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Maria Ailor, Arizona Department of Insurance, Chairwoman
NAIC Market Conduct Annual Statement Blanks (D) Working Group
c/o Tressa Smith, Senior Market Analyst
via tesmith@naic.org

RE: Center for Economic Justice Proposal 4/13/17 re 16 New Life & Annuity Categories

Dear Chairwoman Ailor & Members of the Working Group:

The proponent to expand the life and annuity product categories for which data would be collected concedes that it cannot justify each of the new categories. *See* Center for Economic Justice (CEJ) Response Letter 9/27/17 ("…CEJ did not provide a separate analysis for each product type [because] providing 16 copies of the same argument would have been silly and repetitive…"). The Revision Process requires a proponent to (1) provide a reason and (2) any supporting information relating to a proposed change to the product categories for which data is collected.[1] With regard to the pending CEJ proposal, at least sixteen reasons, one for each proposed new category, is required, accompanied by information uniquely supporting each proposed change.

The proponent certainly knows how to provide detailed justification for each new category of data collection it proposes. For example, CEJ provided ten (10) pages of reasons and supporting information when it successfully urged the NAIC Market Regulation (D) Committee to adopt its proposed lender-placed insurance Market Conduct Annual Statement (MCAS) elements. *See* CEJ Letter 7/12/17 here (third letter in the materials)[2]. Similarly, CEJ provided ten (10) pages of reasons and information supporting its proposal to add flood insurance to the MCAS. *See* CEJ Letter 8/24/17 here (Attachment 2)[3].

Forced Insurance Raises Different Concerns that Life Insurance & Annuities

Consideration of the many reasons and information the CEJ advanced for MCAS collection of lender-placed insurance and flood insurance data reminds us of how different life insurance and annuities are from other kinds of insurance. The NAIC *Market Regulation Handbook* acknowledges that the coverage structure and company finances for life insurers are notably different from other types of insurance and that,

[1] http://www.naic.org/documents/committees_d_mapwg_mcas_revision_process.pdf.

[2] http://naic.org/documents/cmte_d_170720_mcas_comments.pdf (hyperlink long form).

[3] http://www.naic.org/documents/cmte_d_mapwg_170928_materials.pdf (hyperlink long form).

proportionately, market conduct problems with life companies are more likely to arise on the sales side and less likely to arise on the claims side than in other lines of insurance.[4]

Perhaps the most important difference is that individuals are compelled to purchase the other kinds of insurance. A person is mandated to have flood insurance if one has a federally-backed mortgage. Health insurance is mandated by federal law. It is illegal in every state to drive without auto insurance. Lenders "place" insurance as a compulsory element of the loan by which an asset is acquired.

In contrast, it remains true that, unlike property and casualty and health insurance, life insurance and annuities are sold, not bought. "Let's face it: Nobody gets excited about life insurance. It has been around for hundreds of years, and it's surely one of the most socially useful consumer financial products, yet people don't much care who they buy it from–if they buy it at all."[5]

The same amount of justification for the collection of additional data about life insurance and annuities should exist as for the collection of additional data about property and casualty and health insurance. Indeed, there should be a *greater* amount of justification for data collection about life insurance and annuities because of the voluntary nature of its purchase by consumers.

Examining the Proponent's Core Reason for More Data Collection

Unlike CEJ's ability to provide substantial reasons for MCAS collection of lender-placed and flood insurance data, the proponent's core argument for expanding the categories of life insurance and annuities data collection is that "data related to specific product categories is much more efficient and effective for market analysis than data which combine significantly different product categories."[6] There are many problems with the proponent's core argument.

First, it elevates "market analysis" *per se* – in all of its abstraction – as *the* desirable goal. By doing so, it avoids mention of any reasonable goal or goals for market analysis of the data to be obtained for each category, thereby ignoring any which might exist in favor of collecting more data for the sake of collecting more data.

Worse, by reducing the reasons needed to justify the collection of data for new categories of life insurance and annuities to one, abstract goal of collecting more data for the heck of it could be applied to 6 or 16 or 161 categories of business. The proponent mentions dismissively in his Response Letter of September 27 that it is unclear why writing a program to produce the data in 16 categories should present a significant cost since the proposed reporting is for products in the uniform filing coding matrix. This assertion should raise alarm in the mind of every thoughtful reader because it proposes that, if the proponent's core argument is good for 16 categories, why would it not be good for all? The 66 pages of the *Uniform Life, Accident & Health, Annuity and Credit Product Coding Matrix* (here)[7] identifies hundreds of categories for which the

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[4] NAIC *Market Regulation Handbook*, volume I, Chapter 3F, page 30 (2017)

[5] Costoris, M., "The Life Insurance Industry Needs to Get With The Times", Forbes, 1/13/2010, here.

[6] CEJ Response Letter 9/27/17, ibid.

[7] *Uniform Life, Accident & Health, Annuity and Credit Product Coding Matrix* (1/1/16) http://www.naic.org/documents/industry_pcm_lahac.pdf (hyperlink long form).

proponent's core argument might be asserted if the goal of the MCAS is simply to collect more data for the sake of collecting more data.

What is Market Analysis?

A seminal 2003 report of the U.S. General Accounting Office on state insurance market regulation explained that

> *Among other things*, market analysis can provide information on insurance companies' compliance with applicable laws and regulations, highlight practices that could have a negative effect on consumers and help identify problem companies for examination … Analyzing complaints and complaint trends does provide regulators with useful and important information *and should be part of any market analysis program*. However, *other types of information can also help regulators* and deal with market conduct issues, including data from financial reports, rate and form filings and other company filings, routine and special requests for company data and information from other federal and state regulators. All this information…can help regulators identify companies that examiners need to look at more closely or that merit regulatory actions.[8]

(All emphases added). Market analysis is not now and never was imagined to warrant data collection for the heck of it. Rather, it is to be an element among many to "provide information on insurance companies' compliance with applicable laws and regulations." The GAO explanation refers to the very sources of justification which a proponent for new data collection is to rely upon in his or her advocacy – and which the proponent accomplished in its arguments to include lender-placed and flood insurance in MCAS. They include whether there are complaints; data from financial reports; rate and form filings; other company filings; and company data from other federal and state regulators. All such justification is missing in the instant proposal to expand the categories for life insurance and annuity data collection by 300%. Rather, all that is advanced is a core argument which is intended to be so convincing to regulators that it becomes silly and repetitive when used more than once, even though it might be used hundreds of times.

The CEJ Fails to Justify or Support Any New Data Collection

The American Council of Life Insurers represents 290 member companies offering to Americans in every state life insurance, annuities, retirement plans, long-term care and disability income insurance. The companies' operations represent 95 percent of industry assets, 93 percent of life insurance premiums, and 98 percent of annuity considerations in the United States. ACLI takes its members' business seriously because it affects 75 million American families that rely on their products for financial and retirement security. Consequently, it takes seriously every proposal that will require operational system changes, add operational costs, and likely result in additional costs to policy and contract owners.

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[8] *See* "What is Market Analysis?", NAIC *Market Conduct Handbook*, p. 3 (2017). The NAIC incorporates the GAO explanation in its current Handbook but also relied upon it in the formulation of the entire MCAS. See, e.g., "The Evolution of Market Regulation", NAIC & CIPR, 11/5/2011, relied upon in the NAIC – Federal Insurance Office Meeting on Market Conduct, 12/7/2011 (here).

For the reasons and supporting information provided above and in the ACLI letter of 8/11/17, the ACLI opposes the proposed expansion of product categories for which data elements would be collected for the Life & Annuity Market Conduct Annual Statement. The proponent fails to provide sixteen reasons and supporting information specifically pertinent to each of the new categories proposed for data collection. Hence the NAIC should reject the proposal for failing to meet the standards of the MCAS *Data Element Revision Process*. Data collection for the heck of it should not be the goal of market analysis. Thank you for your consideration.

Sincerely,

Michael Lovendusky
Vice President & Associate General Counsel
The American Council of Life Insurers