

## **Comments of NAIC Consumer Representatives and Consumer Organizations**

### **Regarding Proposed Charges for the NAIC Life (A) Insurance Committee Related to Contingent Deferred Annuities**

**October 16, 2013**

The undersigned NAIC Consumer Representatives and Consumer Organizations write to urge the members of the A Committee to adopt the proposals and recommendations contained in the Center for Economic Justice's (CEJ) September 10, 2013 comment letter and to respond to comments submitted by the Iowa Department of Insurance and the IRI.

As set out in CEJ's September 10, 2013 comments, various working groups have identified issues of significant concern with the sale of and financial oversight over CDAs. Yet, these issues of concern have yet to be adequately examined and addressed. The recommendations of the Contingent Deferred Annuities (CDA) Working Group reflect the need for closer examination and review of consumer protections for and solvency oversight of CDAs.

#### **Financial Oversight**

On the issues of reserves, the ACLI and IRI, joined by the Iowa Department, have fought vigorously to prevent the thorough examination of solvency issues raised by the CDA subgroup in February 2012. The original proposed charges to the Life Risk-Based Capital Group and LATF went a long way to addressing these issues of concern raised by regulatory actuaries. The CEJ comments on the charge to LATF complete the circle to enable LATF to fully address the concerns raised by the regulatory actuaries.

The ACLI and IRI proposals, quite simply, gut the charges for examination of solvency issues related to CDAs. The industry proposal limits LATF to examining whether reserve guidance for variable annuities is sufficient for CDAs. But, such a proposal ignores the fact that the CDA subgroup, after examining CDAs and the guaranteed lifetime withdrawal benefit (GLWB) riders to variable annuities upon which CDAs are modeled, identified concerns with reserve standards for variable annuities as they applied to GLWBs.

The ACLI and IRI consistently cite the conclusions of the AAA regarding the sufficiency of existing NAIC methodologies for reserves and risk-based capital as the basis for their position and proposal. With respect, the AAA is not a source of analysis independent of the insurance industry on this issue since many of the participants in the AAA CDA studies work directly or indirectly for insurers seeking to sell CDAs.

We urge the A Committee to retain the original proposed charges for LATF and the Life Risk-Based Capital WG with the addition to the LATF charge, set out below, to reflect the fact that issues of concern regarding reserving and risk-based capital for CDAs also apply to GLWB riders.

Evaluate current reserving requirements, particularly as to Actuarial Guideline 43, as related to contingent deferred annuities (CDAs) and variable annuity Guaranteed Lifetime Withdrawal Benefit (GLWB) riders.

### **Consumer Protection**

The Iowa Department submitted comments in response to the CEJ proposals. We are both troubled and puzzled by these comments.

Commissioner Gerhart attempts to discount CEJ's comments and recommendations by claiming that the points raised by CEJ were "discussed thoroughly during the CDA Working Group's deliberations in the process of developing recommendations to the A Committee." CEJ did raise a number of consumer protection issues before the CDA WG. As a result of CEJ's comments and discussion among the CDA WG members, the CDA WG's recommendation acknowledged the concerns raised by CEJ in its report and recommendations. The fact that consumer protection issues were discussed does not translate into consumer protection issues being resolved by the CDA WG. In fact, the purpose of the proposed charges is, in part, to examine and address the consumer protection issues raised by CEJ and acknowledged by the CDA WG.

Commissioner Gerhart's states that that CEJ's comments "regarding market conduct issues do not take into account that CDA's are registered ... with the SEC as securities" and "market conduct and disclosure requirements are governed by the SEC and FINRA rules." We are puzzled by this comment. In every available forum, the NAIC argues that federal agencies should not infringe upon state-based insurance regulation. Yet, when it comes to CDAs, Iowa argues that state insurance regulators should simply defer to a federal agency and FINRA on vital consumer protection issues related to CDAs. This makes no sense because the insurance regulators charged with approving the products are in the best position to identify the consumer protection issues associated with the product.

It is useful to show the CEJ recommendations regarding consumer protection that Iowa characterizes as market conduct issues best handled by the SEC and FINRA. CEJ proposed the following charge to the CDA WG:

1. Identify and evaluate consumer protection issues associated with the sale and administration of CDAs including, but not limited to,
  - a. The overall value of CDAs to consumers as measured by expected benefits as a percentage of expected fees plus opportunity costs;
  - b. The impacts of policyholder investment decisions and policyholder behavior on the overall value of CDAs to consumers;
  - c. Features of CDAs which may allow the insurer to significantly change the value of CDAs to a consumer after the consumer has paid fees and without recourse by the consumer other than to lapse the policy;
  - d. Consumer comprehension of CDA sales and marketing information;
  - e. CDA-specific training for producers;
  - f. CDA-specific suitability requirements; and
  - g. Producer compensation structures which may lead to unsuitable sales.
  
2. Based on the evaluation of consumer protection issues, develop the appropriate regulatory guidance and method of implementation, which may include proposed revisions to model laws or guidelines, development of new models laws or guidelines and/or development of model bulletins.
  
3. Prepare a report describing the current state of CDA regulation in the states and CDA sales, including, but not limited to
  - a. States which have approved CDAs and the product filing type / line of business under which the approval was granted;
  - b. Insurers with CDA products approved by state and product;
  - c. 2012 and 2013 to date sales of CDAs broken out by individual policies issues, group policies issued, premiums/fees collected and amount of investments covered.

We are troubled that Iowa believes these types of consumer protection analyses should not be undertaken by insurance regulators, but left to the SEC and FINRA, who have not addressed any of these issues to date.

The most troubling comment by Commissioner Gerhart is, “I believe it is beyond the scope of the NAIC to make judgments as to the value to consumers of CDA products or the consumer's ability to make riskier investments.” Hopefully, Commissioner Gerhart misunderstood CEJ's recommendations, which were not to ask the NAIC to make judgments for consumers as to the value of CDA products, but to develop objective information on the benefits versus costs of CDAs so consumers can make informed decisions about the value of the products for themselves.

Our request for the CDA WG to develop information on benefits versus costs to consumers is consistent with regulator activity for a variety of products including long-term care insurance and consumer credit insurance, among others. CDAs are complex products with benefits promised far into the future based primarily on market performance of investment portfolios. CDAs are more complex than long-term care insurance and variable annuities with GLWB. The fact that both these products have produced significant problems for consumers should be a clarion call to regulators to scrutinize CDAs carefully to avoid consumers finding themselves in unimagined and harmful situations 10 years or more down the road.

Iowa's comments regarding value of a product to consumers are troubling because the Iowa Insurance Code, like most other states' insurance laws, requires the Commissioner to disapprove or withdraw approval of a contract form or certificate if such contract or certificate contains provisions which are unjust, unfair, inequitable, ambiguous, misleading or likely to result in misrepresentation. A product which provides illusory benefits is clearly one that is unjust, unfair, inequitable, misleading and likely to result in misrepresentation. It is difficult to see how insurance regulators can carry out their statutory responsibilities to protect consumers from such unfair products without some analysis to indicate that the products produce tangible benefits for consumers. If regulators are unable to produce such an analysis, how can Commissioner Gerhart expect consumers to do so?

Thank you for your consideration.

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