September 5, 2014

Via E-Mail

Commissioner Ted Nickel, Chair
Contingent Deferred Annuities (A)
Working Group

Re: Exposure of draft Guidelines for the Financial Solvency and Market Conduct Regulation of Insurers who offer Contingent Deferred Annuities (the “CDA Guidelines”).

Dear Commissioner Nickel:

On behalf of the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA), I am submitting this comment letter on the draft CDA Guidelines.

In Section III.B. of the draft Guidelines, there is a discussion of the NAIC Life and Health Insurance Guaranty Association Model Act (“NAIC GA Model Act”). In particular, that discussion includes the following statements:

“The working group found that the issue of guaranty association coverage would likely vary from state to state. On one hand, a CDA is sold by life companies and would seem to be covered under guaranty funds like other life products. On the other hand, some guaranty funds exclude coverage for products that involve the transfer of investment risks or guarantees of employer retirement plans. CDAs would arguably fit into these categories. Each state should review its guaranty fund coverage laws to determine whether CDAs are covered by those funds”.

The above quoted language seems to suggest that there is significant variation among the states with respect to the coverage of contingent deferred annuities (“CDAs”). NOLHGA is not aware of any basis for reaching such a conclusion. To the contrary, most state guaranty association laws have been updated to be substantially consistent with the NAIC GA Model Act. Based on our experience, we would expect that same level of substantial consistency to exist among the states with respect to the coverage of CDAs. Moreover, in July 2012 NOLHGA provided its member guaranty associations with a comprehensive briefing on its findings regarding the
coverage of CDAs. That briefing was similar to the briefing that NOLHGA provided the CDA Working Group on November 29, 2012. Since that time we have not received any indication from our members that they disagree with NOLHGA’s analysis or that there will be a significant split among the states with respect to the coverage of CDAs. While NOLHGA agrees that each guaranty association will need to decide for itself the question of coverage for CDAs under its own governing law in effect at the time an issuer of a CDA becomes insolvent and is placed under an order of liquidation (just as coverage decisions are made for all insurance products), we do not believe that it would be appropriate to conclude that the coverage of CDAs will vary substantially from state to state.

We also would note that the Receivership & Insolvency (E) Task Force (RITF), during a teleconference held yesterday, approved a memorandum on guaranty association coverage in response to its charge regarding CDAs (copy of memorandum enclosed). The findings and conclusions in the RITF memorandum are consistent with NOLHGA's analysis presented to the Contingent Deferred Annuities (A) Working Group in 2012 and to the RITF at the recent Louisville NAIC meeting.

Thank you for providing us with the opportunity to submit comments. We would be happy to answer any questions you may have.

Very truly yours,

William P. O’Sullivan
Sr. Vice President & General Counsel
To: Commissioner Julie Mix McPeak (TN), Chair, Life Insurance and Annuities (A) Committee and Commissioner Ted Nickel (WI), Chair, Contingent Deferred Annuity (A) Working Group

From: Jim Mumford (IA), Chair, Receivership & Insolvency (E) Task Force

Date: September 4, 2014

Re: Response to 2014 Charge Regarding Contingent Deferred Annuities

The Receivership & Insolvency (E) Task Force (RITF) was requested to provide input regarding the definition of contingent deferred annuities (CDAs) developed by the Contingent Deferred Annuities (A) Working Group and adopted by the Life Insurance and Annuities (A) Committee requiring changes to the Life and Health Insurance Guaranty Association Model Act ("Model Act").

After a presentation and input by the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) representatives, phone conversations with some RITF members and NOLHGA experts, and discussion by the members of the RITF and interested parties at an open meeting, it is the RITF findings that CDAs would fall within the definition of "annuity" in the Model Act and be subject to the same provisions for coverage, group and individual, and subject to the same limitations and broad exclusions, as other annuities. This is based on the assumption that CDAs are considered annuities under state law and the issuer is a member insurer under state guaranty association law.

Subject to the fact that individual state guaranty associations have the ultimate decision of what contracts are covered, RITF believes that, in those states that meet the above assumptions, CDAs should be covered annuities, both in the pre-payout phase and the pay-out phase, subject to all of the other statutory limits and exclusions that apply generally to annuities. This is based on the fact that there is no reason that CDAs defined as annuities by relevant state law would fall outside the scope of "annuities" described as covered in the Model Act, and CDAs would not be subject to any Model Act provision that would specifically exclude CDAs from coverage. The fact that most states have guaranty association laws substantially similar to the Model Act, and the fact that NOLHGA establishes task forces for multi-state insolvencies comprised of interested guaranty association representatives that make recommendations concerning guaranty association coverage of contracts and policies issued by an insolvent insurer, lead to the conclusion that CDAs would be treated in most states as contracts coming within the scope of annuities covered by guaranty associations under the Model Act.

If you have any questions please contact NAIC staff, Jane Koenigsman, jkoenigsman@naic.org.