

Memorandum

To: Nick Gerhart, Chair
Life Insurance and Annuities (A) Committee

From: Tomasz Serbinowski, Chair
Contingent Deferred Annuity Subgroup of the Life Actuarial (A) Task Force

Date: June 2016

Subject: Revisions to the Standard Nonforfeiture Law for Individual Deferred Annuities (#805)

During the Fall 2013 National Meeting, Contingent Deferred Annuities (A) Working Group gave Life Actuarial Task Force (LATF) a charge to recommend a manner to specifically exempt Contingent Deferred Annuities (CDAs) from the Standard Nonforfeiture Law for Individual Deferred Annuities (#805) (the Law).

During the Summer 2015 National Meeting, LATF adopted a recommendation for the Law change (attached) that achieves two objectives: exempts CDAs from the current nonforfeiture requirements, and preserves commissioners authority to prescribe CDA specific nonforfeiture requirements in the future. The recommendation exempts CDAs from the sections of the Law that prescribe computational methods and minimum nonforfeiture values for deferred annuities, but would allow the commissioner to specify separate nonforfeiture standards, if needed, at a later time.

LATF received multiple comments to the effect that the proposal is likely to result in a non-uniform treatment of CDAs across the country, with individual states establishing different nonforfeiture standards for CDAs. Task Force acknowledges that such undesirable outcome is possible, but does not necessarily believe it to be likely. Task Force also notes that many NAIC model laws grant commissioners rulemaking authority, and that this has never been viewed as contrary to the NAIC's stated mission of encouraging uniformity.

LATF would like to stress, that the decision to include the new Subsection 2C granting commissioner authority to prescribe nonforfeiture benefits appropriate for CDAs, was not based on any technical actuarial considerations. The Task Force has not examined the issue of whether the CDAs risk and benefit structure merits any nonforfeiture benefits. At the same time, LATF is unaware of any clear demonstration that CDAs do not merit such benefits.

Given numerous comments by the NAIC funded consumer representatives at the CDA (A) WG, and the comments of the American Academy of Actuaries Nonforfeiture Modernization Working Group, an exemption effectively closing the door on any future nonforfeiture discussions by taking away commissioners' authority to require any nonforfeiture benefits did not seem appropriate.

Therefore, LATF opted to offer a recommendation that preserves commissioner's authority over any nonforfeiture requirements that may be appropriate for the CDAs while at the same time giving the commissioner flexibility and discretion to structure any potential nonforfeiture benefits in a way that fit the unique features of these products.

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Proposed revision to the Standard Nonforfeiture Law for Individual Deferred Annuities (Model 805)

Section 2. Applicability

- A. This Act shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.
- B. Sections 3 through 8 shall not apply to contingent deferred annuities.
- C. Notwithstanding Subsection B, the commissioner shall have the authority to prescribe by regulation nonforfeiture benefits for contingent deferred annuities that are, in the opinion of the commissioner, equitable to the policyholder, appropriate given the risks insured, and to the extent possible consistent with general intent of this law.

Drafting Note: It is expected that any regulation prescribing specific nonforfeiture requirements for the CDAs and promulgated by the commissioner under Subsection C above would apply only to the CDA contracts issued subsequent to the effective date of such regulation.