May 25, 2016

Market Analysis Procedures (D) Working Group
c/o Teresa Cooper
Market Analysis Manager
National Association of Insurance Commissioners
tcooper@naic.org

Subject: Should SSA DMF/Escheated Unclaimed Property be Reported on the Life MCAS?

Dear Ms. Cooper:

The Market Analysis Procedures [MAP] (D) Working Group is considering reporting, as a new data element on the life Market Conduct Annual Statement [MCAS], “both Social Security Administration’s [SSA’s] Death Master File [DMF] and escheated unclaimed property”.

The American Council of Life Insurers appreciates the invitation of the Chair of the Working Group to comment on this matter.¹

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ACLI opposes reporting SSA DMF/escheated unclaimed property on the life MCAS. ²

We note comments of the Chair in which he questioned whether companies using the DMF would have difficulty identifying claims that were the result of a DMF search because they are making DMF comparisons in real time, and beneficiaries may be making claims at or near the same time that the company has validated the death of an insured.³ Our comments below include this concern as among

¹ The American Council of Life Insurers [ACLI] is a Washington, D.C.-based trade association with approximately 300 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums, www.acli.com.

² See also, Letter from Michael Lovendusky [ACLI] to Lisbeth Landsman-Smith [Chair, NAIC Unclaimed Benefits Model Drafting (A) Subgroup], “Draft NAIC Unclaimed Life Insurance and Annuities Model Act” (April 28, 2016). [Attached]

³ Draft Minutes of MAP (D) Working Group Conference Call (April 28, 2016).
the reasons we oppose MCAS reporting. Also among our objections is that MCAS reporting of SSA DMF matches/escheated unclaimed property is inconsistent with the purposes of the MCAS:

MCAS is intended to provide insurance regulators with market conduct information not otherwise available for their market analysis initiatives.4 “It provides an analysis tool for certain key market data elements that help regulators allocate market analysis resources where they can be most effective.”5

SSA DMF/Escheated Unclaimed Property Should Not be Reported on the Life MCAS

- SSA Death Comparisons are Not Unclaimed Property Claims

A DMF match is not a “claim”. It is notice which might constitute the occurrence of a death. A “claim” is made when a beneficiary files a claim form.6

- Data Will Lack the Accuracy and Confidence Level Required of MCAS

Once a life insurer sends claim forms to a beneficiary, the insurer cannot distinguish between a DMF match that results in a claim and claims made otherwise in the due course of business. Now that many companies have been conducting DMF comparisons, they have been finding deaths via the effort days or weeks after a death occurs. As this interval becomes increasingly short, life insurers will have fewer instances when they know if a claim is being filed in the due course of business or if the beneficiary's claim has been prompted by the validation of the insurer’s DMF match. A new MCAS data element would result in inaccurate information without regulatory value.

- Data is Already Reported and Available to NAIC from Other Regulatory Sources

All insurers, including life insurers, file unclaimed property reports on an annual basis to every state's unclaimed property administrator. Private sector entities interested in the information should assume the responsibility to examine the reported data. With respect to NAIC and its member jurisdictions, the Market Regulation Handbook provides the following:

Many states require that insurance companies provide specific filings or reports in response to previously identified issues. An inventory of such filings may produce valuable information.7

The success of an appropriate prioritization of state and insurer resources depends upon the systematic sharing of information among inter- and intra agency regulators with specialized expertise on particular issues, such as state unclaimed property administrators. A measure of success is the avoidance of duplication in data collection. 8

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4 http://www.naic.org/mcas_2016.htm
6 This is consistent with the definition of “claim” in the Life & Annuities Data Call & Definitions. It also is consistent with what appears to be a consensus instruction of the Working Group to NAIC staff on responding to insurer inquiries. It is our understanding that many companies already report in this manner.
8 As an example, the Florida Office of Economic and Demographic Research [the Office] prepared, in connection with a revenue estimating conference, an analysis dated April 19, 2016, of CS/SB 966. “The bill essentially codifies the provisions of the regulatory settlement agreements for all life insurance policies, annuity contracts, and
Characterization of Escheated Retained Asset Accounts to the State

On a recent call of the Working Group, members discussed the characterization of escheated retained asset accounts [RAAs]. It was noted that an RAA is legally regarded as a payment to a beneficiary. Another characterization that seemed to be identified, in passing, as a possibility: treating escheated RAAs as payment to the state of its “claim” on insurance product proceeds and thus reportable on MCAS.9

For the above reasons, ACLI opposes the proposal to report SSA DMF matches/escheated unclaimed property on the life MCAS. With respect to RAAs, we observe that states regard escheatment as the transfer of unclaimed property from one custodian (e.g., a life insurer) to another custodian (i.e., the state), each of which has held or holds the property for the benefit of the property’s legal owner. It is not a “claim” that has been paid to the state. This is the case whether the property at issue concerns life insurance, annuities, or RAAs. There is no justification for insurers reporting in any other way that it would identify unclaimed property. This is consistent with the discussion draft of an Unclaimed Life Insurance and Annuities Model Act under review by the Unclaimed Benefits Model Drafting (A) Subgroup. For purposes of unclaimed property, the discussion draft does not distinguish among proceeds from life insurance, annuities, and RAAs.

RAAs Should Not be a New Data Element on the life MCAS

A suggestion has been made that RAAs should be a new data element on the life MCAS. The accompanying observation was that “NAIC notes to the financial statement include some data regarding retained asset accounts that is aggregate and not reported at the state level”.10

Each new MCAS data element imposes new expectations and costs. Proposals to add data elements should be carefully considered. The suggestion to add RAAs lacks specific information to warrant adding RAAs as an MCAS data element.

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The Office describes the data and sources for its analysis as: 1) Department of Financial Services, Bureau of Unclaimed Property Database; 2) Discussions with Department of Financial Services, Bureau of Unclaimed Property Staff; and, 3) House of Representatives, Final Bill Analysis for CS/SB 966. [emphasis added]

The Office found that found that the 22 life insurance companies under settlements have reported and remitted 128,000 accounts totaling $170.4 million in unclaimed funds. The analysis further assumes an additional, non-recurring $73 million may be reported within five years from the remaining companies that have not been audited but will now have to perform DMF comparisons.

Analysis is attached.

9 Draft Minutes of MAP (D) Working Group Conference Call (April 28, 2016).

ACLI appreciates the opportunity to submit these comments. Please feel free to contact me if you have any questions or need additional information.

Sincerely,

Lisa Tate

The American Council of Life Insurers
Lisa Tate
Vice President & Associate General Counsel

Attachments
28 April 2016

Via email to jmatthews@naic.org

Lisbeth Landsman-Smith, California Insurance Department, Chair
NAIC Unclaimed Benefits Model Drafting (A) Subgroup
c/o Jolie Matthews, Senior Health Policy & Legislative Analyst & Counsel

RE: Draft NAIC Unclaimed Life Insurance and Annuities Model Act

Dear Chairwoman Landsman-Smith,

Pending for further discussion by the Subgroup is the consumer representatives’ proposal to add to the draft *Unclaimed Life Insurance Benefits Model* an additional insurance company annual statement data reporting requirement expressed below:

**Section X: Insurer Reporting**

An insurer shall, on an annual basis, report the following information to the [Insert State Insurance Department] in conjunction with the filing of their Annual Statement:

- A. The number of contracts that escheated the abandoned property fund of each jurisdiction during the year, including the total number escheated;
- B. The dollar amount of contracts that escheated the abandoned property fund of each jurisdiction during the year, including the total dollar amount escheated;
- C. The number of DMF matches made during the year pursuant to the search requirements of this Act; and
- D. The dollar amount of policy benefits provided to beneficiaries and policy-owners resulting from DMF matches made during the year.

The ACLI opposes this proposal for the following reasons.

The annual statement is intended to provide information important to evaluation of the solvency of the insurance company. It should not be encumbered with reporting requirements irrelevant to such considerations, including unclaimed life insurance benefits, which is well understood by all parties to be a small fraction of the benefits paid by insurance companies in the due course of business.

The data in proposed provisions A and B is already reported annually by every insurance company to every state’s unclaimed property administrator. Those interested in such information should assume the responsibility to examine the reported information. Alternatively, the insurance regulator should request his or her collegial unclaimed property administrator to share the information for greater public availability.

The data in provisions C and D should not be required because it would be irrelevant three different ways:
First, it is not the “number of Death Master File (DMF) matches made” each year which might be of possible relevance; rather, it is the number of validated DMF matches which might be of interest but which is nonetheless irrelevant for the other reasons explained in this letter.

Second, even validated DMF matches are not relevant because there is no value in compelling insurance companies to parse out abandoned property so identified by DMF comparisons versus any other way a company identifies abandoned property. The reasonable regulatory requirement is the reporting of abandoned property however such property is determined to be abandoned. There is no extra value reasonably justifying requiring insurance companies to collect and report DMF utilization experience. Indeed, the consumer representatives proposal does not explain to what purpose such reporting might be used. The Social Security Administration and the Government Accountability Office have explained the problem of DMF errors and why the database quality is deteriorating, and CBS News has reported on the impact such errors have on individual citizens. 1

Third, the most important reason why the proposed reporting of life insurance company DMF utilization experience would be irrelevant is because the NAIC and interested parties are on notice that the unclaimed property administrators will not respect the insurance laws and insurance regulators’ guidance on insurance company use of the DMF. Rather, the administrators will encourage their auditors to use the DMF however they see fit, without restriction, using secret, proprietary formulae owned by each auditor. Hence, to compel insurance companies to report data required by insurance law which is not respected by unclaimed property administration simply imposes unnecessary reporting for no reasonable purpose. Instead it will expose every insurance company to conflicting data reporting compliance requirements and arbitrary demands from two different regulators resulting from the refusal of the unclaimed property administrators to respect the functional regulation of the business of insurance by the insurance commissioners.

For these reasons, the ACLI opposes the proposal of the consumer representatives to require insurance companies to report on the annual statement data in addition to that already reported to unclaimed property administrators, and particularly additional data regarding DMF utilization. Thank you for your consideration.

...continued...


See e.g., Social Security Administration Office of the Inspector General Congressional Testimony on Social Security’s Death Records at https://oig.ssa.gov/newsroom/congressional-testimony/hearing-social-securitys-death-records, February 2, 2012 (“SSA does not have a death record for all deceased individuals, thus SSA does not guarantee the file’s veracity.”)

Sincerely,

The American Council of Life Insurers
MICHAEL LOVENDUSKY
Vice President & Associate General Counsel
REVENUE ESTIMATING CONFERENCE

Tax: Other Taxes and Fees/ Unclaimed Property
Issue: Life Insurance
Bill Number(s): CS/SB 966 (Ch. 2016-219, L.O.F.)

☑ Entire Bill
☐ Partial Bill:

Sponsor(s): Senator Benacquisto

Month/Year Impact Begins: Although the bill became law on April 12, 2016, the impact would begin in the 2016-17 fiscal year.
Date of Analysis: April 19, 2016

Section 1: Narrative

a. Current Law:

Under section 717.107, F.S., funds held under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than five years after the funds became due and payable, as established from the records of the insurance company. There is no requirement for insurance companies to take proactive steps to determine if they owe benefits to individuals. According to the Department of Financial Services (DFS), an insurance company typically waits until a party with an interest in a policy provides a death certificate and files a claim. If no such person comes forward, the insurance company keeps the benefits. Often, the insurance company uses retained asset accounts to hold funds until the company receives proof of the insured’s death and the beneficiaries withdraw the cash.

In 2008, Florida, along with 43 other states, began auditing life insurance companies for compliance with state unclaimed property laws. The audits covered policies that were in force at any time on or after January 1, 1992. As a result of the audits, the state entered into settlement agreements with 22 large life insurance companies. These agreements were often part of multi-state regulatory settlement agreements. Pursuant to these settlements, the affected life insurance companies now must routinely compare their policy holders against the U.S. Social Security Administration Death Master File. This file is an extract of death information from the electronic database that contains records of Social Security Numbers assigned to individuals since 1936 and includes the deceased individual’s first, middle, and last names, date of birth, and date of death. Once the insurance company obtains notice of the death of the insured, it must attempt to locate the beneficiaries.

b. Proposed Change:

The bill essentially codifies the provisions of the regulatory settlement agreements for all life insurance policies, annuity contracts, and retained asset accounts that were in force at any time on or after January 1, 1992, and applies those provisions to all life insurance companies. The bill requires the insurance companies to conduct an initial match of all such policies against the Death Master File once to determine whether the death of an insured, annuitant, or retained asset account holder is indicated. After the first search, the company must make the comparisons to the Death Master File (or a comparable database/service as determined by DFS) at least annually before August 31 of each year. Additionally, certain specified insurers must make the initial comparison to the Death Master File for all in-force policies. The bill also changes the start of the dormancy period from the date the “funds became due and payable as established from the records of the insurance company” to the “date of death of the insured, the annuitant, or the retained asset account holder.” The bill provides a five-year compliance window by allowing insurance companies to report and remit proceeds from an unclaimed life or endowment insurance policy, retained asset account, or annuity contract on or before May 1, 2021, without penalty.

Section 2: Description of Data and Sources

• Department of Financial Services, Bureau of Unclaimed Property Database
• Discussions with Department of Financial Services, Bureau of Unclaimed Property Staff

Section 3: Methodology (Include Assumptions and Attach Details)

Retroactive Payments Resulting from Initial Match: As of April 19, 2016, the 22 life insurance companies under settlement agreements have reported and remitted 128,004 accounts totaling $170.4 million in unclaimed funds. The breakout by fiscal year is on the following table:
REVENUE ESTIMATING CONFERENCE

Tax: Other Taxes and Fees/ Unclaimed Property
Issue: Life Insurance
Bill Number(s): CS/SB 966 (Ch. 2016-219, L.O.F.)

**TABLE 1 – UNCLAIMED PROPERTY RECEIPTS FROM INSURANCE COMPANY AUDITS**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Number of Accounts</th>
<th>Total Amount Reported</th>
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<tr>
<td>2011-12</td>
<td>755</td>
<td>$1,300,444</td>
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<tr>
<td>2012-13</td>
<td>70,661</td>
<td>$47,986,747</td>
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<tr>
<td>2013-14</td>
<td>17,531</td>
<td>$45,432,279</td>
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<tr>
<td>2014-15</td>
<td>17,048</td>
<td>$49,200,073</td>
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<tr>
<td>2015-16 YTD</td>
<td>22,009</td>
<td>$26,481,997</td>
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<tr>
<td>TOTAL</td>
<td>128,004</td>
<td>$170,401,539</td>
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</table>

According to DFS staff, these companies represent approximately 70% of the insurance market. Assuming the remaining companies that have not been audited and will now have to perform the initial match against the Death Master File represent 30% of the market, it could be assumed that an additional $73.0 million may be reported to the state as unclaimed within the five-year window. However, it is unknown which companies will complete the initial match in which year, or how much will be reported to the state in a given fiscal year. These revenues would be nonrecurring.

**Ongoing Payments Resulting from Annual Match:** In addition to the nonrecurring revenues the state will receive from the initial match process, all companies will now have to match their policies against the Death Master File at least annually, which will result in additional recurring revenues each year. Based on the assumed total unclaimed revenues of approximately $243 million covering the period 1992-2021 [= $170.4 M received + $73.0 M assumed (see above)], the calculated annual average of unclaimed funds is approximately $8.0 million. It could be assumed that a similar amount will be remitted annually beginning in FY 2016-17. However, an exact amount for each fiscal year cannot be determined because of several unknown factors, including when the newly affected companies will complete the initial match, thus triggering the annual match requirement. It is also unknown how many unclaimed policies may be discovered and reported by the insurance companies required to match all in-force policies.

**Change in Start of Dormancy Period:** The change in the start date for the 5-year dormancy period will likely speed up the receipt of unclaimed accounts; however, the number and value of affected accounts cannot be determined from the data available.

**Section 4: Proposed Fiscal Impact**

**Impact on Unclaimed Property Receipts**

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<tr>
<th></th>
<th>High</th>
<th>Middle</th>
<th>Low</th>
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</tr>
<tr>
<td>2020-21</td>
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**Impact on State School Trust Fund Transfers**

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<td>2020-21</td>
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**List of affected Trust Funds:**
Unclaimed Property Trust Fund/ State School Trust Fund
There is no impact to GR Service Charges.

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Section 5: Consensus Estimate (Adopted: 04/21/2016): The Conference adopted the proposed estimate.

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