



**Comments of the Center for Economic Justice
to the
NAIC Life Actuarial Task Force**

Proposed Revisions to AG 49

November 9, 2016

Summary of Comments

The Center for Economic Justice (CEJ) supports the proposed change to apply the requirements of Sections 4 and 5 of AG 49 to indexed universal life illustrations for new business and in-force policies on or after the effective date.

CEJ urges a change in the effective date to March 1, 2017. The proposed effective date of July 1, 2017 is much longer than needed for industry to implement this needed consumer protection for updated illustrations for in-force policies. AG 49 has been effective for new business for over a year which means that the industry has the infrastructure in place to produce AG49-compliant credit rates. There is no need to provide industry with over six months lead time simply to utilize a crediting rate based on a methodology industry is already using. Delaying the implementation date to July 1, 2017 extends the period in which existing IUL policyholders may continue to receive update illustrations with unreasonable and unrealistic illustrations.

Discussion

The purpose of AG 49 is to protect consumers from the use of unrealistic non-guaranteed crediting (interest) rates in illustrations for indexed universal life insurance. AG 49 was developed and adopted on an expedited basis to stop the use of abusive and unreasonable projected returns for the policy. It is useful to recall the purpose of AG 49 – a fundamental consumer protection guideline to ensure consumers presented with IUL illustrations received useful information to assist in their decision-making.

Because of the expedited nature of the development and adoption of AG 49, LATF committed to the Life A Committee to continue work on AG 49 after initial adoption to address ongoing issues. One of those issues is now before LATF – whether to apply the non-guaranteed illustration crediting rate calculation and capping requirements of Sections 4 and 5 of AG 49 to all illustrations on or after a future effective date. Stated differently, the proposal is to apply the crediting rate requirements of AG 49 for both new business illustrations and for updated illustrations on or after the effective date for in force policies

It is important to state clearly what the proposed change is not doing – the proposal will not require revision of an illustration provided prior to the effective date.

It is also important to be clear what aspect of an IUL illustration is affected by this change – the crediting rate and the methodology for the illustrating insurer to calculate the crediting rate for the non-guaranteed scale. The proposal does not change any aspect of the IUL policy. The proposed change may impact the crediting rate the insurer uses for an updated illustration – in those instances in which the crediting rate would be higher than permitted by AG 49.

A crediting rate for the non-guaranteed scale of an illustration is already subject to change. The crediting rate for an updated illustration for an in-force policy may change from the crediting rate used in a prior illustration under pre-AG 49 methodologies because the performance of the underlying index has changed. ACLI has confirmed this during the August 2016 LATF meeting in San Diego, explaining that an insurer offering an illustration for a replacement policy will use the same crediting rate assumptions for an updated illustration of the existing policy as used for the replacement policy illustration to ensure a fair comparison of the products. Changing the crediting rate in an updated illustration from that used in a prior illustration is neither a retroactive change to the existing policy or a structurally-difficult endeavor for insurers.

The benefits of the proposed change are many and obvious:

1. Consistent consumer protection

The proposal will ensure consistent consumer protection regarding crediting rates for the non-guaranteed illustration by applying AG 49 to all illustrations on or after the effective date – regardless of whether that illustration is for new business or an updated illustration of an in-force policy. It would be illogical to provide different consumer protection for two consumers evaluating the same policy, but differing only by a few months in the date of purchase.

2. Better information for consumers reviewing their IUL products

As discussed above, the purpose of AG49 was to stop the use of unrealistic and unreasonable crediting rates for illustrations of future earnings with an IUL policy. The application of AG49 requirements for the development of a maximum crediting rate provides consumers with better information and, consequently, empowers consumers to make better decisions for themselves.

3. Easier and less costly compliance for insurers

Under the current AG49, an insurer must calculate AG49-compliant crediting rates for new business IUL policies on or after September 1, 2015. But AG49 does not currently apply to updated illustrations on IUL policies issued before September 1, 2015. This means that insurers must maintain and utilize the non AG 49 compliant crediting rate methodologies and be able to demonstrate to regulators which of perhaps many methodologies were used in calculating the crediting rate for illustrations on or after September 1, 2015 depending on when the policy was issued. Clearly, it will be far easier for insurers to maintain compliance with a single set of requirements for crediting rate methodologies on or after an effective date than to maintain compliance for multiple methodologies.

4. Easier and less costly oversight for regulators

The same logic applies to ease of regulatory oversight of crediting rate methodologies and calculations as for insurer compliance. It will be far easier – and, consequently, less costly for regulators and insurers – to have a single set of requirements for crediting rate methodology and calculations on or after the effective date.

The arguments against the proposal are without merit and include the following:

1. “Retroactive application of a rule or regulation”

Some industry commenters claim the proposal is an impermissible retroactive change to a contract. This is clearly incorrect. The proposed change to AG 49 will not change any contractual feature of an existing IUL policy. Opponents of the proposal have not – and cannot – point to any contractual feature of the IUL policy that would be “retroactively” changed by the proposed change to AG 49.

We suggest that it is an abuse of process at LATF for opponents of the proposed change to AG 49 to claim “retroactive” application and seek to delay a LATF decision by demanding NAIC legal review without identification of any contract feature that could be changed by the proposal.

2. “Consumer confusion”

Opponents of the proposed change have claimed that consumers will be confused if they receive an updated illustration with a lower, more realistic crediting rate for the non-guaranteed scale illustration. Putting aside that, despite months of opportunity to support this claim, no evidence – or logic – has been presented in support of this claim of consumer confusion.

We assert that the claim of consumer confusion is patently absurd – that a consumer who purchased an IUL policy with unrealistically-high crediting rates for the non-guaranteed scale illustration acted rationally – despite bad information – and these same consumers when presented with more realistic information – better information for an informed evaluation – will become irrational and make bad decisions with their policies. This argument is profoundly anti-consumer – asserting that consumers are better off without the illustration protections of AG 49.

3. “Conflict with another NAIC model”

During the October 20, 2016 LATF call, one LATF member asked if the proposed change to AG49 creates conflicts for producers in the Life Insurance and Annuities Replacement Model Regulation. We would again suggest that it is an abuse of process at LATF to broadly suggest conflict with other rules or statutes without referencing some specific “conflict.” Nevertheless, we have reviewed the model in question and find no reference to any requirements for the crediting rate for the non-guaranteed scale in an updated illustration for the existing policy. For example, the model defines “policy summary” for universal life insurance products:

For universal life policies, means a written statement that shall contain at least the following information: the beginning and end date of the current report period; the policy value at the end of the previous report period and at the end of the current report period; the total amounts that have been credited or debited to the policy value during the current report period identifying each by type (e.g., interest, mortality, expense and rides); the current death benefit at the end of the current period on each life covered by the policy; the net cash surrender value of the policy as of the end of the current period; and the amount of outstanding loans, if any, as of the end of the current report period.

As for alleged problems or conflicts for the producer, there are none. Section 4A states:

A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts.

If the answer is yes, then the producer and applicant must sign a disclosure described in Appendix A of the model. That disclosure includes the following:

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in-force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer.

Clearly, the consumer protections of AG 49 applied to an in-force illustration, as referenced in the paragraph above, is consistent with the purposes of the replacement model regulation and with consumer protection, generally.

Effective Date

CEJ urges a change in the effective date to March 1, 2017. The proposed effective date of July 1, 2017 is much longer than needed for industry to implement this needed consumer protection for updated illustrations for in-force policies. AG 49 has been effective for new business for over a year which means that the industry has the infrastructure in place to produce AG49-compliant credit rates. There is no need to provide industry with over six months lead time simply to utilize a crediting rate based on a methodology industry is already using. Delaying the implementation date to July 1, 2017 extends the period in which existing IUL policyholders may continue to receive update illustrations with unreasonable and unrealistic illustrations.