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Honorable Maggie Carlton
Member, Nevada State Assembly
Chair, NCOIL Life Insurance & Financial Planning Committee
Via email to wmelofchik@ncoil.org

Re: Same name, (much) different products: Enhanced cash surrender value offerings

Dear Assemblywoman Carlton:

I respectfully submit this letter in response to Representative Dunnigan's and your request for clarification on the very different products—both labeled "enhanced cash surrender value"—described by me (Life Insurance Settlement Association witness) and Ms. Melchert (American Council of Life Insurers witness).

ACLI described and defended commonplace "enhanced cash surrender value" riders marketed and added at policy issuance, generally on corporate owned life insurance policies for accounting purposes. But these products have never been at issue; instead, last Friday's posted hearing materials unambiguously identified its topic as newer, rare, spiked cash surrender offers, made years after issuance, to induce consumers to terminate and give up the death benefit on universal life secondary guarantee policies.

<u>The ECSV Products Subject To NCOIL's Inquiries</u>

NCOIL's discussions since November[1] have pertained to "enhanced cash surrender value" products that:

- Have only been used for the last few years.
- Have only been filed by three carriers, and only used as a regular business practice by one.
- Were not available and never contemplated or illustrated at policy issuance, but rather are offered only on policies after they have been well-seasoned, often for decades.
- Present a spiked "enhanced cash surrender value" offer—good only for a few months and far higher than the cash surrender value calculated under the issued policy—to induce the termination of the policy, and its death benefit protections for the insured's beneficiaries.

[1] Sen. Holdman's October letter described three insurers' short term "ECSV endorsements on universal life insurance policies," raising cash value from "$53,885 to $106,121," from "$19,037 to $360,601," and to "$437,460 on a policy with $0" CSV. Rep. Lehman in November described "a couple life insurance companies that have…this ECSV. They'll send out a notice that says, 'Hey, for this short period of time, if you want to cash in, we'll give you a much greater settlement.'…You can't offer something in a period of time because you and I can get the same letter but if I miss it by a day, you get a $300,000 settlement and I'm still stuck with my $5,000." Commissioner Mulready in March said "we've dug into it…and…we're talking about a universal life insurance policy, where there's a spike in the cash surrender value and there's a limited time offer to policyholders to surrender…for a substantially higher cash value."

The Wholly Different Product Described And Defended By ACLI

ACLI did not address, explicitly disclaimed knowledge of, and did not defend the “enhanced cash surrender value” offers, described above, which were the subject of Friday’s meeting. Its witness explained that, with respect to “spikes and offers and a limited time to exercise those options,…from the discussions I’ve had, I am not aware of that practice…I don’t have knowledge of that.” Instead, ACLI described and defended a very different product never raised, described, or objected to by LISA—or inquired about by NCOIL.

Per ACLI’s description, these riders are “very widely used, but maybe not in the circumstances that [LISA] has pointed out.” That is certainly correct: The ECSVs objected to by LISA are not “widely used,” but rather have only been filed by three insurers and regularly offered by one. And the ECSVs described and defended by ACLI are “added at the time of issuance,” unlike the ECSVs objected to by LISA, which are offered out of the blue on seasoned policies—after being neither included in the issued policy nor mentioned in the policy’s annual statements and illustrations on which consumers based their decisions for years.

Examples Of The Products In Question

Because ACLI told the Committee it was “not aware of,” but “would like to see examples of,” the ECSV offers that have been the subject of NCOIL inquiry since November, I attach to this letter relevant materials from the carrier which has incorporated limited time, spiked ECSVs as a regular business practice—Lincoln National—including offers to enhance cash surrender values from $0 to $33,113.47; from $0 to $74,706.56; and from $4,756.20 to $14,682.45.

Unlike the traditional enhanced cash surrender value offers defended by ACLI, these endorsements are not “widely used” or “added at the time of issuance”; and they are what ACLI did not defend—massively “spiked” cash offers presented as a “limited time option.”

Also attached are examples of several carriers’ traditional ECSV rider offerings. In order to understand the difference between the products under review by NCOIL and those discussed by ACLI, please consider Lincoln’s own descriptions of its two different products and their purpose:

- Lincoln’s traditional ECSV rider is marketed at policy issuance to support the purpose of life insurance: “Get the life insurance protection you need while also protecting your assets.” The new ECSV endorsement is marketed for the opposite purpose of terminating seasoned policies and their life insurance protection: “If you accept the Enhanced Cash Surrender Value option…the beneficiaries will no longer be able to collect this policy’s death benefit.”
- The traditional ECSV is “primarily sold in business-owned, business-sponsored, or premium-financed cases” because “the cash value within business-owned life insurance can be booked as a cash asset.” The new ECSV offers are made to terminate “single or survivorship universal life policy forms purchased primarily based on the coverage provided by the secondary guarantee.”
- Because Lincoln’s traditional ECSV marketing is designed to keep policies in force to “secure the financial protection you need,” it warns that “loans and withdrawals will reduce the policy’s cash value and death benefit [and] may cause the policy to lapse.” Its spiked, limited time ECSV offers,

> by contrast, seek out existing consumers who "no longer want or need the death benefit protection," in order to induce them to terminate coverage so that "Lincoln would no longer be responsible for the death benefit…allowing the release of…reserves and redeployment of the funds" (i.e., to profit).

Neither LISA Nor ACLI Defends The New ECSV Practices, Nor Objects To The Old ECSV Practices

Senator Holdman's assertion at the Committee meeting—that the new enhanced cash surrender value practices, mainly practiced by one company, are non-compliant[2]—is fully supported by the record. ACLI, in turn, did not defend the limited time, spiked cash surrender value offers described by Senator Holdman and the posted meeting materials. These are the products objected to by LISA and which, plainly, were the subject of NCOIL's well-noticed hearing.

LISA by contrast has never objected to, and NCOIL has never reviewed, the common, traditional riders to corporate owned life insurance policies, available from policy issuance for the accounting benefit to businesses, which appear to have been the products described and defended by ACLI.

We hope that the clarifications herein—including what amounts to effective agreement between the two interested party trade associations (neither opposed legacy ECSVs; neither defended the new and radically different, limited time, spiked offers)—facilitate a speedy resolution of this matter at NCOIL, with regulators, and in the life insurance market. Please contact me should you wish to further discuss this matter, and in the meantime I express my client's deep appreciation for your interest in this issue.

Best regards,

Nat Shapo

Nat Shapo

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[2] ACLI emphasized that "insurers…are subject to the Unfair Trade Practices Act," a wholly irrelevant and highly misleading argument. Senator Holdman had instead suggested that short term, spiked offers violate a different but equally important pillar of the insurance code, the Standard Nonforfeiture Law For Life Insurance's smoothness requirement—which, as described by its NAIC drafters and the Society of Actuaries, mandates "a reasonably orderly sequence of increases" of cash surrender values; and prohibits "sharp increases," "erratic cash values," "sharp jumps," "spikes in the nonforfeiture structure," and "benefits discontinuous in nature…available only during certain windows of time." A thorough treatment of these compliance issues is found in my slides, posted on the NCOIL website at https://secureservercdn.net/50.62.194.59/33a.fce.mwp.accessdomain.com/wp-content/uploads/2022/06/LISA-NCOIL-slides-6.3.22.pdf.