

# Center for Insurance Research

1130 Massachusetts Ave. • Cambridge, MA 02138

November 14, 2011

Representative Robert Damron (KY)  
Sen. Mike Hall (WV), Chair NCOIL Life Insurance Committee  
National Conference of Insurance Legislators  
385 Jordan Road  
Troy, NY 12180

## Re: Model Unclaimed Life Insurance Benefits Act

Dear Representative Damron and Senator Hall:

I am writing to offer comments on behalf of the Center for Insurance Research (“CIR”) on the proposed Model Unclaimed Life Insurance Benefits Act (“Act”). CIR is an independent, nonprofit 501(c)(3) public policy and advocacy organization that actively represents the interests of insurance policyholders in Massachusetts and across the nation. I serve as one of the appointed consumer representatives to the National Association of Insurance Commissioners (“NAIC”) and the Interstate Insurance Product Regulation Commission (“IIPRC”).

I am very grateful that Representative Damron and the Committee are reviewing the Unclaimed Benefits issue, as I believe that distributing overdue benefits to hundreds of thousands of families across the country would provide a welcome boost in these troubling economic times.

### **Background**

I first became aware of the Unclaimed Benefit issue while participating in the demutualization hearings of John Hancock in Massachusetts. As part of the conversion process, John Hancock was required to distribute cash or stock to all of its policyholders in order to become a publicly traded company. As we discovered, the company had hundreds of thousands of “lost” policyholders for which it had no current address or contact information. After some diligent work done by state officials, who conducted a more in-depth search, Hancock was still left with over 400,000 “lost” policies.<sup>1</sup> The vast majority of lost policies are small-face value life insurance policies and were owned by lower income families.<sup>2</sup> As other large mutual life insurers began to demutualize, they revealed they also had hundreds of thousands of policyholders who were due

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<sup>1</sup> *Galvin ‘finds’ 2,000 policyholders*, Joe Bartolotta, Boston Herald (November 15, 1999). Each of these policyholders would have received a minimum of \$340 in cash or stock.

<sup>2</sup> For example, at a public hearing in Florida this summer Nationwide testified that it had 263 unclaimed policies for which a beneficiary had not been located. The total benefits were \$950,000 = or a \$3,612 average death benefit.

demutualization benefits, but that could not be located using the insurer's current records. Metlife alone turned over 60 million unclaimed shares to state abandoned property funds by the end of 2006.

The stark reality is that many of these "lost" policyholders are deceased and the death benefits they earned were never distributed to families burdened by funeral or other end of life expenses. When considering the Unclaimed Benefits issue, the Committee should keep in mind that in addition to the face value of the unclaimed policies themselves, there is a large pool of related demutualization funds connected with some of those policies. Thus, it is CIR's view that the ultimate scope of the Unclaimed Benefits problem is potentially much larger than the \$1 billion figure identified by insurance regulators.

### **The Model Act**

CIR fully supports the proposed Model and wishes to thank Representative Damron and Committee for their work in protecting consumers. I will also note that multiple investigations are ongoing at the NAIC and individual state level, and that as this process continues future developments may require ongoing adjustments to the proposed Model.

As a preliminary matter, I disagree with suggestion of the Life Insurers Council ("LIC") in their letter dated Nov. 7, 2011, that the Model must be "prospective" only and limited to "policies that go in force on or after the effective date of any new legislation and limited only to an insurer that uses the Death Master File for any other purpose." If adopted, this suggestion would all but eliminate the protections established by the Model.

It is my understanding that the purpose of the proposed Model is to ensure that the large amount of currently existing Unclaimed Benefits (estimated to be excess of \$1 billion) be distributed to the appropriate beneficiaries, if at all possible, and escheated to the state abandoned property funds in an orderly manner otherwise. The suggestion by LIC to make the Model "prospective" only would defeat this primary purpose.

In addition, I do have some additional suggestions on specific parts of the Model that may provide additional clarity to the draft and comments on proposed amendments by interested parties:

**Section 3(B):** I disagree with ACLI's Proposed Amendment No. 2. Limiting a "Death Master File Match" to only matches that include a Social Security Number and the name and date of birth would drastically limit the scope of the Model. I believe a name and date of birth match may be sufficient to designate a "match" that at least requires further inquiry. Social Security Numbers ("SSN") were not required by insurer when older policies were issued, and SSN collection procedures may have varied from company to company.

The goal of the Model is to help overcome the historical data limitations that resulted in a glut of Unclaimed Benefits today. Limiting the definition of match to only SSN matches (plus the name and date of birth) would defeat that purpose and mean that, as a practical matter, the DMF would only aid in locating policies issued in the modern era.

**Section 3(C):** I am unsure as to the purpose of ACLI's Proposed Amendment No. 3. ACLI's November 9, 2011 letter suggests Section 3(C) be amended to "avoid conflict between state and Federal law." However, no specific conflict is identified in the note supporting the amendment, and it is not clear what provision of federal law may (in the opinion of ACLI) create a conflict. Absent a more detailed explanation, I am unable to support this particular amendment.

**Section 4(A):** CIR fully supports the proposed Section 4(A) sponsored by Representative Damron on November 14, 2011. I believe that the best way to deal with the Unclaimed Benefits problem is to:

- 1) Develop requirements and tools that assure that life insurance benefits are paid out to families promptly, minimizing the amounts that go in abandoned property funds; and
- 2) Ensure that funds owed to beneficiaries who cannot be located escheat to abandoned property funds in a timely manner, allowing consumers to search for Unclaimed Benefits just as they would any other asset.

With this in mind, I believe it is prudent to require DMF searches on a regular basis for all life insurers per Representative Damron's proposed Model. This would minimize the amount of Unclaimed Benefits and provide insurers with greater clarity in financial reporting.

The murky nature of Unclaimed Benefits liabilities has already started to impact the insurance industry, as publicly traded life insurers have begun taking charges for liabilities related to Unclaimed Benefits in S.E.C. filings.<sup>3</sup> Moreover, two insurers in Ohio have been sued by policyholders, challenging their life insurance settlement practices.<sup>4</sup> Depending on state laws, insurers may also find themselves liable for interest payments on Unclaimed Benefits. While I will not speculate as to the merits of any pending or future legal challenges to company practices, it is clear that Unclaimed Benefits issues may create financial reporting or legal issues for life insurers.

The best way to limit any future problems is to minimize the amount of Unclaimed Benefits in the first place. If the DMF requirement is only applied to insurers that currently use the DMF, then many life insurers may never conduct such searches (exposing them to financial reporting or legal risks), or worse, insurers that currently use the DMF may cease using it – meaning fewer death benefits will be distributed and the amount of Unclaimed Benefits may actually increase.

I believe the best approach is to apply the search requirement to all life insurers and fully agree with the recommendation of Representative Damron and Mr. Lyman of the National Association of Unclaimed Property Administrators ("NAUPA") in this regard.

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<sup>3</sup> *Metlife Joins AIG taking benefit charge amid probes*, Noah Buhayar, Bloomberg News (Oct. 11, 2011).

<sup>4</sup> *Two Ohio Life Insurance Companies Face Federal Suit Over Death Master File Practices*, Jeff Jeffrey, A.M. Best Company (Sept. 28, 2011).

ACLI's Proposed Amendment No. 5: I do not support this proposed amendment. ACLI amendment No. 5 appears to be moot in light of the revised *Section 4(A)*, but I note that an insurer who is "compelled" to use the DMF by government action would seem to be a likely candidate for continued use of the DMF.

ACLI's Proposed Amendment No. 6: I do not support the ACLI amendment, and believe that quarterly searches are appropriate, as called for in the Model. ACLI has objected to the quarterly requirement, citing the cost of such a program as being prohibitive.<sup>5</sup> I believe the quarterly approach is the best approach however, due to the practical realities of life. When an older relative passes away, the funeral is arranged, the will probated and their assets disposed of in short order. Homes may be sold and addresses may change as a result. Mail forwarding will not continue indefinitely, and after a full calendar year family members may no longer be carefully monitoring the affairs of the deceased.

I believe the best approach is to identify deceased policyholders as soon as practical, as that will result in the best opportunity for locating and confirming beneficiaries, reducing the amount of Unclaimed Benefits.

An alternative option would be to vary the search timeframe in accordance with the age of the policyholder. For example, an annual check maybe sufficient for insurers that are less than 50 years old, while quarterly checks are required on those who are more than 70 years old.

***Section 4(A)1:*** I believe that requiring a documented good faith effort by insurers to confirm the death of a potential insured is an important protection and fully support this provision.

ACLI's Proposed Amendment No. 7: I do not support this proposed amendment, as it is confusing and appears unnecessary. However, the explanatory footnote does shed some light upon ACLI's view of the Model.

ACLI indicates the Model will result in:

[C]ompelling a life insurer to use a DMF Match to pay a beneficiary before the beneficiary has made a claim [and] risks payment of a death benefit lump sum exponentially greater in value than a monthly annuity contract payment. ... Payment might be made to a wrong beneficiary or less than the correct number of beneficiaries, giving rise to possibly multiple causes of action or grounds for complaint.

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<sup>5</sup> I will note that ACLI has provided no actual cost figures, only vague assertions of "very costly practices." (ACLI Comment Letter, Oct. 17 at p. 2). As a consumer advocate, I have learned to take these complaints with a grain of salt. I see the "expense" claim raised frequently at the NAIC, never with any concrete support, to the extent that I no longer find it credible. Until the industry is able to provide some independent assessment, I believe any claim of ruinous administrative costs is just "Crying Wolf."

I believe this misconstrues the intent of the Model. After reviewing the proposed law, it is my understanding it is designed to require the use of modern technology (via the DMF file), to require insurers to locate potential death claims and then take steps to verify a death has occurred. If the beneficiary cannot be located, the benefits will be ultimately transferred to the abandoned property fund.

Nothing in the Model "compels" a life insurer to pay death benefits on a random or haphazard basis. Per the normal contract and legal requirements, an insurer will still verify whether an insured is deceased or not. The provisions of the Model simply set standards for determining when such a review will be initiated by the insurer based on data reported in the DMF.

Moreover, the ACLI's concern over payments to the "wrong beneficiary" or "less than the correct number of beneficiaries" is frankly perplexing. The beneficiary, or multiple beneficiaries, are identified in the insurance policy - which is in the possession of the life insurer. Presumably a life insurer will check the terms of the policy before making a payment, and ACLI's fears appear unwarranted.<sup>6</sup>

**Section 4(A)2:** I also wish to offer my strong support for this provision, which will help ensure that benefits are distributed to beneficiaries in a timely fashion. I disagree with the extended response timeline proposed by the ACLI.

**Section 4(A)3:** I believe establishing a timeline for the steps to be taken once a death is confirmed is appropriate.

Proposed ACLI Amendment No. 8: I do not support this proposed amendment.

**Section 4(A)3.b:** I do not support Proposed ACLI Amendment No. 9. Including a specific requirement for an official death certificate is not necessary. The standards for making a death benefit claim are already well established under existing law. Adding a separate reference in the Model could create subsequent problems should a state decide to change or use alternative proofs.

**Section 4(A)3.d:** I agree with Proposed ACLI Amendment No. 10, as it is only sensible that an insurer should be able to disclose minimal personal information in order to locate a beneficiary.

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<sup>6</sup> ACLI suggests that using the DMF to cut off annuity payments to seniors (who may be on a fixed income) is using the database "responsibly", but using to identify deceased insureds for further investigation creates larger "risks." ACLI Letter Nov. 9, 2011 at n. 7. I disagree. Ironically, in its October 17, 2011 letter, ACLI cited errors in the DMF to show the database was unreliable - though apparently it was reliable enough to stop annuity payments to potentially deceased seniors. ACLI Letter Oct. 17, 2011 at 2. Given that Mr. Lyman of NAUPA has stated the DMF is 99.5% accurate (Lyman Nov. 8, 2011 email), I believe the DMF is a suitable tool for identifying deceased insureds.

**Section 4(B):** I do not support Proposed ACLI Amendment No. 11. It is not clear why the deleted language is objectionable, and adding language requiring an insurer to continue to obey other segments of the insurance code appears unnecessary.

**Section 4(C):** I do not support Proposed ACLI Amendment No. 12, the term "directly or indirectly" is not ambiguous.

**Section 4(D):** I suggest that the Committee consider adding a reference to Corporate Owned Life Insurance ("COLI") policies as well, such that an insurer be prohibited from using database to identify deaths under COLI policies unless the database is also used identify deaths of other insureds or Retained Asset Account ("RAA") holders.<sup>7</sup>

Proposed ACLI Amendment No. 13: I do not agree that the entire section should be deleted. ACLI objects to this section on the grounds that it "transcends insurance law" in "far-reaching ways unfathomable to all interested parties." Although the literary flourish is quite entertaining, this is only hyperbole and there is no real substance behind the objection.

**Section 4(E):** I am unsure why the phrase "be classified" is preferable to "escheat to the state" as suggested in Proposed ACLI Amendment No. 14. I do agree with ACLI's statement that a complementary modernization of unclaimed property laws is warranted. CIR would be glad to participate in the process with ACLI has described.

**Section 4(F):** I believe the disclosure of abandoned property transfers will assist legislators, regulators and consumers alike in monitoring Unclaimed Benefits.

Proposed ACLI Amendment No. 15: The ACLI has proposed the addition of a new section (labeled 4(E) in their letter of November 9, 2011 - after assuming section 4(D) is deleted) and the deletion of 4(F). CIR agrees with the new provision proposed by the ACLI and is fully in support of annual reporting of the amount escheated each year by a life insurer.<sup>8</sup>

I made a proposal at the NAIC meeting earlier this month that the NAIC require the total amount transferred to the abandoned property fund of each state be listed in the Annual Statements each year. This will allow policymakers, academics and consumer groups

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<sup>7</sup> In addition to the use of DMF searches to cut off payments to annuity recipients, I note that insurers used the DMF search in order to benefit corporate clients who use life insurance policies on employees as an investment tool, but not for individual families who took out policies to defray funeral expenses. This does not appear to have resulted in equitable treatment.

<sup>8</sup> In its October 17, 2011 Letter, the ACLI suggested the elimination of Section 5(B) in the prior draft of the Model, which required the reporting of abandoned property transfers. (Oct. 17 Letter at 3). ACLI stated that company Unclaimed Benefits "policies and procedures will routinely be subject to examination on market conduct exams." I do not believe that monitoring Unclaimed Benefits practices via subpoena or market conduct exams is a practical approach, and could lead to additional waves of media speculation in the future. I believe the ACLI is wise in suggesting that annual property transfers be reported to regulators on an annual basis instead.

like CIR to better analyze and assess the scope of Unclaimed Benefits. This would be similar to the RAA disclosures required under NCOIL's Policyholders Bill of Rights (developed last year) which have helped clarify the benefits and scope of RAAs. ACLI Amendment No. 15 dovetails with my own recommendations.

I believe that part of the reason that the Unclaimed Benefits issue has garnered so much attention from public officials in such a short time frame is because there was a lack of communication between insurance regulators, state abandoned property officials, insurers and lawmakers. Insurance regulators were unaware of the basic statistics, and treasury officials were unfamiliar with the unique nature of long-term life insurance products. Providing appropriate annual disclosures that all interested parties may review will pave the way for better communication between policymakers, insurers and the public.

There is merit in retaining the language in *Subsection 4(F)(2)*, as it may be beneficial for insurers to certify each year they have followed the relevant abandoned property they have adopted as part of an annual disclosure.

### **Other Matters**

***Reforming Escheatment Laws:*** I agree with the ACLI (note to Amendment No. 14) and Mr. Lyman of NAUPA that lawmakers will ultimately need to modernize the abandoned property laws in order to better account for the unique nature of insurance contracts.

Mr. Lyman noted the Limiting Age as a particularly important topic (“100+ years from date of birth”) and I would agree. Because of how the Limiting Age currently functions, if a person passes away at age 80, 23 to 27 years could pass before an Unclaimed Benefit under a life insurance policy would make its way into abandoned property fund (absent a match under a DMF system). By this time, family members will have stopped searching for any unclaimed assets or heirs may have passed on themselves. This is simply inefficient and may explain why the majority of unclaimed property escheated to state funds is never claimed. I believe a thorough review of the escheatment laws themselves (as proposed by the ACLI) is necessary and I would encourage the Committee to participate in that process.

***NAUPA:*** Additionally, I would recommend that NCOIL members acquaint themselves with NAUPA and in particular, the website [www.missingmoney.org](http://www.missingmoney.org) (a project of NAUPA). The website permits a search of unclaimed property funds in all participating jurisdictions, making it easy for consumer to locate and claim abandoned property (including Unclaimed Benefits and demutualization funds). While [missingmoney.org](http://missingmoney.org) may not yet be perfect (conducting a national as opposed to a state by state search is a little difficult), it can be a tremendous aid to consumers.

However, not every state participates in NAUPA's [missingmoney.org](http://missingmoney.org) website, meaning a true national abandoned property search (necessary in a day an age where people frequently move across the country or choose to retire in a different state) is still currently out of reach. I would encourage NCOIL members to urge their state to participate in the

NAUPA program, if they do not already to so, in order to make locating escheated property easier for consumers.

Thank you for your consideration of these comments.

Sincerely,

/s/

Brendan Bridgeland  
Director