

ASSOCIATION OF ALABAMA LIFE INSURANCE COMPANIES

PO Box 56

Montgomery, AL 36101-0056

June 30, 2016

Jolie H. Matthews
Senior Health and Life Policy Counsel
National Association of Insurance Commissioners (NAIC)
Executive Headquarters,
Hall of the States Building, Suite 700
444 North Capitol Street, N.W.
Washington, DC 20001-1512

Via: jmatthews@naic.org

Re: Comments on June 3, 2016 Draft of Unclaimed Life Insurance and Annuities Model Act

Dear Jolie:

This letter is submitted on behalf of the Association of Alabama Life Insurance Companies ("AALIC"), and as a comment on the June 3, 2016 exposed draft of the Unclaimed Life Insurance and Annuities Model Act. Please find attached a copy of the letter/comment that AALIC submitted to the Drafting Subgroup on June 3, 2015. In that letter, AALIC recommended some meaningful legal and practical suggestions for the Subgroup to consider as it developed the Model. In this letter, we would like to restate the original comments that AALIC submitted last year, and place a new emphasis on our original recommendations.

The primary recommendation that AALIC made in its letter of last year, and that I and others made consistently over the past year on the Subgroup conference calls, is that any Model should be prospective in application. We stated in our letter, and we and others stated consistently over the past year, that the adoption of a Model that is retroactive in application, which severely alters and impairs existing life insurance contracts, involves serious federal and state constitutional and legal problems. The NAIC Subgroup is very aware of these legal

arguments, and it is aware of the litigation that is currently pending in the various states. In addition to the warnings of AALIC and other interested parties throughout the past year, the NAIC counsel conducted its own analysis of the legal problems with retroactive application, and it provided a legal memorandum to the Subgroup raising these problems.

Throughout the past year the Subgroup included a prospective option, and an asymmetric option, in addition to a retroactive option in its drafting note to Section 4 of the Model. However, at the last minute, and prior to its final vote on the exposed draft, the Subgroup elected to remove the prospective and asymmetric options, and to only retain the retroactive option in the Model.

Hence, the Subgroup and the NAIC have actual knowledge of the federal and state legal problems, yet the approach of the Subgroup as set forth in the exposed draft is to recommend to the NAIC membership that it proceed with adoption of a Model which has dubious legal application among the states.

This critical deficiency in the draft Model points directly to the second key comment that AALIC and others have made in writing and on the conference calls over the past year. The Model will lack the key element of “uniformity.” According to the NAIC website, “In order to be considered for development and adoption, an NAIC model law must involve a national standard and/or require uniformity among all the states.” The Model that the Subgroup is offering to the NAIC is the opposite of a national standard and it will not achieve uniformity among all the states.

The Subgroup has actual knowledge of this fact and it has been discussed at length on the numerous conference calls. The majority of the states that have enacted some version of the NCOIL Unclaimed Life Insurance Benefits Model Act have done so on a prospective basis. Thus, the majority of the existing laws that have been enacted are prospective and not retroactive in application.

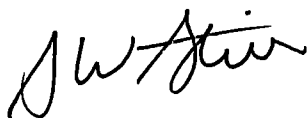
Further, in some of the states that have enacted retroactive versions of the NCOIL Model, lawsuits have been filed challenging those laws. One of the most embarrassing situations involved the legal challenge to the NCOIL law that was enacted in Kentucky. Although Kentucky led the charge in being one of the first states to enact the retroactive law, the statute was subsequently struck down by the state courts because the retroactive application violated state law.

The bottom line here is that if the NAIC were to adopt the current draft Model that has been exposed, then it will not achieve “a national standard”, nor will it achieve “uniformity among the states.” If the current draft were to be adopted by the NAIC, then it will guarantee future litigation among the states, and a continuation of the patchwork or hodgepodge of state laws that address unclaimed life insurance benefits.

One final comment is that the exposed draft continues to ignore the differences between the largest life insurers and the smaller ones. The draft would impose a “one size fits all” edict on all life insurers regardless of size. The draft that has been exposed will impose undue and totally unnecessary hardship on the hundreds of life insurers who simply don’t have the means to comply the way the very largest companies do. This point has also been raised consistently on the Subgroup calls, and, as we said in our letter of June 3, 2015, “Even the Dodd-Frank Law made a distinction between regulatory requirements for Significantly Important Financial Institutions versus smaller institutions. A similar rationale should apply here to smaller life companies.”

In conclusion, the Association of Alabama Life Insurance Companies would strongly urge the NAIC and the Drafting Subgroup, at a minimum, to amend the current draft of the Model Act to restore all three options, namely prospective, asymmetric, and retroactive, to Section 4 of the Model Act.

Respectfully submitted on behalf of the Association of Alabama Life Insurance Companies by,



Stephen W. Still
Shareholder
Maynard Cooper & Gale PC
1901 Sixth Avenue North
2400 Regions Harbert Plaza
Birmingham, AL 35203-2618
Tel. 205-254-1097
Email. sstill@maynardcooper.com

cc: Commissioner Jim Ridling