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The Honorable Joseph Torti, III
Chairman – NAIC Financial Condition (E) Committee
Department of Business Regulation,
Insurance Division
1511 Pontiac Avenue, Bldg. 69--2
Cranston, RI 02920

Re Exposure draft of LATF response to Financial Condition ‘E’ Committee regarding Separate Accounts

Dear Superintendent Torti;

The ACLI¹ appreciates the opportunity to provide comments on the draft response from the Life Actuarial Task Force (LATF) to the Financial Condition “E” Committee’s questions about separate account products. We look forward to working with the various NAIC workgroups to address any issues, and to improve the consistent and efficient use of separate account products in order to allow these products to best meet consumer needs. It is important that any discussion of issues start with a common understanding of the facts and historical development.

The ACLI believes that separate accounts facilitate an important part of a company’s business strategy by providing an opportunity to offer value added products to individual consumers as well as to group or institutional clients. Separate accounts serve as a vehicle to allow for enhanced investment returns to consumers, and can also provide enhanced flexibility and transparency allowing for better risk management for both consumers and insurers. Without a separate account vehicle, companies may not be able to offer such products due to the misalignment of statutory and market asset values.

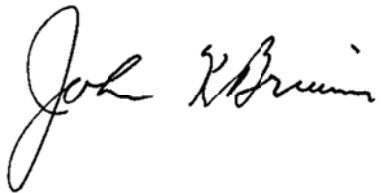
Since the advent of life and annuity products in separate accounts, the NAIC has adopted model laws and regulations in response to acknowledged regulator, customer and insurer needs and concerns. While currently all state insurance regulators permit the establishment of separate accounts in their jurisdictions, the adoption of many of these NAIC models has been limited and inconsistent. As a result, the regulation of separate account products can vary from state to state, impacting the availability of these valuable products and benefits to the public. The NAIC’s interest in separate accounts provides an opportunity to improve on the models and the consistency of their adoption across the states.

¹ The American Council of Life Insurers (“ACLI”) represents more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States. These member companies represent over 90% of the assets and premiums of the U.S. life insurance and annuity industry.

In the interest of promoting meaningful dialogue on the subjects raised by these questions, however, we urge revision of the initial draft response from LATF to the Financial Condition 'E' Committee to correct misstatements, and to balance statements in the draft that suggest that separate accounts have been abused, that requirements are being avoided, and that separate account products produce additional risk for the industry. The appendix to this letter contains detailed comments on areas where we believe that changes should be made.

The issues that have been raised in the exposure draft of LATF's comments are ones that could benefit from further discussion and investigation of the facts and of the attributes of separate account products in the various markets. In the short term, this letter is focused on providing our perspective on various statements in the draft that should be corrected before a final response is provide to the E Committee. We plan to continue to discuss the issues raised and to provide further thoughts on those issues in the future.

We look forward to working with the NAIC on these issues, and will be available to answer any questions on this letter.

A handwritten signature in black ink, appearing to read "John R. Brumby". The signature is written in a cursive style with a large initial "J" and "B".

APPENDIX

The following are comments on specific issues in the draft, organized by paragraph. ACLI comments are in bullets and bold.

I. Origin of Separate Accounts

Over 50 years ago, the Supreme Court told Variable Annuity Life Insurance Company that federal securities laws required them to set up separate accounts for investment-linked variable annuities. To enable this, the NAIC adopted model laws which were adopted by most of the states. The models were designed to allow the Securities and Exchange Commission (SEC) to regulate variable products (without significant conflict from state insurance regulators) and allow companies to set up separate accounts.

- **The VALIC decision by the Supreme Court determined that contracts whose value fluctuated according to the investment experience of selected assets violated the law if the contract was not registered under the Securities Act and the Investment Company Act**
- **The NAIC model laws on Separate Accounts were not developed in response to this decision, but were developed in advance in an effort by the NAIC for the states to retain complete authority over the life companies by demonstrating a robust regulatory framework.**

This framework allowed for the potential for greater returns for policyholders, but was accompanied by their assuming the risk of loss of principal. The mechanism to provide those returns incorporated unitized values, where the performance of assets (up or down) was directly passed on to policyholders (i.e., contract values were fully “variable” or “unit-linked”). In exchange for taking on the investment risk, policyholders received insulation of separate account assets supporting reserves (i.e., those assets were “walled-off” from general account creditors).

- **While the second statement is true, the use of unitized values arose not only because the contract values were variable but because the underlying accounts were commingled. That is, because the accounts held the assets of multiple policyholders, unitization was a convenient way to allocate the investment risk among those policyholders.**
- **The insulation was not in exchange for higher returns, but to recognize where the assets and associated returns were segregated and dedicated to the given contracts.**

The most basic application of separate accounts is seen in the pure deferred variable annuity (with none of the optional benefits and guarantees available today). In a simple deferred variable annuity, the customer allocates deposits among the array of investment sub-accounts of the separate account. The underlying assets in these sub-accounts may increase or decrease in value, but through daily “unit-linked” accounting, the investment experience belongs to the customers/annuitants in those sub-accounts. In this simple product design, there would be no need to establish general account reserves because the general account has made no guarantees and, therefore, has no liability. All product risks (i.e., the investment risks) are fully borne in the separate account. This is fair to both the general and separate account customers.

- **We note that the early separate accounts generally held the investment portfolio internally; the introduction of subaccounts did not emerge until the 1980’s.**

- **The second to last sentence states that all product risks are borne in the Separate Account. It would be clearer to say that for a unit linked product, the investment risk is borne by the policyholder while the pricing risk of mortality and expense fees are generally guaranteed by the company and are a general account risk.**
- **We also note that the Model Law does not require the use of unit linked accounting, nor limit products to be variable, but from the beginning has allowed for a variety of product types, including products with guarantees.**

Although it took many years, the application of separate accounts has dramatically expanded beyond this simple product design. For example, insurers have been able to create an array of “hybrid” products – products that overlay traditional insurance company guarantees (e.g., mortality, morbidity, etc.) to the separate account investment portfolio. An immediate (payout) variable annuity arguably represents the first such hybrid product. It relies on the separate account framework. And, in the classical immediate variable annuity (i.e., variable payout annuity), the contract holder bears all investment results (through adjustments to all future annuity payments) and the insurer (i.e., general account) bears all mortality risk/rewards. Therefore, the general account stands to lose (or win), based on the actual mortality experience.

- **Replace “Able to create” with ‘developed’.**
- **The first individual variable annuity products were immediate annuities and the explosion in deferred annuities came later. The earliest regulations seem to have focused on only the immediate product.**
- **In addition, consider that variable life products were developed in the late 1970’s which incorporated various guarantees.**

Approximately 25 years ago the SEC said it was concerned about credited interest variations forcing investment risk on the consumer (including market value adjustments and indexed products, although there were not many indexed products at the time). Market value adjustments made products violate the nonforfeiture law so the industry (represented by the American Council of Life Insurers—ACLI) desired that these products be placed in separate accounts to avoid the nonforfeiture requirements. In response, the NAIC developed a couple of models – the *Modified Guaranteed Annuity Regulation* (#255) and the *Modified Guaranteed Life Insurance Regulation*. Although few states adopted either, the accounting guidance excerpted from the regulations remains in appendices of the NAIC *Accounting Practices and Procedures Manual* (APPM). Even though interest rate guarantees are provided, both model regulations provide that separate account assets can be insulated from general account creditors “if and to the extent so provided in the contract.” Yet it is not clear regulators and/or industry ever intended to extend insulation to these products.

- **To our knowledge, the SEC never expressed a concern about investment risk being “forced” on consumers; rather, their concern was whether a product qualified for the “insurance exemption” from registration without regard to the merits of the product itself.**
- **This states that these products violate the SNFL-IDA, and that they were placed in separate accounts to avoid nonforfeiture requirements. This is incorrect, in that all variable annuities are exempt from the SNFL-IDA. Instead, the Model Variable Annuity Regulation (Model 250) and Modified Guaranteed Annuity Model (255), each contain nonforfeiture provisions which parallel the SNFL-IDA with appropriate modifications for the nature of the product design and guarantees. These regulations are not only appropriate, but the use of a separate account was formally blessed by the NAIC {Note the definition in section 4A of the model and the separate account provision in section 9.}. Resulting practice has been driven largely by the requirements of the various states. We’re not aware of any situation**

where any of these two products have been written without an appropriate level of regulatory scrutiny.

In the early 1990s many indexed products were developed using separate accounts and were registered with the SEC because the industry assumed the SEC would require it. But most recently the Harkin Amendment in Dodd-Frank said products would not be regulated by the SEC if they comply with the nonforfeiture law. At that point the SEC seemed to lose interest in regulating these products.

- **Very few of the early Indexed products were registered with the SEC as industry did not believe the SEC had jurisdiction. The non-registered products provide minimum values that satisfy the SNFL-IDA. After nearly a decade of legal wrangling between companies and the SEC, Congress clarified the law in the Dodd-Frank Bill to provide that these products would be entitled to the “insurance exemption” from registration provided certain conditions are met, including compliance with the SNFL-IDA. Given this clarity, the SEC does not have jurisdiction to regulate these products.**

In the mid-1990s, to address the growth in the use of separate accounts for guaranteed benefits being funded through group contracts, the NAIC developed the *Separate Accounts Funding Guaranteed Minimum Benefits under Group Contracts Model Regulation* (#200). This provided a regulatory framework for investment return guarantees being provided through such group forms as stable value, participating income annuities, and pension closeouts. Careful attention was given in the development of that model to such matters as insulation of separate account assets supporting contract holder funds versus company funds that might be transferred to the separate account to support the guarantees.

Model laws now exist that permit separate accounts, but no precise definition of the meaning of the term “variable” other than to be a product with “benefits that vary according to the investment experience of a separate account.” As a result there seems to be an increase in companies trying to take advantage of the flexibility available through separate account designs. In some cases, these new products may even be simple fixed products, designed to take advantage of the general account reserves required for guarantees in the separate account, but “walling themselves off” via insulation provisions from any problems the general account might have. This may create an unfair discriminatory situation, because if a product is in the separate account the policyholders may perceive that they are getting a “safer” deal than if the product is in the general account. There is no law that allows regulators to constrain a company from putting a product in a separate account.

- **The first sentence appears to equate separate accounts with variable products. The Model Variable Contract Law (Model 260) since its inception has provided that “A domestic Life insurance company establish . . . separate accounts . . . to provide for life insurance or annuities . . . payable in fixed or variable amounts or both . . .”**
- **There is no need for a more precise definition of variable products in the context of this model.**
- **We disagree with the implication that companies are “trying to take advantage . . .”. We believe it is more accurate to indicate that companies are complying with the legal framework provided in order to develop products that meet consumer needs, and allow for risk management to the benefit of both company and consumer, but only when such products have insurance department approval.**
- **The Model law requires products with guarantees to be approved by the Commissioner, who has full authority to accept or reject, contrary to the last statement of the paragraph.**

Indeed, even the design of the immediate (payout) variable annuity raises important issues for consumers, regulators, and insurers. For example, what are the proper reserve levels for the product's mortality guarantees? How does "insulation" work in the event of the insurer's insolvency? And the issues have become more complex considering today's vast array of products and the differences that have been created by variations in state laws/regulations.

- **Reserves are addressed by the SVL, and by related regulations and actuarial guidelines.**
- **The question on insulation appears to involve state receivership statutes and related interpretations.**

II. PRODUCTS – NON UNIT LINKED

The non-unit linked products listed in the FAWG report generally contain modified guaranteed annuities, Bank-Owned Life Insurance (BOLI) and Corporate-Owned Life Insurance (COLI) life insurance products, and products which are often used to fund pension plans including group annuities, guaranteed investment contracts, and funding agreements. There is a smaller number of other products listed in the FAWG report where there is not enough information to determine the type of product it is, whether it is a benefit within a base product and/or whether it is an individual or group product.

Modified Guaranteed Annuities:

Modified Guaranteed Annuities (MGAs), which are market value adjusted annuities or MVA annuities in the separate account, were created to allow companies to incorporate market value adjustment provisions in deferred annuity contracts that guarantee a current interest rate for a fixed period of years. Market value adjustments are based on interest rate movements post-issue and as such serve as a mechanism for transferring a portion of interest rate risk to the contract holder. Such provisions were believed to contribute to a violation of the annuity nonforfeiture law applicable to fixed individual deferred annuities.

As stated therein, the purpose of the *Modified Guaranteed Annuity Model Regulation* (#255) is "to provide rules for a modified guaranteed annuity, a variable annuity whose assets are placed in a separate account." Model regulation #255 also states that an MGA "means a deferred annuity contract...the values of which are guaranteed if held for specified periods. The contract contains nonforfeiture values that are based upon a market-value adjustment formula if held for shorter periods." The nonforfeiture requirements for MGAs differ from those applicable to fixed annuities. Model #255 also provides that separate account assets equal to the reserves and other contract liabilities can be insulated "to the extent set out in the contract."

Appendix A-255 of the *APPM* (A-255) contains the accounting guidance excerpted from the model regulation and both note that the market value adjustment (MVA) formula "may or may not reflect the value of assets held in the separate account." A-255 provides that valuation requirements "recognize that assets of the separate account are based on market values, the variable nature of benefits provided, and any mortality guarantees." Further, A-255 indicates that the separate account liability must at least equal the surrender value based upon the MVA in the contract and "if that liability is greater than the market value of the assets, a transfer of assets will be made into the separate account so that the market value of the assets at least equals that of the liabilities. Any additional reserve that is needed to cover future guaranteed benefits shall be established."

- **Modified Guaranteed Annuities pass investment risk of changing interest rates to the customer. This generally provides for the opportunity for a higher return to the customer, along with better risk management to the company.**
- **The Modified Guaranteed Annuity Model Regulation clarifies nonforfeiture treatment for these products. The requirements were designed to provide appropriate guarantees considering the nature and purpose of the product design. This is not a violation of the SNFL-IDA since variable annuities are exempt from that law.**

Group Pension Products:

Group pension products – immediate and deferred payout annuities, Guaranteed Investment Contracts (GICs) and GIC alternatives (e.g., stable value) - are used in defined benefit and defined contribution plans. These products help employers fund pension benefit obligations, provide stable investment options to 401(k) participants, and transfer pension liabilities to an insurance company.

The buyers, plan sponsors, have a fiduciary responsibility to consider the insurer’s credit quality before they make any long term product commitments. While it may be possible to evaluate credit for short periods (say five or ten years), payout annuities involve very long term obligations (e.g., over 50 years). Given the failures of once AAA-rated insurers like Executive Life and Mutual Benefit Life, the separate account’s insulation feature is absolutely vital to the sale of group pension products.

Insulation is arguably the only rational way for insurers to address credit concerns. Without it, sponsors would be forced to turn to other financial institutions for “safer” solutions.

The value of the insulation feature is very much appreciated by federal and state regulators. For example, DOL I.B. 95-1 encourages plan sponsors to consider the structure of the contract (e.g., separate account insulation) when evaluating the “safety” of a group annuity contract. Also, Appendix A-200 of the APPM allows contract holder premiums, contributions and related earnings to be insulated from the creditors of the general account.

Many states, including New Jersey, New York, and Connecticut have fairly clear rules aimed at maintaining the “separateness” of separate account assets. State laws, however, are not always in sync on the issue.

- **The second paragraph above is an accurate portrayal of the role of separate accounts and the insulation of assets for consumers. This logic extends naturally to other separate account products as well, notwithstanding the statements made elsewhere in the exposure that the insulation provides unfair discrimination.**

BOLI/COLI:

Bank-Owned Life Insurance (BOLI) and Corporate-Owned Life Insurance (COLI) products are intended to provide a tax-efficient way for banks and corporations to indirectly finance the cost of their non-qualified employee retirement and benefit programs. In both cases, these group life insurance products are a useful and tax-efficient asset/liability management tool. General account and separate account product designs are generally available.

A separate account design offers buyers the opportunity to achieve higher returns than may be possible using conservative general account fixed investments. Separate account designs also provide insurers with

flexibility (e.g., investments) to build products that achieve the specific liability objectives defined by the buyers (e.g., banks and corporations).

Life insurance contracts (including BOLI/COLI) offer the potential to accumulate cash value on a tax deferred basis, and pay tax-free insurance proceeds on death of the insured. Since BOLI/COLI purchases are quite large and often involve a long term commitment, insurance company credit risk can be a significant concern. The insulation feature addresses the concern in a straightforward manner.

Under bank accounting rules, life insurance policies funded through the general account place a strain on bank capital. The value of bank-owned life insurance is severely hit (e.g., 50% of cash value, regardless of the insurer's credit rating) if the life insurance policy is funded through the insurer's general account. However, for bank capital requirement purposes, if life insurance policies are funded through a separate account, the accounting rules permit banks to look to the individual assets held in the separate account. This can lead to lower capital requirements for essentially the same product, if the assets in the separate account consist primarily of high quality bonds.

- **While these BOLI and COLI products have similarities, they are different enough that they should be discussed separately.**
- **It is more common that COLI products are either unit linked variable products, or that they are general account products.**
- **The primary focus of the separate account construct for BOLI products is similar to that for Group Pension products, in that they are set up for asset liability management purposes, as well as for capital management for the customer. The idea in the second paragraph about higher returns is not an accurate portrayal of this market.**
- **The value of bank-owned life insurance is not "severely hit" if the policy is funded through a general account. Banks, like insurers, are subject to statutory capital requirements. Separate Account based products allow for lower capital requirements if the investment guidelines governing their operation are sufficiently more conservative than those that apply to an insurer's general account. This can result in more efficient capital treatment to the bank policyholder.**

Equity Indexed Annuities not compliant with nonforfeiture requirements

The NAIC model *Standard Nonforfeiture Law for Individual Deferred Annuities* (#805) (SNFLDA) defines the nonforfeiture requirements for deferred annuities. Some recent separate account versions of equity indexed annuities (EIA) are essentially identical to EIAs in the general account except for the significant distinction that the downside protection is less than required by the SNFLDA. A separate account is used because the product does not meet the SNFLDA, and there is a view that a product sold via a separate account means ipso facto it is variable and therefore exempt from the SNFLDA.

Section 2(B) of the model *Variable Annuity Model Regulation* (#250) defines a variable annuity as “a policy or contract that provides for annuity benefits that vary according to the investment experience of a separate account or accounts maintained by the insurer as to the policy or contract, as provided for in Section [insert applicable section] of the laws of this state.”

Paragraph 20b of SSAP 50 defines a variable annuity as “an annuity which includes a provision for benefit payments which vary in accordance with the rate of return of the underlying investment portfolio selected by the policyholder. The considerations for a variable annuity are usually invested in a separate

account in which the value of the contract share varies according to the performance of the separate account before the commencement of annuity payments as well as after...”

- **The product title should not include a judgmental opinion. As stated earlier, these products do not avoid or fail to comply with nonforfeiture requirements. The SNFL-IDA exempts variable annuities. When a product is filed as a variable product it is subject to the nonforfeiture requirements for variable products. Some Indexed Annuities are explicitly filed as a form of variable annuity and subject to those nonforfeiture requirements.**
- **According to Dodd-Frank, Indexed products that meet specified requirements are not considered to be securities, and are therefore not registered as such. A key requirement is that the product complies with the SNFL-IDA. Products that are designed to meet those requirements are typically generally account products.**

III. ISSUES:

Preferred class of policyholders:

This is the critical issue with respect to any separate account. In a January 1999 article in the *Financial Reporting Section Monograph* Craig Raymond raised this issue noting that:

The regulatory structure allows a block of policies to be segregated in a SA (separate account) with substantial investment guarantees made to the corresponding policyholders. It also allows the option for the company to insulate these assets from the remaining GA (general account) liabilities while at the same time requiring assets to be maintained in the SA sufficient to fund these liabilities. The result is, in essence, a preferred class of policyholders who have their assets protected from GA liabilities while having first call on GA assets.

A question to explore is whether the current framework inappropriately allows for preferred classes to exist or be created within a separate account to the detriment of the general account.

- **While “preferred class” is an interesting sound bite that captures attention, there has been little to clearly articulate what is meant by a ‘preferred class’, much less to establish that this is accurate. State receivership statutes may define the priority of claims for separate account products. While it is possible that certain policyholders may be treated differently, such differences may not be inappropriate.**

Insulation:

Related to assessing the potential for a preferred class of policyholders is whether the assets in the separate account are insulated. It is generally assumed that the assets in the separate account backing up the contract are insulated. However, depending on the state this may not be the case.

NAIC Model Variable Contract Law (#260) Section 1D states:

If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to the account shall not be chargeable with liabilities arising out of any other business the company may conduct.

- **The statement that “it is generally assumed” is inaccurate as there are specific legal requirements and parameters for insulation.**

Another issue relating to the question of insulation pertains to any general account assets that are needed to support the separate account and are transferred into the separate account. Should such general account assets be considered insulated or rather a debt owed back to the general account and treated as other general account assets in a receivership situation?

The subgroup is not aware of or familiar with requirements that may already be in place to answer the question and make clear what is insulated prior to the time of receivership.

If there is uncertainty of what is insulated prior to the time of receivership then another related issue is one of marketing and whether policyholders are led to believe that a non-unit linked product plus any general account assets used to support it are insulated.

- **As noted in the model law, where assets are insulated, there is a contract provision which specifies the facts.**

Uncertainty of what is insulated prior to receivership may lead to another issue of inconsistency in what is reported for state guaranty fund assessments. To the extent that insulation is unknown for such products then companies have to make assumptions as to what is covered by a guaranty fund in providing information for assessment purposes. There are two supplements currently completed by companies which state guaranty funds use to compute assessments.

- **We do not understand how there is uncertainty when the contract spells out the parameters.**
- **Insulation does not enter into the calculation of the assessment base. The Guaranty Association Model Act Base Reconciliation Exhibit does not refer to insulation, or use it to define the assessment base.**

The Glossary of SSAP No. 56 defines insulation as:

The legal protection of separate account assets equal to the reserves and supporting contract liabilities from the general account liabilities of the insurance enterprise ensuring that the separate account contract holder is not subjected to insurer default risk to the extent of their assets held in the separate account.

It is likely that the “person on the street” would expect that his or her policy (contract) is legally protected if marketing information uses the terms “insulated” or “in a separate account.” The legal protection would more likely be driven by product approval under a state statute based on either NAIC Model Law #200 or the *Model Variable Contract Law* (#260). One challenge is the reality that not all states have adopted identical versions of the models.

- **This is speculation that could be misleading. As noted above, the parameters of insulation are outlined in the law, and defined in the contract.**

As noted earlier in the Group Pension product discussion, insulation is a critical feature for many plan sponsors because of their fiduciary responsibilities, and especially when it comes to the purchase of the annuities. In New Jersey, New York, and Connecticut, the laws deal with guaranteed separate accounts (vs. the original laws that considered only non-guaranteed, equity-like, accounts). These laws have helped

address plan sponsor concerns about whether a guarantee from the general account would invalidate the integrity of the separate account. The laws essentially provide that if the assets in the separate account are insufficient to meet guarantees (e.g., mortality, minimum performance, etc.), then the shortfall is considered a “policy” of the general account. In other words, in the unlikely event of insolvency, the customers of the separate account could end up with more than the market value of the assets in the separate account. NAIC Model Regulation #200 for separate accounts funding guaranteed benefits addresses this general account issue in its provision for non-insulated supplemental accounts.

Because of insulation, separate account customers have a “beneficial interest” in the assets of the account. While the assets are technically held in the insurer’s name, the performance of those assets belongs to the customers. This attribute is critical to the sale of BOLI products, as noted in the BOLI/COLI product discussion.

- **Whether the policyholder has beneficial interest in the underlying assets, and whether the performance belongs to the policyholder is dependent on the terms of the contract.**

As mentioned above a question to explore is the questionable promotion of insulation in marketing products in a separate account. A more basic insulation question is whether any non-unit-linked product should have had approval of the commissioner to allow it to be in a separate account.

- **If the contract defines the assets to be insulated, then that provision should be reasonably communicated to customers prior to sale.**
- **The second question is totally unrelated to this topic and does not belong here. However, as noted above, we believe that separate account products provide value to consumers and should continue to be allowed.**

Guarantees:

NAIC Model Law #260 Section 1C states:

“Except with the approval of the commissioner ... reserves for benefits guaranteed ... and funds guaranteed ... shall not be maintained in a separate account.”

Many of the products identified in the FAWG table include the word “guarantee.” This would suggest that either commissioners have approved such separate accounts or that the approval process is not sufficiently diligent to review filings before they are deemed approved.

A question to explore is whether guarantees have a legitimate place in any separate account, given the preferred class of policyholders and insulation issues discussed earlier. If so, should those guarantees have the benefit of any advantage over general account protections?

- **This presumes that a ‘preferred class’ exists, but as discussed above, this concept needs further definition and analysis.**
- **Industry believes that guarantees do have a legitimate place in Separate Accounts. We need to have further discussion about the construct of any requirements.**

Another question to explore is whether contracts sold as variable, but containing guarantees, would be covered by the Guaranty Association. Does the answer depend on the type of guarantee (e.g. the guarantee of a return equal to an index like the Standard and Poor 500, a guaranteed maximum percentage

decline in value of an index, or a buffer where the company absorbs the first x% of an index decline and the contract holder is on the risk after that)?

Nonforfeiture requirements:

The nonforfeiture law exempts variable contracts.

A question to explore is whether contracts sold as variable, but containing guarantees, are appropriately exempt from the nonforfeiture law. Does the answer depend on the type of guarantee? Is an updated definition of variable needed?

- **As noted several times in this letter, nonforfeiture requirements exist for both fixed and variable products, and apply whether products are in a separate or general account.**