Does SNFLIDA apply to CDAs?

Short answer is “Yes”.

Certain products are exempt from the law but many CDAs would not fit any of the existing exemptions.

- Certain group retirement products are exempted
- Variable annuities are exempted (but as has been made clear by the industry’s testimony, CDAs are fixed annuities)
- Annuities in the payout phase are exempted (one would probably assume that the payout phase starts when the fund goes to zero rather than when the systematic withdrawals are initiated)
- Investment annuities (undefined term)

Is it clear how to apply SNFLIDA to CDAs?

Short answer is “No”.

The nonforfeiture law provisions vary depending whether a contract provides cash value benefits. Most deferred annuities do. Cash values are required if a contract provides a lump-sum settlement at maturity. CDAs do not provide any lump-sum settlements (nor any death benefits) and hence are not required to provide cash values. They might, however, be required to offer paid-up nonforfeiture benefits.

The nonforfeiture law has two separate tests:

- “retrospective” (based on the premiums paid); and
- “prospective” (based on the maturity value)

The retrospective test requires the nonforfeiture value to be not less than 87.5% of premiums/considerations accumulated at a prescribed interest rate.

- If premiums/considerations are deemed to mean CDA’s fees, the minimum nonforfeiture value would be equal to the fees accumulated at a nonforfeiture rate (this rate is tied to a 5 year treasury rate)

The prospective test requires the nonforfeiture value to be not less than the maturity value discounted for interest and mortality.

- Maturity value may be difficult to define. It could be deemed to be the present value of the expected payments once the fund value goes to zero. To calculate this present value, a lot of assumptions would have to be made (the fund performance, mortality, and interest rate). It is possible that this present value could be zero or close to zero.
- Discount rate may be difficult to define – it is supposed to be a rate specified in the contract for accumulation of the considerations. Underlying funds do not have a guaranteed accumulation rate. CDA’s benefit base may have a roll up rate. Two possible choices would be either discounting at 0% or the roll up rate.
- The commencement date for the paid-up benefit would need to be defined – most likely would have to be a fixed date. I believe that some states require this paid up annuity to be an immediate annuity

Conclusion

Because many (possibly even a majority) of the CDAs fall within the scope of the SNFLIDA, and because the application of the law is arguably unclear, either an exemption from the law or special interpretation would be required.