

## Comments of the Center for Economic Justice

### 11/16/2015 Draft Unclaimed Life Insurance and Annuities Model Act

December 17, 2015

The Center for Economic Justice offers the following comments on the draft Model Act. Many of our comments reference previously-submitted comments, which are attached. We provide our comments by key issue.

#### “Retroactive Application”

CEJ objects to the application of the model’s requirements to all in-force and future policies, contracts and retained asset accounts as “retroactive application.” The model specifies reasonable claim settlement practices – specifically, identification of and notification to beneficiaries – for the policies, contracts and retained asset accounts. CEJ urges regulators and policymakers to develop model legislation and enact model legislation which requires application of the due diligence requirements of the model to all in-force and future policies, contracts and retained asset account and to older policies, contracts and retained asset accounts no longer in-force but for which no claim has been paid and no explicit cancellation has been made.

The failure to require “retroactive application” fundamentally defeats the purpose of this consumer protection exercise because the model’s requirements would not apply to the overwhelming majority of policies, contracts and retained asset accounts for decades to come. This can surely not be the intent of any regulator or policymaker given the evidence of insurers’ failure to pay billions of dollars of claims due to beneficiaries’ lack of knowledge of the existence of the policies, contracts and retained asset accounts.

Arguments by certain industry stakeholders that “retroactive application” violates the insurance contract are incorrect and should be vigorously fought by all insurance regulators, the NAIC and state legislatures. If successful, the industry “contract violation” argument would seriously weaken regulators ability to ensure fair treatment of consumers – not only for life

insurance benefits, but for other lines of insurance because such an argument challenges regulators' ability to identify and stop unfair claims settlement practices.

Professor Joe Belth, who has studied, taught and written about life insurance issues for over 40 years, has written the following regarding Kemper's recent lawsuit against the Illinois State Treasure for pursuing an unclaimed benefits audit identical to those conducted for numerous other insurers.

First, the insuring agreement in a life insurance policy usually says the company pays the death benefit when the company receives proof of the insured's death. For example, the key sentence in United's sample policy says "Payment will be made after we receive proof of the insured's death, subject to the terms of this policy." Interestingly, there is often no mention of the filing of a death claim, suggesting that the company could obtain the proof of death on its own volition. It should be recognized that it may be unrealistic to require a beneficiary, who may be unaware of the existence of the insurance, to notify the company of the insured's death. I think it is wrong to say the beneficiary's ignorance frees the company from responsibility.

Second, I have long argued that companies should be required to mail a report at least once a year to every policyholder irrespective of whether a premium payment is due. The mailing should be made in such way that the postal service will notify the company of a change of address when it forwards mail to a new address, and will return mail that was undeliverable because no forwarding address is on file. Such information would alert the company in a timely manner each year to policyholders with whom the company has lost contact. It would also alert the company to insureds who might be deceased. To my knowledge, no state insurance law or regulation has ever required life insurance companies to mail annual reports to policyholders.

Third, what brought unclaimed property held by life insurance companies to national attention was the demutualization wave beginning in the early 1990s. To complete a demutualization, a mutual company must contact its policyholders to ask for their

approval of the demutualization plan, and later must send them cash and/or stock to which they are entitled. Some demutualizing companies received a deluge of undelivered mail, thus showing they had huge numbers of lost policyholders. It is ironic that the problem initially was ignored by state insurance regulators. Instead, the problem was addressed by state treasurers. They have a vested interest in obtaining unclaimed property, most of which never reaches the rightful owners and therefore remains forever with the states.<sup>1</sup>

CEJ adds that failure to require uniform “retroactive application” across all states and insurers will lead to disparate treatment of consumers whereby policy beneficiaries of some insurers in some states would receive the consumer protections of the model, while policy beneficiaries of other consumers in other states would not. This is an illogical and profoundly anti-consumer outcome

#### No Options for “Retroactive Application”

Section 8 of the draft model act offers 3 options for applicability: “retroactive,” “prospective,” and “asymmetric.” We strongly urge the NAIC to specify only the “retroactive application” and not offer these options to the states. We recognize that some NAIC members support the “prospective” and “asymmetric” applications, but the majority of NAIC members support the “retroactive” application. More important, inviting states to select among radically different consumer protection regimes will lead to hugely increased difficulty in regulatory oversight and enforcement and to disparate treatment across consumers.

It makes no sense for two beneficiaries who live in the same state, but whose policies were issued in other states to be treated differently in terms of their insurers’ efforts to locate beneficiaries. It makes no sense for two beneficiaries who live in different states, but whose policies were issued by the same insurer in the same state or whose policies were issued by different insurers in the same state to be treated differently. Yet, offering application options 2 and 3 will result in precisely that lack of consumer protection.

---

<sup>1</sup> <http://www.josephmbelth.com/>

Adopting a model with these three options will surely lead to regulatory arbitrage as insurers will be incentivized to move from states with reasonable consumer protection to states with inadequate consumer protection.

#### Conflicting Definitions of Records and Recordkeeping Services

In our November 11, 2015 comments, attached, CEJ discussed the conflicts between the definitions of Records and Recordkeeping Services. We refer you to those comments and will not repeat them here, other than our recommendation:

Based on the above, CEJ recommends deletion of the following:

Part (2)(e) of the definition of Policy:

~~(e) Any policy issued to a group master policyholder for which the insurer does not provide recordkeeping services.~~

Part (2) of the definition of Records:

~~(2) "Records" does not include such information maintained by a group life insurance policyholder or contract owner.~~

In addition, CEJ asks that references to group policies or contracts be made consistent. One reference is to "group master" policy and another is to "group life insurance" policy.

#### No Exemption for Credit Life Insurance

In our November 4, 2015 and November 12, 2015 comments, we presented evidence demonstrating why credit life insurance should not be exempt from the requirements of the model. Again, we will not repeat our comments, which are attached, but present this summary:

Credit life insurers and lenders have argued for excluding credit life insurance from the requirements of the Model because, they claim, lenders are beneficiaries of credit life policies, have an interest in pursuing claims and, consequently, this interest ensures all credit life claims

will be pursued and paid. Credit insurers and lenders have offered no empirical evidence to support their logical argument. They have provided no evidence that a credit life insurer did a DMF match and found nothing.

In response to the credit life insurer/lender argument, CEJ has pointed out that in many circumstances – financed single premium (SP) credit life insurance through a lender with a captive reinsurance arrangement – the lender has a financial interest in the claim not being paid. CEJ has not argued that this is an intentional practice of any credit life insurer. Rather, we have asked for empirical evidence to support the industry argument. In the absence of such empirical evidence, CEJ’s analysis shows that the credit life insurer/lender logical argument is flawed and, consequently, is not reliable to support exclusion of credit life insurance from the model.

#### No Exemption for Health Insurance Coverages

The model includes, for consideration, an exemption for “any health insurance coverage, including, but not limited to, disability and long term care arising from the reported death of a person insured under such coverage.” While it is unclear what type of life insurance policy, annuity contract or retained asset account is implicated in this exemption, there has been growth in combination/hybrid life-long term care and annuity-long term care products. Beneficiaries of such products should not be denied a death benefit simply because their life insurance or annuity also included some potential long term care benefit.

#### Add Requirement for Insurer Reporting of Activity and Outcomes Resulting from the Model

CEJ strongly endorses the proposal by the Center for Insurance Research to add four data elements to the Statutory Annual Statement regarding activity and outcomes resulting from the requirements of the model act. These extremely modest data reporting requirements are reasonable and necessary for regulators, policymakers and stakeholders to understand the scope of activities and benefits, if any, from compliance with the Model’s requirements. The data would also inform and allow the setting of objective measures for regulator evaluation of “hardship” entreaties by insurers.