Office of the Illinois State Treasurer
Michael W. Frerichs

July 5, 2016

Lisbeth Landsman-Smith, Chair
Unclaimed Benefits Model Drafting (A) Subgroup
c/o Jolie H. Matthews Senior Health and Life Policy Counsel
National Association of Insurance Commissioners
444 North Capitol Street, N.W.
Washington, DC 20001

VIA EMAIL ONLY to jmatthews@naic.org

Re: Comments – June 3, 2016 Draft of the Unclaimed Life Insurance and Annuities Act

Dear Chairperson Landsman-Smith:

Thank you for providing an opportunity to comment on the June 3, 2016 draft of the Unclaimed Life Insurance and Annuities Act. I believe that the work of the Drafting (A) Subgroup is important, and that the National Association of Insurance Commissioners (NAIC) should adopt model legislation concerning the unclaimed life insurance issue. I have a strong interest in this issue because as the Illinois State Treasurer I am the administrator of unclaimed property in Illinois, including unclaimed life insurance and annuities.

On May 31, 2016 the Illinois General Assembly passed HB4633, the Unclaimed Life Insurance Benefits Act as amended. This legislation was the result of negotiations after consultation with the life insurance industry, the Illinois Department of Insurance, and my office. Several issues of disagreement were specifically deferred until 2017 to give the NAIC time to finish their work on model legislation, including how to deal with lapsed policies and collecting and updating contact information for the beneficiaries of life insurance policies.

I support the overall work and direction of the Drafting (A) Subgroup. Your June 3, 2016 draft addresses a number of issues that previous model legislation from the National Conference of Insurance Legislators (NCOIL) omitted. For example, subsequent acquisition of policies by an insurer, requesting and updating contact and identity information for both the insured and beneficiaries, and handling lapsed policies are all covered in your draft while they are unaddressed by the 2011 and 2014 NCOIL drafts.

I do have specific areas of concern, however. Specifically, 1) the look-back period for lapsed policies, 2) the omission of "common nicknames" in the "reasonable procedures" for conducting comparisons, and 3) the inclusion of a "not cost effective" exemption.

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Lapsed Policies

The June 3, 2016 draft requires a Death Master File (DMF) comparison for "policies that have lapsed within eighteen (18) months prior to the effective date of this Act…" In contrast, the May 14, 2016 discussion draft contained bracketed language covering "lapsed policies that have not been compared against the death master file for eighteen (18) months following the lapse date of the applicable policy…"

I strongly believe that the language from the May 14 discussion draft is more appropriate. This language is similar to current law in New York. I understand industry concerns that examining lapsed policies would be burdensome. However, many lapsed policies have already been compared to the DMF through unclaimed property examinations of insurers, and would not have to be compared again. Further, although they are more expansive than necessary, the June 3, 2016 draft contains hardship provisions that should address these concerns.

Common Nicknames

The June 3, 2016 draft omits "common nicknames" from the list of things that insurers must use "reasonable procedures" to account for when performing DMF comparisons. However, the May 14 discussion draft included nicknames. Omitting a requirement to account for common nicknames would result in many false negatives that would harm consumers. I believe it is patently unfair to punish Elizabeth's beneficiaries because a policy was in the name of Betty or Liz or James' beneficiaries because his agent called him Jim.

Including nicknames is not an unreasonable provision. The 2014 NCOIL Model Act includes "common nicknames" in the equivalent section. The draft Revised Uniform Unclaimed Property Act (RUUPA) to be approved by the Uniform Law Commission in a matter of weeks specifically uses the 2014 NCOIL Model Act criteria as the default for determining a match. The Global Resolution Agreements entered into by insurers representing a majority of the market use common nicknames. Five state laws specifically mention nicknames (Idaho, Iowa, North Dakota, Rhode Island, and West Virginia) and another three use the broader requirement to account for "common variations" in data (Florida, Nevada, and New York). Illinois' legislation also specifically mentions nicknames as it based match criteria on the 2014 NCOIL language. I have been unable to find a state that provides detailed criteria for a DMF match, as the June 3, 2016 draft attempts to do, that does not include common nicknames.

The June 3, 2016 draft otherwise copies much of the language from the 2014 NCOIL Model Act. Match criteria is an area where both regulators and the industry should certainly prefer consistency. As insurers account for common nicknames in unclaimed property examinations and an increasing number of existing state DMF laws, I believe that, again, the May 14 discussion draft was correct in retaining the use of common nicknames.

Overbroad and Discriminatory Hardship Exemption

The June 3, 2016 draft contains provisions for insurer hardships in Section 5. I believe that including some hardship provisions is appropriate. The Illinois DMF legislation includes provisions allowing the Department of Insurance to limit DMF comparisons to electronic files or approve a timeline for conversion of insurer records upon a showing of hardship. This language is similar to provisions in the West Virginia DMF law.

However, the June 3, 2016 draft allows complete exemption from the DMF comparison in cases of "financial hardship to the insurer or not cost effective." I am quite concerned about the inclusion of "cost effective" as a reason for a complete exemption from the DMF comparison requirement. Some insurance industry representatives already try to misdirect and minimize the amounts at stake in order to claim that DMF matching is not "cost effective" – but, until the comparison is run we do not know how much is at stake and how many consumers are affected. Neither the insurer nor the regulator can know *a priori* how many policies will be matched and what the total value of those policies will be. Assuming that the amounts at stake are *de minimus* is what led to the problems this Model Act seeks to redress.

Further, allowing insurers to avoid DMF comparisons simply because the face value of the policies involved are relatively small is outright discrimination. As the NAIC is well aware, the problem of unclaimed life insurance benefits disproportionately involves industrial life insurance policies. These policies by definition have a small face value. They are disproportionately owned by the poor and by racial minorities. Allowing insurers to ignore these policies because it would cost them too much sends the message that the NAIC does not value these people or their beneficiaries. This loophole says that the poor simply are not worth enough to care about.

I understand that an insurer without electronic records may need more time to run a comparison. I do not understand why a life insurance company that sold small face value policies door-to-door or at the factory gate – intentionally targeting the working poor and racially minorities – should be excused from paying benefits for decades simply because the customers they targeted could not afford a larger policy.

I strongly encourage the NAIC to remove the "not cost effective" clause from Section 5 of the Model Act.

Conclusion

Again, I support the overall work and direction of the Drafting (A) Subgroup. I fully intend to hold up some parts of your draft as truly model language that Illinois and other states should use. But, I urge you to use language from your May 14 discussion draft concerning: 1) lapsed policies, 2) nicknames, and especially 3) hardship exemptions.

Thank you for your work on this vitally important issue.

Sincerely,

Michael Frerichs

Michael W. Frerichs
Illinois State Treasurer