Additional Comments of the Center for Economic Justice

To the Unclaimed Benefits Model Subgroup

Regarding Application of the Model to Credit Life Insurance

November 12, 2015

The Center for Economic Justice (CEJ) submits these additional comments in response to the November 12, 2015 letter submitted by the American Bankers Association.

The ABA seeks to rebut CEJ's comments in support of applying the requirements of the Unclaimed Benefits Model to credit life insurance. The ABA argues that CEJ has provided generalizations and no facts to support CEJ's position. While CEJ did, in fact, provide facts to support our position, the ABA has, no doubt without intending irony, provided no facts to either refute CEJ's argument or to establish that the application of the Unclaimed Benefit Model to credit life insurance would fail to identify unclaimed credit life insurance benefits.

The first fact undermining the ABA argument is that beneficiaries of the credit life insurance policies are arguing for excluding credit life insurance from the requirements of the Model. Why would credit life insurance beneficiaries argue against requirements to identify unclaimed benefits for these beneficiaries? Because it might result in additional payments to these lender beneficiaries? CEJ suggests that lenders – and their trade association – do not act against their financial interest, which would mean that lenders benefit from a credit life insurance exclusion in the Model. The objection of the ABA is consistent with the analysis put forth by CEJ that, in some circumstances, a lender has a financial interest in an insurer not paying a credit life claim.

It is important to, again, frame the issue. Credit life insurers and lenders have argued for excluding credit life insurance from the requirements of the Model because, they claim, lenders are beneficiaries of credit life policies, have an interest in pursuing claims and, consequently, this interest ensures all credit life claims will be pursed and paid. Credit insurers and lenders have offered no empirical evidence to support their logical argument. They have provided no evidence that a credit life insurer did a DMF match and found nothing.

In response to the credit life insurer/lender argument, CEJ has pointed out that in many circumstances – financed single premium (SP) credit life insurance through a lender with a captive reinsurance arrangement – the lender has a financial interest in the claim not being paid. CEJ has not argued that this is an intentional practice of any credit life insurer. Rather, we have asked for empirical evidence to support the industry argument. In the absence of such empirical evidence, CEJ's analysis shows that the credit life insurer/lender logical argument is flawed and, consequently, is not reliable to support exclusion of credit life insurance from the model.

As to the facts sought by the ABA, in 2014, of the total credit life gross written premium of $941 million, $602 million, or 64%, was SP credit insurance. SP credit life has been a significant majority of total credit life insurance premium for over two decades, even in the early 2000's when total credit life gross written premium exceeded $2 billion.

It is also a fact that captive reinsurance arrangements have been a common method lenders sharing in the profitability of credit life insurance sales. Chapter 8 of *Money on the Table*[1] provides a detailed explanation of the benefits and logistics of establishing an auto lender-affiliated captive reinsurer.

The 2005 International Monetary Fund Assessment of the Regulation and Supervision of the Financial Sector of the Turks and Caicos Islands (TCI) reported: [2]

> The TCI insurance industry was established in 1989. It has since become one of the world's largest credit life reinsurance jurisdictions. TCI is the most important center for PORC (producer owned reinsurance company).
>
> PORCs constitute the bulk of the TCI insurance industry representing 2,857 out of 3,013 licensed insurers.
>
> Licensing continues at about 200 per annum
>
> As of December 31, 2002, there were 143 U.S. – owned captive.

As to the specific issues raised by the ABA, the CEJ analysis does identify specific types of credit life insurance products and transactions – but ones which have been and are common. CEJ did offer suggested language in our earlier comments tailored to these products. If an exemption for credit life is considered, we suggested the following language

> *Credit life insurance sold on a net coverage, monthly outstanding balance premium payment basis with no lender-affiliated captive reinsurance.*

ABA argues that "the data used to support the argument regarding the unearned premiums that have been financed is old." The argument is incorrect in three ways. First, the illustration was not "data" – it was an illustration to show how financed single premium credit insurance coverage amounts are calculated and why the amount of coverage is greater than amount borrowed and, consequently, includes coverage amounts for the borrower and not just the lender. Second, we made no reference to unearned premiums. Third, the mechanics of SP remain the same today as in 1999. We pointed out that the difference between the SP total

[1] http://creditre.net/SharedFiles/Download.aspx?pageid=19&mid=23&fileid=12

[2] https://books.google.com/books?id=TMeS-63bK90C&pg=PT25&lpg=PT25&dq=producer+owned+credit+reinsurance+company&source=bl&ots=sT6geZm3yJ&sig=HK8QCvPcampST4Kg2szvpf8b03E&hl=en&sa=X&sqi=2&ved=0CD4Q6AEwBWoVChMIpqen6I-MyQIVBEUmCh2nag8f#v=onepage&q=producer%20owned%20credit%20reinsurance%20company&f=false

coverage amount and coverage necessary to pay off the remaining loan balance grows with longer loan terms and higher interest rates.

ABA complains that CEJ did not provide data on the number of current credit insurance captive reinsurance arrangements. If the number were small, we would expect that the ABA would have supplied it. Regardless, the relevant inquiry is the number of credit insurance captive reinsurance arrangements that have been in existence. The report of the IMF, cited above, for just one jurisdiction, suggests that the number of such arrangements is substantial.

ABA's fourth point is that financed SP in connection with real-estate secured loans is prohibited by federal law. While this is an important consumer protection that CEJ and other consumer organization fought for over the objection of industry, it does not change the fact that billions of dollars of SP has been sold in connection with lender captive reinsurance over the past 15 years.

ABA fifth point is that a lender may face penalties for "elect(ing) not to file a claim." The point of the Unclaimed Benefit Model is, among other things, to identify unclaimed life insurance beneficiaries. There is a big difference between failing to search for potential beneficiaries and electing not to file a claim.

ABA sixth point is that banking and insurance examiners would "find such discrepancies." Clearly, if traditional financial or market conduct exams had been identifying unclaimed benefit issues, then the special multi-state investigation and use of forensic accountants would not have been necessary.

In summary, the ABA has provided no empirical data or evidence to support the argument for exempting credit life insurance from the Model. Nor has the ABA provided any evidence or coherent argument in response to the November 4, 2015 CEJ comments.

Thank you again for your consideration.