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Via email to [jmatthews@naic.org](mailto:jmatthews@naic.org)

Lisbeth Landsman-Smith, California Insurance Department, Chair  
NAIC Unclaimed Benefits Model Drafting (A) Subgroup  
c/o Jolie Matthews, Senior Health Policy & Legislative Analyst & Counsel

RE: Draft NAIC *Unclaimed Life Insurance and Annuities Model Act*

Dear Chairwoman Landsman-Smith,

The ACLI comments below on the captioned, draft model act, by section. Proposed textual changes are in bolded strike-through deletions or underlined additions, with commentary following each proposed change.

**Section 3. Definitions**

For purposes of this Act:...

- D. "Death master file match" means a search of the DMF that results in a match of the social security number or name and date of birth, ~~in accordance with the requirements of Section 5A(4),~~ of an insured.

*ACLI Comment:* The reference to a subsection of the model act in the definition should be deleted for both procedural and substantive reasons. Procedurally, or stylistically, it is bad legislative drafting to debase a definitional element by reference to a substantive requirement. By doing so, it diminishes the clarity of the definition by compelling analysis of the referenced requirement, in turn making the definition and requirement ambiguously circular. Here, the reference makes ambiguous what constitutes a "Death master file match." Pursuant to the relevant, modern laws of 22 states and also the NCOIL *Model Unclaimed Life Insurance Act*, a Death Master File Match is a match of a social security number or name and date of birth. But the draft NAIC model undermines the clarity of this national standard by qualifying that the match must be "in accordance with the requirements of Section 5A(4)." This subsection refers to the requirement that a company must use the Death Master File with "reasonable procedures that account for" five categories of personal identity ambiguities and errors. These procedural requirements are commonly referred to as "fuzzy matching" requirements. The NAIC should not build fuzzy matching requirements into the definition of "Death Master File Match" because it destroys the certainty of what constitutes a Death Master File Match and the ability of a company to verify such a match. Destructively, it invites examiners and unclaimed property auditors to second-guess reasonable compliance efforts by an insurance company. This objectionable phrase is a substantive deviation from the guidance of relevant, modern laws of 22 states and the standards of the NCOIL *Model Unclaimed Life Insurance Benefits Act*. Should the NAIC draft model sustain this deviation, it will undermine insurance standards and national uniformity to the detriment of the NAIC as the national insurance standard-setting organization.

### Section 3. Definitions

For purposes of this Act...

F. “Knowledge of death” means:

- (1) ...;
- (2) A death master file match validated through documented reasonable and good faith efforts ~~consistent with Section 5A of this Act~~; or

*ACLI Comment:* Again, the reference to a subsection of the model act in a definition should be deleted for both procedural and substantive reasons. Procedurally, or stylistically, it is bad legislative drafting to debase a definitional element by reference to a substantive requirement. By doing so, it diminishes the clarity of the definition by compelling analysis of the referenced requirement, in turn making the definition and requirement ambiguously circular. Here, the reference makes ambiguous what constitutes “knowledge of death” – a key term critical for determining an insurance company’s duty directly to its insured’s beneficiaries or, alternatively, whether the policy benefits are abandoned for eventual escheat to government. Here, the definitional reference is to a substantive section of the model act requiring elaborate insurance company duties detailed in four sub-provisions and seven sub-sub-provisions. The sub-provisions include the “fuzzy matching” requirements mentioned above, which are specifically included to create reasonable procedures on testing ambiguous data relating to personal identity. The inclusion of the substantive sectional reference in the definition destroys the certainty of the definition of what constitutes “knowledge of death.” Unless the reference is deleted, the definition invites examiners and unclaimed property auditors to second-guess reasonable compliance efforts by an insurance company – and particularly risks unclaimed property auditor demands for determinations of abandonment to the disadvantage of insurance policy owners and beneficiaries. The ambiguities in this definition of the NAIC draft model are not found in the relevant modern laws of 22 states or the standards of the NCOIL Model. Should the NAIC model sustain these ambiguities, they will undermine insurance standards and national uniformity to the detriment of the NAIC as the national insurance standard-setting organization.

### Section 4. Applicability and Scope

- A. The requirements of this Act shall apply to all in-force and future policies, annuity contracts and retained asset accounts as of the effective date of this Act ~~and policies that have lapsed up [sic] eighteen (18) months prior to the effective date of this Act.~~

*ACLI Comment:* The comment accompanying this provision advises that “Subsection A above provides for a retroactive application of the requirements of this Act.” This is a good starting reason to delete it because (a) it will invite judicial challenge as violating federal constitutional principles disallowing a state from passing any law impairing the obligation of contracts; (b) there is already judicial precedent invalidating a modern law addressing insurance company use of the death master file due to retroactive application; and (c) there is currently litigation challenging another state’s law premised on retroactive application. A further reason to delete the offensive phrase is because it is absurd. The literal meaning of the phrase extends the requirements of this Act to policies that “have lapsed up [sic] eighteen (18) month prior to the effective date...” – i.e., NOT within 18 months prior to the effective date of the act but literally *back to the first life insurance policy issued by every insurance company in the United States*. The ACLI recommends that the NAIC avoid embedding a litigation magnet in its model act by deleting this unreasonable retroactive application. This objectionable phrase is a substantive deviation from the guidance of relevant, modern laws of 22 states and the standards of the

NCOIL Model. Should the NAIC model sustain this deviation, it will undermine insurance standards and national uniformity to the detriment of the NAIC as the national insurance standard-setting organization.

**Section 5. Insurer Conduct**

- A. An insurer shall comply with the following requirements for performing a comparison of its policies, annuity contracts and retained asset accounts against the death master file:...
- (2) Thereafter, an insurer shall compare all in-force policies, annuity contracts and retained asset accounts and policies that have lapsed within eighteen (18) months prior to the effective date of this Act in its records against any updates to the death master file on at least a semi-annual basis to identify potential matches of its insureds using the search criteria in Paragraph (4). ~~If the insurer conducts death master file searches for any of its other lines of insurance business more frequently than semiannually, the insurer shall conduct a death master file search of all lines of business with the same frequency.~~

*ACLI Comment:* The names of some contract owners, such as those owning annuities contracts, are compared against the Death Master File more frequently than, e.g., names of life insurance policy owners as part of company antifraud procedures. In an annuity that provides for life-time payments, the company pays monthly benefits for the life of the annuitant. It is an obligation of the relatives or representatives of the annuitant to inform the insurance company when the annuitant has died. Whether through fraudulent intent, negligence or ignorance, the relatives sometimes fail to notify the insurer in a timely manner. Unknowing, the insurer will continue to pay benefits for months and years beyond the death of the annuitant. This will, in turn, eventually result in a demand for return of overpaid monies, including possible collection actions if the overpayment amount warrants collection. In contrast, the life insurance policies and retained asset accounts do not pay out until proof of death is presented and a claim is made for proceeds. The insurance company is *not* in a position of having paid out money that it should *not* have been required to pay when it overpays an annuity. Therefore, annuity contracts are higher risk and, in response to certain states' antifraud requirements, insurers have implemented Death Master File comparisons on a more-frequent basis so as to avoid collection of large sums of money from the family of the decedent.<sup>1</sup> These considerations recommend Death Master File comparisons occurring semi-annually on the *required* set of contracts, policies and accounts, while permitting (or, rather, not discouraging) insurers to search more often on any contracts, policies and accounts for which they would think additional Death Master File testing appropriate. Unclaimed property reporting is required only once per year. Beneficiaries will still be contacted in a reasonable time. The objectionable sentence otherwise risks undermining antifraud efforts by creating an incentive for a company to lessen the frequency of Death Master File comparisons on high-risk contracts.

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<sup>1</sup> The NAIC has historically identified annuities as an area ripe for fraud. The NAIC *Fraud Prevention Model Act*, for example, specifically includes a description of annuity fraud in its definition of "fraudulent activity" and imposes a duty on insurers to detect such fraud by whatever means are available to them, and to report it to the state Commissioner. The NAIC *Special Investigation Unit or Fraud Plan Model Act* also imposes duties on insurers to detect and report fraudulent activity, such as illicit annuity payments. Note, also, that generally a company is paying *someone* in a payout annuities situation but it trying to make sure it's the *right* person. This is not an issue of trying to save the company money when it is more frequently comparing its annuity contract owners with the Death Master File.

**Section 5. Insurer Conduct**

- A. An insurer shall comply with the following requirements for performing a comparison of its policies, annuity contracts and retained asset accounts against the death master file:...
- (4) In addition to accounting for exact matches of names, social security numbers and dates of birth, every insurer also shall conduct the comparisons required under this subsection following reasonable procedures that account for:
  - (a) ...;
  - (b) ...;
  - (c) ...;
  - (d) ...; ~~and~~
  - (e) ~~Common data entry errors that account for transposed numbers.~~

*ACLI Comment:* This addition to the requirements that a company has reasonable procedures to accomplish “fuzzy matching” undermines the ability of an insurance company to comply with a reasonable use of the Death Master File unreasonably inviting arbitrary and capricious Death Master File comparisons. Consider that, in subsection (d), a company must use reasonable procedures that account for “incomplete social security number(s)”. This subsection (d) bases the Death Master File comparison effort on the preliminary match of at least one number of the social security number. Compare, then, the current draft proposal (e) that a company account for “common data entry errors that account for transposed numbers.” This means that a company must test *for every possible permutation of nine-digit numbers* against every other datum indicating a possible candidate for a match. The staggering proposition might be expressed by a mathematical formula beginning with  $9^9 \times$  (name, date of birth, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, interchanged first and middle names, compound last names, maiden or married names, hyphenated names, blank spaces or apostrophes in last names, transpositions of month and date portion of the date of birth (this at least limited to a set of about 12 x 30 variations), and incomplete social security numbers (this limited by the certainty of at least one number)).

**Preservation of Opportunity to Advocate for Improvements to NAIC Model**

The ACLI provides these comments as our highest priority concerns. This draft model represents a paradigm shift for the operation of life insurance contracts and the responsibilities of insurance companies, policy owners and beneficiaries. The ACLI supports the use of Death Master File comparisons and related beneficiary outreach but encourages the NAIC to consider the new regulatory burdens represented by this model. Given the proposed new and additional burdens, the ACLI encourages the NAIC to align its model with NCOIL Model terms because they are the bases of laws enacted in over 20 states challenging uniform and efficient compliance efforts by life insurance companies. The ACLI will continue to advocate for uniform and common sense implementation of the new paradigm as this model advances to the NAIC Life Insurance & Annuities (A) Committee, as well as before NAIC committees addressing other elements of the new administration of unclaimed life insurance benefits. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Ford". The signature is stylized with a large initial "M" and a long horizontal stroke at the end.

The American Council of Life Insurers