ASSOCIATION OF ALABAMA LIFE INSURANCE COMPANIES
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Adam Cole, Chair, NAIC Unclaimed Benefits Model Drafting (A) Subgroup
C/o Jolie H. Matthews, Senior Health and Life Policy Counsel
National Association of Insurance Commissioners (NAIC)
Via: jmatthews@naic.org

RE: Comments Concerning an NAIC Unclaimed Benefits Model Act

Dear Chairman Cole and Members of the Subgroup:

We understand that the Subgroup is interested in receiving comments on a Model Act from a range of interested parties. Accordingly, these comments are submitted on behalf of the Association of Alabama Life Insurance Companies and its member companies.

First, we point out that we share the interest of the Subgroup in arriving at a solution that appropriately balances the needs of consumers with the costs imposed on companies. We point out, however, that for years, no one – consumer or company – thought that an insurance company had an affirmative duty to ascertain whether its customers or their beneficiaries had failed to file a claim. We also note that, as with many problems, there are multiple solutions, including those implemented by the departments of twelve states (including Alabama), to allow citizens to search the records of insurers for lost policies. The task of the Subgroup is to balance the needs of the consumer with the costs imposed on the companies, costs that will ultimately be borne by all consumers, even those who do not take advantage of the benefits, while at the same time following applicable law. Considering that the results of the audits have revealed that the overwhelming number of consumers have in fact not needed the companies to check for unreported deaths, it is clear that the overwhelming

number of consumers will not benefit from any change in law. Nevertheless, they will ultimately bear a pro rata share of the costs imposed by the changes. Because of this, we urge the Subgroup to attempt to craft the least expensive solution to the problem. In particular, given what regulators and industry have learned over the past few years, we urge that the Subgroup take a fresh look at the problem and potential solutions and not be guided by solutions arrived at in particular situations in an examination environment.

As the Drafting Subgroup moves forward with its consideration of a Model, we would strongly urge you to consider the merits of *The Unclaimed Life Insurance Benefits Act* enacted into law in Alabama in 2013. Broadly based on the NCOIL *Model Unclaimed Life Insurance Benefits Act*, with major exceptions noted herein, the Alabama Act is superior primarily in two ways. The first relates to governing legal principles, and the second to the common-sense recognition that one size does not fit all.

First, unlike the NCOIL Model, the Alabama law is prospective in application. That is, the requirements that insurers perform comparisons of in-force life insurance policy records against the Death Master File, only apply to policies "issued or entered into on or after January 1, 2016." Thus, the Alabama law does not run afoul of the very real constitutional problems presented by the NCOIL Model, which is retroactive in that it would impair existing, in-force life insurance policies. For this reason, the NAIC should not follow the NCOIL Model on this important point.

Should the NAIC adopt the NCOIL Model approach to existing life insurance policies, then there is a very strong legal argument that it would violate the Contract Clause of the United States Constitution because it would eliminate the insurers' contractual right, set forth in existing in-force policies, to require the person seeking benefits to initiate the claim process. The Contract Clause provides, in pertinent part: "No State shall…pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligations of Contracts." U. S. Const. Art I, Sec. 10. The Supreme Court consistently has held that a law that retroactively alters existing contracts violates the U. S. Constitution unless the law is a narrowly tailored means of remedying an "emergency need," or a "broad and general social or economic problem." The NCOIL Model fails this test because it impairs existing, in-force life insurance policies. Thus, the NAIC should therefore avoid that approach.

The NAIC is the national insurance standard-setting and regulatory organization in the United States. It is a professional organization, and it should proceed in a professional manner in the drafting and adopting a Model Act. We recommend that the NAIC conduct an independent and professional research of the legal and constitutional implications of the Contract Clause, and that it make that research

public as a part of the drafting process. This will benefit the NAIC in making sure it is proceeding in a legal and constitutional manner. If the NAIC's goal is to implement uniform laws among the states, we believe that using a retroactive approach like the NCOIL Model will not achieve that goal. Some states, like Alabama, will cautiously avoid enacting laws that violate the U. S. Constitution, and other states will experience litigation in the courts challenging any laws that violate the Contract Clause. Over time, this will result in a patchwork of laws among the states, versus uniform laws. Enactment of a prospective law, such as Alabama's, is the best way to achieve a uniform and constitutional result.

The second superior aspect of the Alabama Act is that it recognizes the operational burden and work associated with searching for unreported deaths, and lessens the burden by requiring searches every three years. From an operational perspective, the frequency of required searches is a paramount concern – as it takes significant time and resources to research and verify search results. Less frequent searches strike an appropriate balance by minimizing the cost and work of the required searches (which is especially important for smaller companies), while still proactively looking for unreported deaths and initiating the claims process when beneficiaries fail to do so. Alabama's three-year search requirement works in conjunction with its lost policy search service to benefit consumers in a cost-effective manner. Beyond Alabama, other states' versions of the NCOIL model reflect the kind of common-sense principles that should be considered in drafting a new model law. For example, Tennessee's version of the *Unclaimed Life Insurance Benefits Act* does not require companies to expend resources checking to see if the individual who submitted a premium payment last month has died; as long as the company is actively receiving premium payments from outside the policy value, the company is entitled to assume that the owner is still alive and that the owner is watching after the needs of the beneficiary. It defies common sense to require companies to expend funds (which ultimately raise the cost of insurance) to determine if the person who recently sent the company money is dead. Further, the majority of the states that have enacted the NCOIL model have either not required "fuzzy logic" as part of the search criteria or have only required a minimal level. Absent fuzzy logic requirements, companies already have to expend time and resources researching and ultimately excluding false hits from their search results. Mandating that companies intentionally input erroneous information will only exacerbate the frequency of false hits. Such an approach defies common sense.

Lastly, if a new model law addresses so-called "asymmetric use," it is critical that it recognize the legitimate fraud prevention uses of the DMF and similar databases. A requirement that the DMF be used symmetrically across all lines and blocks of business would fail to recognize companies' varying products, unique fraud risks, and the various tools that companies use to combat fraud in its various and ever-evolving forms. Companies should be encouraged to tailor

their fraud prevention methods and efforts to the unique risks of fraud that they face. Imposing standards of symmetry would inhibit companies' use of the DMF, and similar databases, to detect and prevent fraud. Again, such an approach defies common sense and would ultimately hurt consumers.

Another benefit of the Alabama Act is that it recognizes the difference between the largest life companies and the smaller ones, and it treats them differently. We are aware that about 20 of the largest life companies have entered into much publicized settlement agreements with regulators and state treasurers in which they have agreed to search and match existing in-force policies with the DMF. That is fine; we assume that companies can agree to whatever terms they choose to with regulators due to the particular issues of each company. However, that does not make those terms the best way to assure that consumers are protected without the imposition of undue costs or that the settlements should be the "law of the land," nor does it make such terms fair for the smaller or other life companies who have different situations. Even the Dodd-Frank Law made a distinction between regulatory requirements for Significantly Important Financial Institutions versus smaller institutions. A similar rationale should apply here to smaller life companies.

In conclusion, we appreciate your consideration of the points made herein, and we urge the NAIC to give serious consideration to the merits of these points.

Respectfully submitted on behalf of the Association of Alabama Life Insurance Companies by,

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cc: Commissioner Jim Ridling