

April 7, 2014

Rep. Robert Damron, KY
Rep. George Keiser, ND
Co-Chairs, NCOIL Unclaimed Property Task Force

[VIA EMAIL]

Re: Proposed amendments to the NCOIL Model Life Insurance Benefits Act for consideration

Dear Representatives Damron and Keiser:

The National Association of Unclaimed Property Administrators (NAUPA) provides the following response to the request for proposed amendments to the National Conference of Insurance Legislators ("NCOIL") Model Unclaimed Life Insurance Benefits Act (the "Model Act") and certain comments made at the initial in-person meeting of the NCOIL Unclaimed Property Task Force held on March 7, 2014.

In recent years, NAUPA member-states have undertaken initiatives to identify unclaimed death benefits under policies of life insurance. The states undertook these efforts after learning that, for a number of reasons, beneficiaries were often unaware that their loved ones had purchased life insurance during their lifetimes, resulting in the benefits going unclaimed long after the insureds had died. The results of these initiatives demonstrate that the United States Social Security Administration's Death Master File (the "DMF") is an effective tool for identifying deceased insureds and ensuring that these unclaimed death benefits are reunited with their rightful owners, thereby fulfilling the wishes of the policyholders when they originally purchased their policies.

For this reason, NAUPA fully supported NCOIL's approval in 2011 of the Model Act. The Model Act provides the mechanism for enacting an insurance statute that places an affirmative requirement on insurance companies to perform regular comparisons of their in-force policies against the DMF in order to identify situations where an insured is deceased but a beneficiary has not filed a claim, thereby reducing the likelihood that such benefits will ever

become unclaimed property. In light of various activities that have taken place in this area since the initial passage of the Model Act, NAUPA understands the desire to consider if there are ways that it may be clarified or improved. NAUPA believes, however, that any amendments to the Model Act must not undercut its central purpose, as previously articulated by NCOIL on multiple occasions, of requiring industry-wide use of the DMF to help ensure that all benefits are paid to deceased insureds in a timely manner. *See, e.g.*, Nov. 20, 2011 NCOIL press release (announcing approval of the Model Act and stating that it addresses the problem of insurers “not using the DMF consistently to learn of policyholders’ deaths, leaving beneficiaries of life insurance policies in the dark and causing death benefits to remain in limbo”); February 1, 2012 letter from Sen. Carroll Leavell, Rep. George Keiser, and Rep. Robert Damron to Rep. Sam Johnson (stating that the Model Act “relies on the DMF to help ensure that life insurance beneficiaries receive their promised benefits”).

In particular, NAUPA believes it is imperative that the Model Act continue to apply to all of an insurers in-force policies. Specifically, the Model Act requires insurers “to perform a comparison of its insureds’ in-force life insurance policies and retained asset accounts against” the DMF.” Model Act, Section 4.A.¹ A number of insurance companies have suggested that the Model Act be amended to only apply to policies issued sometime after the date it is enacted by a particular state, thereby exempting insurers from searching any of their previously issued in-force policies. *These previously issued policies, however, are the very ones that are likely to be unclaimed now, or to become unclaimed in the foreseeable future.* Individuals insured under newly-issued policies generally are not expected to die for decades to come. Moreover, to the extent that insureds die unexpectedly shortly after their policies have been issued, it is far more likely that their beneficiaries will be aware of the existence of the policies. A review of policies where funds have been remitted to beneficiaries as a result of recent state actions demonstrate that a large number are small face amount policies sold many years ago door-to door. These were purchased at great personal cost and sacrifice and were often intended to cover burial costs for families. Promises made to these citizens should be kept. *Accordingly, an amendment that would limit DMF comparisons to newly-issued policies would effectively eviscerate the underlying purpose of the Model Act and render it an illusory fix to the very real problem it seeks to rectify.*

¹ It should be noted that the Model Act is intended to cover certain annuity contracts through its definition of “Contract” set forth in Section 3.D. The search requirement set forth in Section 4.A., however, only refers to insurance policies and retained asset accounts. The omission of annuities from this section is undoubtedly inadvertent and NAUPA proposes that the Model Act should be amended to correct this oversight.

Nevertheless, some insurance companies have suggested that applying the Model Act to previously issued policies constitutes a violation of the Contract Clause of both the federal and state constitutions. This argument is entirely without support and, in fact, has been squarely rejected by the only court that has considered it. Faced with this precise issue, the Kentucky Circuit court in *United Ins. Co. of Am. v. Kentucky*, No. 12-CI-1441 (Ky. Cir. Ct. Apr. 1, 2013), explicitly rejected the argument that applying KRS § 304.15-420, Kentucky's version of the Model Act, to all in-force policies constituted an unlawful retroactive regulation, holding that the statute did not alter any substantive contractual relations and, even if it did, the statute was justified by a significant and legitimate public purpose.

In reaching this conclusion, the court noted, among other things, that "the legislature has sought to remedy the problem of insurance companies holding on to funds that should be paid to beneficiaries upon the death of the insured" and that "[t]he statute merely confirms the right of beneficiaries to the money the insured's premiums have already paid for." *Id.*, slip op. at 7, 8. As the court explained, "[i]n a highly regulated industry such as insurance, companies should be aware that their rights are always subject to the regulatory power of the state to enact consumer protections such as the one at issue here. Such changes in statute do not violate vested rights or due process." *Id.*, slip op. at 9. Additionally, the court held that any burden imposed by the Model Act was also justified by a significant and legitimate public purpose, stating that "[f]or insurance companies to attempt to keep the money through willful ignorance of the death of the insured amounts to unjust enrichment at the expense of some of the least privileged citizens in this state." *Id.*, slip op. at 11.

A number of insurance companies have also suggested that various amendments be made to limit the frequency of DMF comparisons, provide for additional exemptions of certain groups of policies from searches, and/or allow for insurance commissioners to exempt or delay some companies from having to conduct the searches. In general, NAUPA believes that more comprehensive search requirements are in the best interest of consumers and will be most effective in preventing policy proceeds from becoming unclaimed property. Accordingly, NAUPA cautions that any proposed amendments that reduce the number of comparisons and/or the groups of policies to be searched from what is currently called for the Model Act be carefully evaluated to ensure that they do not unnecessarily omit companies or policies from the search process or create a situation where unclaimed death benefits will be overlooked.

Additionally, at least one suggestion has been made to consider including within the Model Act a requirement that matches be performed using some form of "fuzzy logic." NAUPA agrees that it would be beneficial to include a provision in the Model Act that takes into account

Reps. Damron and Keiser

April 4, 2014

Page 4

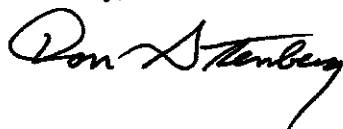
common data discrepancies and/or typographical errors, which NAUPA understands is consistent with the manner that DMF searching is generally performed.

Finally, some insurance companies have suggested the Model Act be amended to address issues that clearly fall within the scope of NAUPA member-state officials' responsibilities in carrying out their obligation to ensure compliance with their respective unclaimed property laws, such as how states compensate their unclaimed property auditors or what standards must be met before property is required to be escheated. NAUPA strongly opposes any such amendments as being beyond the intended scope of the Model Act. As noted above, through enactment of the Model Act, states may impose requirements on insurance companies that will prevent unpaid death benefits from becoming unclaimed property. The Model Act, however, must not attempt to abrogate the ability of unclaimed property administrators in enforcing the unclaimed property laws to the extent that insurance companies are unable to find and pay the beneficiaries of such policies.

NAUPA looks forward to continuing to actively work with the Task Force as it moves forward in considering any possible amendments to the Model Act in a manner that ensures that the underlying purposes of the Act are achieved. In this regard, it should be noted that at the same time that NCOIL is considering potential amendments to the Model Act, the Uniform Law Commission is working on drafting revisions to the Uniform Unclaimed Property Act (the "UUPA"). NAUPA believes that it would be extremely beneficial for the Model Act and the UUPA to dovetail with one another on issues related to use of the DMF to identify deceased insureds and unclaimed death benefits.

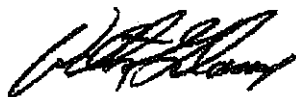
As requested by the Task Force in its March 9, 2014 release, attached are several proposed amendments to the Model Act that NAUPA would recommend.

Sincerely,



Don Stenberg

Nebraska State Treasurer and member, Advisory Council to the Unclaimed Property Task Force



Walter Graham

Chief of Unclaimed Property, Florida Department of Financial Services and member, Advisory Council to the Unclaimed Property Task Force

[NAUPA Proposed Amendments To]
Model Unclaimed Life Insurance Benefits Act

Adopted by the NCOIL Executive Committee on November 20, 2011, and by the Life Insurance & Financial Planning Committee on November 17, 2011. Amended by the Executive Committee on July 15, 2012, and the Life Insurance & Financial Planning Committee on July 13, 2012. Technical amendment adopted by the committees on July 14, 2013, and July 11, 2013, respectively.

Section 1. Short Title

This Act shall be known as the *Unclaimed Life Insurance Benefits Act*.

Section 2. Purpose

This Act shall ~~require~~establish standards for insurers to make reasonable efforts to identify death benefits that may be due under life insurance policies, annuity contracts or retained asset accounts and attempt to locate beneficiaries, and ensure the escheatment of unclaimed life insurance policy or annuity contract benefits or retained asset accounts under the unclaimed property statutes ~~recognition of the escheat or unclaimed property statutes of the adopting state and require the complete and proper disclosure, transparency, and accountability relating to any method of payment for life insurance death benefits regulated by the state's insurance department.~~

Section 3. Definitions

- A. "Death Master File" means the United States Social Security Administration's Death Master File or any other database or service that is at least as comprehensive as the United States Social Security Administration's Death Master File for determining that a person has reportedly died.
- B. "Death Master File Match" means a search of the Death Master File that results in a match of the social security number or the name and date of birth of an insured, annuity owner, or retained asset account holder.
- C. "Policy" means any policy or certificate of life insurance that provides a death benefit. The term "Policy" shall not include (i) any policy or certificate of life insurance that provides a death benefit under an employee benefit plan (a) subject to The Employee Retirement Income Security Act of 1974 [29 USC 1002], as periodically amended, or (b) under any Federal employee benefit program, or (ii) ~~any policy or certificate of life insurance that is used to fund a preneed funeral contract or prearrangement, or (iii) any policy or certificate of credit life or accidental death insurance.~~
- D. "Contract" means an annuity contract. The term "Contract" shall not include an annuity used to fund an employment-based retirement plan or program where the insurer is not committed by terms of the annuity contract to pay death benefits to the beneficiaries of specific plan participants.
- D-E. "Retained Asset Account" means any means mechanism whereby the settlement of proceeds payable under a Policy or Contract is

accomplished by the insurer or an entity acting on behalf of the insurer establishing an account with check or draft writing privileges, where those proceeds are retained by the insurer, pursuant to a supplementary contract.

Drafting note: All other terms used in this Act shall be interpreted in a manner consistent with the definitions used in [Insert State Insurance Code].

Section 4. Insurer Conduct

A. An insurer shall perform a comparison of its insureds' in-force life insurance policies ~~Policies, Contracts and Retained Asset Accounts~~ against a Death Master File, as well as any Policies that have lapsed or terminated within the last fifteen (15) years, on at least a semi-annual basis, to identify potential matches of its insureds, annuitants or account holders. Notwithstanding the foregoing, Policies that have lapsed or terminated may be excluded from further comparisons after having been included in a previous Death Master File comparison. In performing the comparisons, an insurer shall implement reasonable procedures to account for common variations in data that would otherwise preclude an exact match against the DMF. For those potential matches identified as a result of a Death Master File Match, the insurer shall:

1. within ninety (90) days of a Death Master File Match:

- a. complete a good faith effort, which shall be documented by the insurer, to confirm the death of the insured, annuitant or retained asset account holder against other available records and information; and
- b. determine whether benefits are due in accordance with the applicable ~~pPolicy, or eContract or Retained Asset Account~~; and if benefits are due in accordance with the applicable ~~pPolicy, or eContract or Retained Asset Account~~:
 - i. use good faith efforts, which shall be documented by the insurer, to locate the beneficiary or beneficiaries; and
 - ii. provide the appropriate claims forms or instructions to the beneficiary or beneficiaries to make a claim including the need to provide an official death certificate, if applicable under the ~~pPolicy, or eContract or Retained Asset Account~~.

2. With respect to group life insurance, insurers are required to confirm the possible death of an insured when the insurers maintain at least the following information of those covered under a policy or certificate: (1) Social Security number or name and date of birth, and (2) beneficiary designation information, (3) coverage eligibility, (4) benefit amount, and (5) premium payment status.

3. To the extent permitted by law, the insurer may disclose minimum necessary personal information about the insured or beneficiary to a person who the insurer reasonably believes may be able to assist the insurer locate the beneficiary or a person otherwise entitled to payment of the claims proceeds.

B. An insurer or its service provider shall not charge insureds, account holders, or beneficiaries for any fees or costs associated with a search or verification conducted pursuant to this section.

- C. The benefits from a ~~life insurance~~ Policy, Contract, or a ~~Retained Asset Account~~, plus any applicable accrued interest shall first be payable to the designated beneficiaries or owners and in the event said beneficiaries or owners can not be found, shall escheat to the state as unclaimed property pursuant to *[Cite state statute for escheat or unclaimed life insurance benefits]*.

Drafting note: Some states' insurance commissioners may want to develop an informational notice that appraises beneficiaries of their rights to the payment of interest on the benefits or proceeds of a life insurance policy or retained asset account. The written notice should be provided by a life insurer to a beneficiary prior to or concurrent with the payment of any life insurance proceeds or the settlement of any life insurance claim, where applicable.

- D. An insurer shall notify the *[Insert the state agency for unclaimed property]* upon the expiration of the statutory time period for escheat that:

1. a ~~life insurance~~ Policy or Contract beneficiary or ~~Retained Asset Account~~ holder has not submitted a claim with the insurer; and
2. the insurer has complied with subsection A of this Section and has been unable, after good faith efforts documented by the insurer, to contact the ~~Retained Asset Account~~ holder, beneficiary or beneficiaries.

- E. Upon such notice, an insurer shall immediately submit the unclaimed ~~life insurance~~ Policy or Contract benefits or unclaimed ~~Retained Asset Accounts~~, plus any applicable accrued interest, to the *[Insert the state agency for unclaimed property]*.

Section 5. Unfair Trade Practices

Failure to meet any requirement of this Act is a violation of *[Insert State Unfair Trade Practices Statute]*.

Drafting note: Some states' Unfair Trade Practices statutes specify that an act must be shown to be a "pattern" or "general business practice" in order to constitute a violation of that statute. In those instances, care should be taken in the adoption of this model to ensure consistency across those two statutes.

Section 6. Effective Date

This Act shall take effect on or after *[insert appropriate date]*.

Drafting note: Due to the fact that the provisions of this Act may necessitate significant changes to insurer compliance programs, states should consider up to a one-year delayed effective date.

Drafting note: To address other concerns with transparency and accountability in life insurer procedures relating to treatment of retained asset accounts, please refer to the NCOIL Beneficiaries' Bill of Rights, which requires extensive written disclosures to consumers and insurer reporting.