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July 3, 2006

Randall Stevenson
Chief Managing Life and Health Actuary
NAIC

By Electronic Mail

Re: Comments On Proposed Model Regulation Permitting The Recognition Of Preferred Mortality Tables For Use In Determining Minimum Reserve Liabilities

Dear Mr. Stevenson:

The Center for Economic Justice (CEJ) submits the following comments on the above-cited proposed regulation related to preferred mortality tables.

In addition to raising a number of issues of concerns to consumer groups, we find the proposed regulation to be poorly crafted, vague in key areas and a bald attempt by industry to eliminate reasonable regulatory oversight. We urge the Life Health Actuarial Task Force (LHATF) **not** to adopt the proposed regulation for a number of reasons set out below.

1. We are concerned that the NAIC Life Health Actuarial Task Force (LHATF) is passively exposing an industry proposal as a regulator product. It appears to us that LHATF is putting forth the American Council of Life Insurers (ACLI) proposal with little regulatory input, guidance or comment. Such action by LHATF is very unusual, as LHATF has a long history of active scrutiny of regulatory proposals to ensure fairness to insurers and appropriate consumer protections. We are concerned that important technical regulatory insights and safeguards may be trampled for political considerations. We ask that LHATF members apply the same diligence to the proposed regulation as you have always performed in the past.

2. We are concerned about the lack of regulatory oversight and absence of objective standards regarding the use of preferred mortality tables in the proposed regulation. For example, the only condition on the use of Super Preferred Nonsmoker, Preferred Nonsmoker and Preferred Smoker mortality tables is that a company actuary certifies that the present value of anticipated mortality experience is less than the present value of death benefits using the relevant mortality table. (See Section 5 of proposed regulation).

We do not understand how a company can reasonably determine how to use a specific preferred mortality table when there are no objective characteristics associated with the determination of the mortality experience of that table. Consequently, there is no way for an actuary to reasonably relate a company's mortality experience, which may be based on specific underwriting criteria, to a mortality table with essentially unknown foundation.

There clearly should be more guidance, grounded in objective risk classification criteria, for a company actuary to evaluate reserves in relation to preferred mortality tables. This obvious need is reflected in the SOA/AAA work on preferred mortality tables which is grounded in objective risk characteristics summarized in a score.

We also do not understand why the single condition – present value valuation – is limited to the plans of insurance using the preferred tables. We see no reason why plans of insurance based upon residual standard tables are exempt from any regulatory oversight. This exemption for residual standard mortality tables is unwarranted and represents another major flaw in the proposed regulation.

3. <u>The regulation should contain specific prohibitions against unfair risk classification and eligibility guidelines and a requirement that insurers file their underwriting and risk classification guidelines with the regulator.</u> It is clear that life insurers, as their property casualty counterparts, have implemented more refined risk classification programs which result in multiple price points for a particular product. We are already aware of some unfair risk classifications, such as ineligibility based on legal travel destinations. We are also concerned that life insurers, like property casualty insurers, are utilizing risk classification factors that are proxies for economic status. Consequently, it is vital that regulators know what risk classification characteristics insurers are using and the proposed regulation should include a requirement that insurers file their underwriting and risk classification guidelines with the regulator. Knowledge of these underwriting and risk classification guidelines is not only essential for the regulator to understand the marketplace generally, it is essential for meaningful oversight of the actuarial certifications based on preferred mortality tables.

The regulation should specifically prohibit certain risk classification characteristics, including consumer credit reports – in whole or in part – and income, in addition to race, religion and national origin. This is clearly an area that requires greater discussion within LHATF and LHATF should not be forced to forego critical policy discussions to meet ACLI's time frame.

4. <u>There are several vague or illogical provisions in the proposed regulation.</u>

   a. Section 5 starts with "For each plan of insurance with separate rates for Preferred and Standard Nonsmoker lives," but then refers to three mortality tables for Nonsmokers – Superpreferred, Preferred and Residual Standard. There is no definition of Preferred and Standard Nonsmoker lives and no indication how these two categories relate to the three mortality tables.

b. The regulation has a "Separability" provision. "Separability" is not a word found in the dictionary. Perhaps ACLI intends this to be a Severability provision. However, given the tight and important interaction between the various provisions in the proposed regulation, a severability provision makes no sense. Suppose, for example, that Section 5 was struck down for failure to include present value certifications of plans of insurance based on Residual Standard mortality tables. It would make no sense for the remaining portions of the regulation to remain in force.

c. It is unreasonable to rely upon mortality table splits developed by Tillinghast under contract with the ACLI when the SOA/AAA is well underway in developing preferred mortality tables. As with other aspects of the proposed regulation, the reliance on the Tillinghast report smacks of industry self-regulation instead of necessary regulatory oversight.

5. The definition of statistical agent should be limited to those activities associated with the collection, compilation and transmission of insurer reports to regulators. Activities associated with actuarial judgments about the data, such as experience modifications, should be left to insurers or advisory organizations – in the advisory organization's role as an advisory organization and not as a statistical agent. We suggest that the definition of statistical agent exclude the provision about promulgation of experience modifications. Further, we suggest that the definition of statistical agent specifically state that, as a designated statistical agent of the commissioner, the statistical agent's primary duty as a statistical agent is to the commissioner. Finally, we suggest that the definition of statistical agent specifically provide for experience reports of individual insurers to the commissioner.

In conclusion, we urge LHATF to reject this poorly conceived, poorly written and untimely proposed regulation. Thank you for your consideration.

Sincerely,

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