- III. Guaranty Associations
- IV. Next Steps for Fiduciaries (and Stewards)



Annuity Research & Consulting does not provide legal or tax advice. This material is for educational purposes only. Please consult your own advisors for personalized advice.

ERISA 404(E) Annuity Safe Harbor

A fiduciary will be deemed to satisfy the requirements of paragraphs (1)(B)(i) and (1)(C)(i) if—

A) the fiduciary obtains written representations from the [insurer](#) that...[7 Criteria]

AND

B) after receiving such representations and as of the time of selection, the fiduciary has not received any notice described in subparagraph (A)(iv) and is in possession of **no other information which would cause the fiduciary to question** the representations provided.

Source: [29 U.S. Code § 1104 - Fiduciary duties | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

A History of Concern over Changes in Insurer Risks

02/25/20	Federal Reserve	Shadow Banking in Insurance
05/20/22	Northwestern Mutual	Competitor accounting practices
06/07/23	SEC	Rating agencies can't be relied upon
11/3/23	IMF	Risk of contagion
12/2023	Americans for Financial Reform Education Fund	Compiles and analyzes these reports, and then some

History of ARC's Involvement

- **02/2022** Kerry Pechter/ RIJ "[Origins of the 'Bermuda Triangle' Strategy](#)"
- 09/2022** ARC Formed/Counterparty Risk Factors
- 10/2022** Matt Zagula introduces ARC to Tom Gober
- 11/2022** ARC Introduces Tom Gober to Marcia Wagner
- 01/2023** ARC Begins Educational Meetings w/ 401(k) Industry
- 03/2023** Tom Gober and Marcia Wagner present to Senate Sub-Committee
- 03/2023** Marcia Wagner Introduces ARC and Tom G. to ARA/Tom Referred to DOL EBSA
- 07/2023** Tom Gober Presents to DOL EBSA

Today's Presenters



Michelle Richter-Gordon

- Co-Founder Annuity Research & Consulting (ARC)
- 20+ years experience in life and annuity (L&A)
- MBA, Columbia, 2005. BA, Economics, Wesleyan University, 2000
- Michelle is an advisor



Thomas D. Gober, CFE

- 37 years in deep-dive analysis of insurance industry
- MBA, Millsaps College, 1984
- Insurance Examiner-in-Charge, Financial & Market Conduct
- 10+ years as consulting and testifying expert for federal law enforcement followed by a shift to civil litigation
- Last 5 years squarely focused on the L&A industry – leading to the development of the TSR Ratio

Statement of the 2023 Advisory Council on Employee Welfare and Pension Benefit Plans to the U.S. Department of Labor Regarding Interpretive Bulletin 95-1

IB 95-1, First Issued March 6, 1995

“...in the wake of the failure of Executive Life Insurance Companies of California and New York, ...provides guidance to pension plans considering the purchase of annuities "to transfer liability for benefits purchased under the plan to [an] annuity provider." ...fiduciary responsibility... in the selection of the "safest annuity available" [annuity] and makes it clear that **"cost consideration may not ... justify the purchase of an unsafe annuity;" nor is it appropriate to rely solely on insurance rating services.**” (ARC emphasis added)

Source: <https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council/statement-regarding-interpretive-bulletin-95-1>

Introducing Tom Gober



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Non-disapprove [nä-n- dis-uh-proof]

“The agreement was **non-disapproved** by the TDI.”

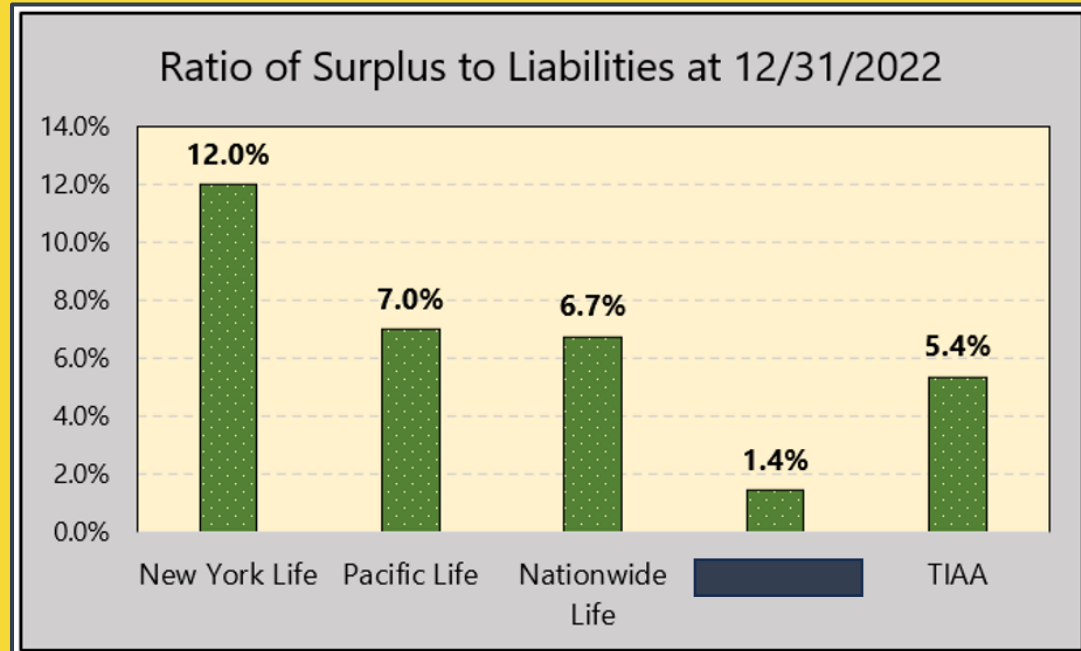
- State Insurance Commission
(their description of a \$23 billion deal with an insurer affiliate)

It is assumed these transactions occur with explicit approval of state regulators, when in fact many occur because of “non-disapproval”

Ratio of Surplus to Liabilities

To better understand how exceptionally low one carrier's SURPLUS is relative to its size and risk profile, we compared the surplus to liabilities ratios of a group of their L&A peers below:

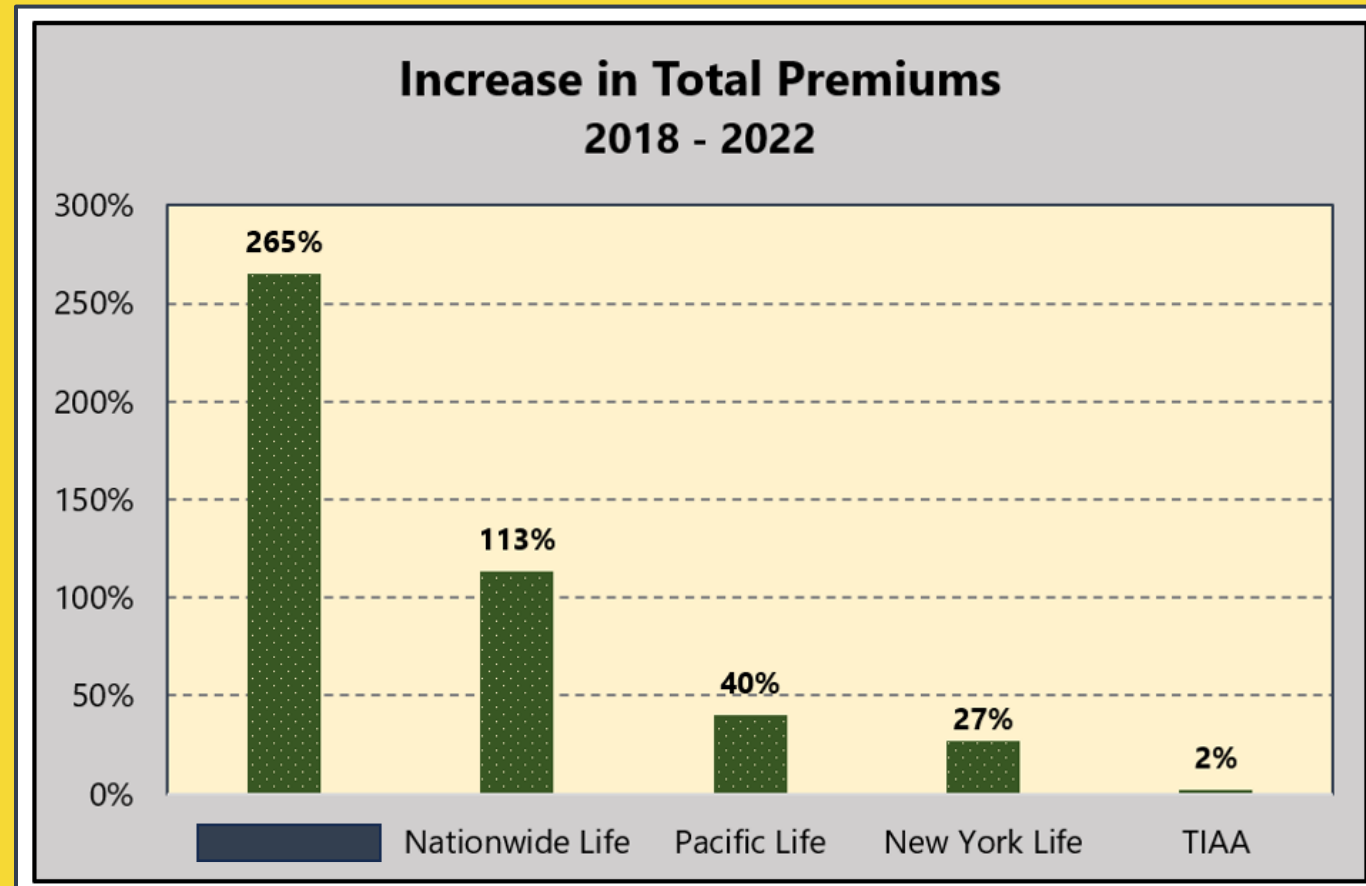
Ratio of Surplus to Liabilities at December 31, 2022			
	Total Surplus	Total Liabilities	Surplus to Liabs
New York Life	\$ 23,886,506,553	\$ 198,894,305,421	12.0%
Pacific Life	\$ 11,701,694,114	\$ 167,094,606,965	7.0%
Nationwide Life	\$ 10,195,361,948	\$ 151,212,926,273	6.7%
██████████	\$ 2,067,261,385	\$ 143,532,368,695	1.4%
TIAA	\$ 897,415,804	\$ 16,735,144,324	5.4%



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Rate of Growth in Premiums from 2018 Through 2022

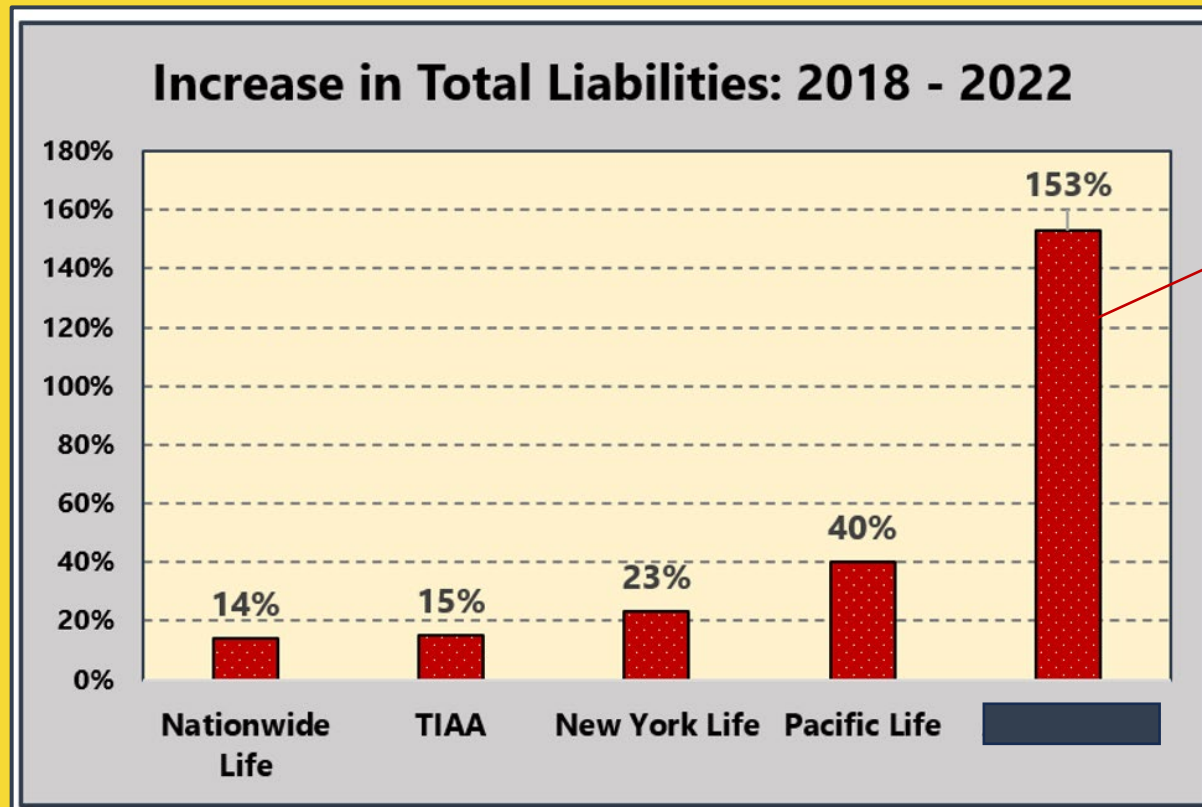
Some might see rapid growth as a positive trend, but life insurers must balance premium growth with surplus adequacy. With premiums come immediate and heavy initial expenses. Surplus must keep pace. *Carriers must grow no more than their financial core can support.* Prudent balance is essential.



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Rate of Growth in Total Liabilities from 2018 Through 2022

Note one carrier's total liabilities surged across the four-year period, especially relative to its peers.



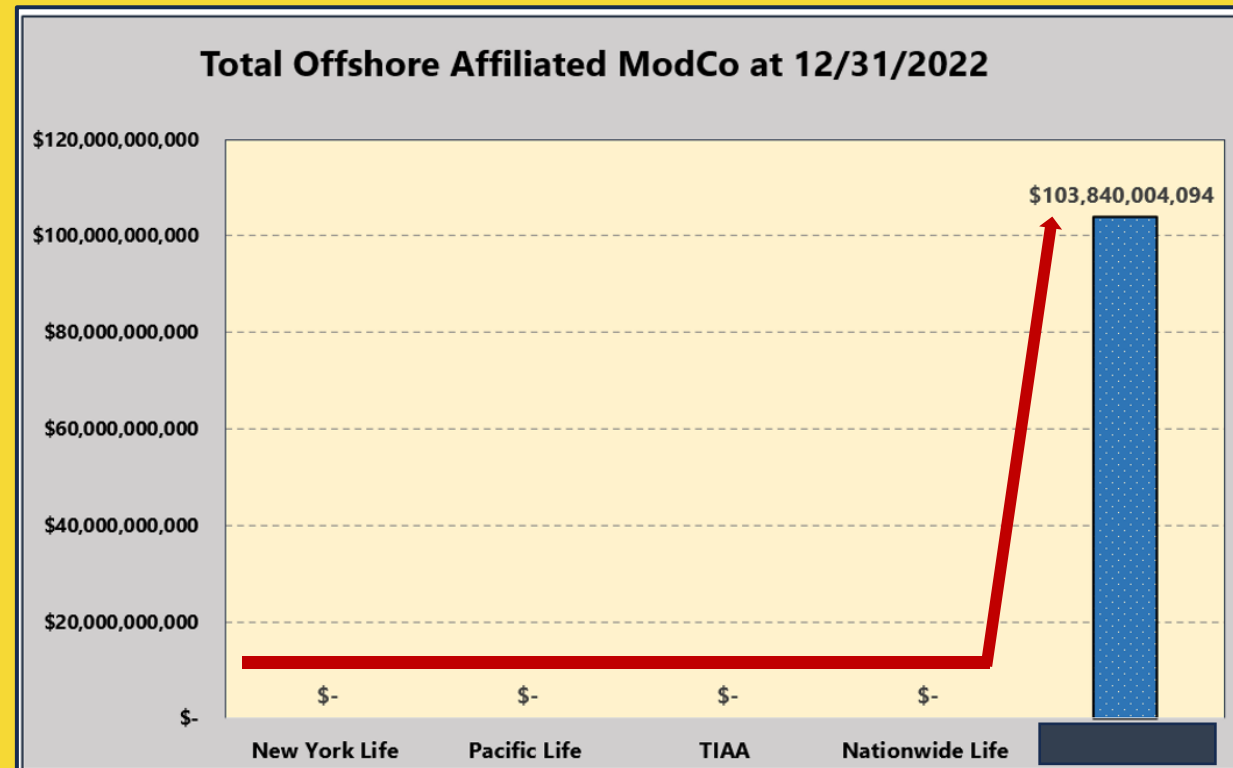
This example is a PE co and much of the growth you see is NOT traditional sales but gobbling up blocks of business (M&A)... without their affiliated offshore reinsurance, the bar would be roughly twice as high.

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Cookin' their required capital with Offshore Affiliates at 12/31/2022

Such sudden high growth in liabilities and riskier assets should push their Required Capital & MINIMUM SURPLUS HIGHER. Why doesn't it?

In a private analysis I performed with an actuary, we determined that X Co.'s surplus as of 2022 would be required to be at least \$8Bn: orders of magnitude higher than current surplus of \$2Bn.



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Statement of the 2023 Advisory Council on Employee Welfare and Pension Benefit Plans to the U.S. Department of Labor Regarding Interpretive Bulletin 95-1

Elements of IB 95-1 Focused on in Today's Webinar:

1. Ownership Structure.
2. Increase in non-traditional/risky investments.
3. Non-traditional liabilities.
4. Reinsurance arrangements.
5. Determine if sufficient funds to make good on financial promises.
6. Consider the use of separate accounts.
7. State guaranty association protections.

ERISA Fiduciaries Have a Duty to Investigate

Text Excerpt from IB (95)-1:

“The availability of additional protection through **state guaranty associations** and the extent of their guarantees.

Unless they possess the necessary expertise to evaluate such factors, fiduciaries would need to obtain the advice of a qualified, independent expert.

A fiduciary may conclude, after conducting an appropriate search, that more than one annuity provider is able to offer the safest annuity available.”

Source: <https://www.law.cornell.edu/cfr/text/29/2509.95-1>

State Guaranty Funds Do NOT Provide Full Immunization From Counterparty Risk

“**Guaranty association coverage** is determined at the time, if ever, that the insurance company that issued the policy becomes insolvent and ordered liquidated. Under current CHLIGA law annuity coverage is limited to 80% of the value of the annuity, up to \$250,000.”

- **California Life and Health Insurance Guarantee Association, in direct correspondence with Mark Chamberlain, 4/14/2022**

ARC investigates and educates about counterparty risks

ARC's 10 Risk Factor Process

Includes *Counterparty Risks*

- Individual Carriers Relative TSR Scores
- Segment by Corporate Ownership/Philosophy

Includes *State Guaranty Fund Risks*

- Vary By State
- Pooled vs. Allocated (Segregated)
- History of Receivership Restrictions



Fiduciary Legal Versus Stewardship Best Practices

Fiduciary

- Has evolved into meaning minimizing Sponsor Fiduciary Risk
- Legal Standard/Precedents

Stewardship

- Concern for consumer outcomes
- Compassion

**"Stewardship is your passion and discipline to protect the long-term interests of those you serve."
Don Trone, CEO of 3ethos & the Center for Board Certified Fiduciaries**

Don Trone, "‘Fiduciary’ Should No Longer Be the Cornerstone of Our Profession", 401(k) Specialist
<https://401kspecialistmag.com/fiduciary-should-no-longer-be-the-cornerstone-of-our-profession/>

Call to Action

- www.Annuityresearch.com
- www.TheTSRratio.com

Sources:

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