



**Comments of the Center for Economic Justice  
To the NAIC Travel Insurance Working Group**

**May 8, 2017**

CEJ submits the following comments on key issues requiring early resolution to guide the work of the Travel Insurance Working Group.

**1. Require Separate Presentation and Sale of Insurance and Non-Insurance Products.**

*This is the threshold issue* for the working group because the decision to allow or prohibit bundling of insurance and non-insurance products will impact virtually every aspect of the model, including the need for and definitions of various products and persons, disclosures, oversight of rates and forms, premium tax provisions, consumer disclosures and more.

The NCOIL model permits the current practice of bundling insurance products and non-insurance services into a single “travel assistance” product. Industry claims that this bundling is the travel industry’s response to consumer demand. We urge the NAIC and the Travel Insurance Working Group to start its work on a travel insurance model law with the fundamental decision that that bundling of insurance products and non-insurance services into “travel assistance” products will be prohibited. There are several reasons for this threshold decision.

- a. **Consumer confusion regarding which products or services are or are not insurance products.** Insurance consumers have rights and protections not available to consumers of other consumer products. Consequently, bundling of insurance products and non-insurance services into a single product is inherently confusing to consumers.
- b. **Regulatory oversight of a bundled product is inefficient and complex.** The starkest evidence of this fact is the NCOIL model which creates new regulatory terms and actors to accommodate the bundled product. In addition to an overly complex regulatory structure, the enforcement of the statutory requirements is left to market conduct exams to, among other things, determine if insurance products and non-insurance services are properly accounted for in premium tax calculations and that insurance products in the bundle are actually treated as insurance products by the “travel administrator.” A

regulatory structure that clearly identifies and segregates insurance products from non-insurance products will address the identification and treatment of travel insurance products up-front, creating far greater regulatory efficiency and compliance. Stated differently, defining and segregating insurance products from non-insurance services in the sale and administration of travel assistance products moves regulatory oversight and compliance from a back-end market conduct examination to front-end review and compliance.

- c. **There is no other example of a bundled product of insurance products and non-insurance services.** See points a. and b.
- d. **Industry claims that “consumers demand” a bundled product is unsupported and self-serving.** Industry claims that their bundled product has developed as a result of consumer demand, but has provided no evidence that this is actually the case. A number of travel insurance/travel assistance providers’ websites offer different plan options – with significantly different benefits and benefit levels – indicating the travel assistance providers’ response to consumer demand for choice. Examples include:
- i. Nationwide offers “Essential” and “Prime” single trip plans as well as an annual plan.<sup>1</sup>
  - ii. Berkshire Hathaway offers four travel assistance products<sup>2</sup>
  - iii. Allianz offers five plans<sup>3</sup>

It is illogical to claim that consumers demand a single bundled product when the travel assistance providers offer a variety of products. Moreover, we do not believe it is overly complicated for a travel assistance provider to present a consumer with a choice of travel insurance and non-insurance travel assistance or both. Such a presentation will, however, clearly delineate travel insurance products from non-travel insurance services and both reduce confusion for consumers and allow for a more efficient, more effective and more transparent regulatory system for travel insurance.

Further, references to industry sales are not evidence of consumer demand for a bundled product any more than sales of unsuitable annuities to seniors or sales of predatory loans to low-income and minority consumers were evidence of demand for these unsuitable or abusive products. .

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<sup>1</sup> <https://www.nationwide.com/travel>

<sup>2</sup> <https://www.bhnp.com>

<sup>3</sup> <https://www.allianztravelinsurance.com/find-a-plan/products>

2. **Define the State in Which the Travel Insurance is Sold and the State With Responsibility for Consumer Protection.**

Travel insurance/assistance may be bought over the internet, may be sold to consumers directly as an individual policy or to consumers through a group policy and in a variety from and to a variety of locations around the world. Consequently, it is important and necessary to establish which state or states have jurisdiction over what sales.

- a. **Prohibit sham groups for sales of group policies.** The NCOIL model renders the concept and purpose of a group policy meaningless by permitting the sale of a group policy to an insurance producer with the result that the only relationship among the producer's "group" is their purchase from a particular producer. The model law should prohibit sham groups.

3. **Travel Insurance is a Complex Product, Requiring Filing, Review and Approval of Policy Forms. Travel Insurance Sold in a Captive Setting is Not A Competitive Market.**

A review of travel insurance / travel assistance products – which CEJ has previously submitted to the working group – reveals these to be complex products with a large number and variety (e.g., medical and non-medical) benefits with confusing or potentially-confusing terms and conditions, such as pre-existing condition or immediate family. The consumer protection needed for products of this nature are:

- a. **Filing, Review and Approval of Policy Forms and Advertising.** In addition to the complexity of the travel insurance products, another reason for filing, review and approval of policy forms is to ensure that travel insurance products are not arbitrarily declared a non-insurance service. Review of travel insurance advertising is needed for captive sales environments, in particular, to ensure consumers understand their rights and options.
- b. **Full Licensing of Travel Insurance Producers with a Unique Travel Insurance Producer Licensee.**
- c. **Rate Filing and Commission/Compensation Disclosure for Captive Sales Markets.** As a preliminary matter, data on premiums, claims and commissions/compensation is needed to evaluate market shares and profitability – key metrics in any competitive market analysis. Travel insurance/assistance is sold in two types of markets. One market is direct to consumer (typically through the internet) and comparison websites (e.g. Squaremouth). Subject to analysis of market outcomes – including compensation arrangements with the comparison site operator – this market is likely to be competitive because consumers must

make an affirmative action to go the site and, consequently, have shopping options (either by going to a different travel assistance web site or by selecting among providers on an aggregation web site.)

The second type of market is a captive sales market in which the travel provider – travel agent, airline, cruise line – is selling travel insurance/assistance as an add-on to the main travel product. These add-on product markets are not competitive, but are reverse-competitive and notoriously prone to unfair and deceptive sales. Consumer credit insurance is an example of an add-on insurance product market and no state treats consumer credit insurance as a competitive market without rate regulation. Similarly, the Consumer Financial Protection Bureau has taken numerous enforcement actions to stop unfair and deceptive sales in consumer loan add-on markets for payment protection and identify theft services. While CEJ has suggestions for improving the competitive operation of these captive travel insurance/travel assistance markets – e.g., a prominent disclosure that a consumer is not required to purchase travel assistance, that the consumer may purchase travel insurance from other providers and that many employers, groups or credit cards offer some travel insurance and travel assistance benefits – it is completely unreasonable and unwarranted to declare current captive markets as “competitive.”

- d. Require routine reporting of travel insurance premiums, claims, commission / compensation and expense experience similar to that reported by credit insurers in the Credit Insurance Experience Exhibit.**
- 4. Declare “Cancellation” or “Waiver” Products to Be Insurance If These Products Are Backed by an Insurance Policy, such as a Contractual Liability Insurance Policy.**

In the lending world, lenders identified a way to escape state regulation of credit insurance through the sale of a functionally-identical product – debt cancellation coverage / debt suspension agreement (DCC/DSA). The lenders – including banks, credit unions and auto dealers – argued that while credit insurance involved a transfer of risk – from the consumer and lender to the credit insurance company – DCC/DSA was a two-party agreement between the borrower and lender in which the lender simply agreed – via an amendment to the loan agreement – to cancel or suspend the loan or loan payment. Banking regulators agreed with lenders and called DCC/DSA banking products, moving regulatory oversight from insurance to banking regulators. In theory, banking regulators would monitor lenders’ use of DCC/DSA to ensure the safety and soundness of the lender – i.e., that the lender was not agreeing to cancel debts without the resources to do such

cancellation and stay in business. In practice, lenders addressed the banking regulators' safety and soundness concern by purchasing a contractual liability policy – from the same credit insurers who had previously sold the lender a credit insurance policy – to cover all benefits provided under the DCC/DSA agreements. In practice, the operation of the DCC/DSA product markets was the same as that for consumer credit insurance markets, but with different product names and less regulatory oversight.

We provide the background on DCC/DSA products and markets to explain why certain travel assistance “waiver” or “cancellation” products are, and should be treated as, insurance products. Just as an individual travel insurance producer is a sham group, so are travel assistance fee “waivers” or “cancellations” if the travel provider has a contractual liability policy backing up the “waiver.” It is a sham to move something out of the travel insurance policy, call it a “waiver” product” and then use a contractual liability policy to transfer the risk in exactly the same way that risk would be transferred if the “waiver” was part of the original travel insurance policy.

Prohibiting sham “waivers” is necessary and important for consumer protection and for appropriate premium tax collection.