

DATE: March 12, 2008

TO: IIPRC Product Standards Committee

FROM: Utah Insurance Department

RE: Proposed Change to the Individual Deferred Non-Variable Annuity Contract Standards

This comment is provided by the Utah Insurance Department in support of the changes incorporated in the latest draft of the IIPRC proposed Individual Deferred Non-Variable Annuity Contract Standards in response to the concerns raised by the Alaska Division of Insurance about the nonforfeiture provisions.

Utah fully supports the proposed changes and believes that the proposal is appropriate, restores the original intention of the Standard Nonforfeiture Law, and provides a higher level of protection for senior consumers.

The central issue underlying the proposed change is the definition of the term “maturity date.” An annuity contract may have a stated maturity date but one is not required. Defining maturity date for nonforfeiture purposes is an important consumer protection and public policy issue. The main question is how soon the full values under the contract should be made available to the consumer with no penalty and a secondary question being what is the appropriate planning horizon for a consumer.

The proposed maturity date standard of age 70 or the tenth anniversary of the contract is reasonable. For younger consumers, age 70 is in line with retirement age because annuities are intended to be a retirement vehicle. For older consumers, ten years may be close to or in excess of their life expectancy, and even if they are in good health at the time of purchase, their life circumstances can change very quickly, necessitating access to the contract funds.

In recent years, the press has reported on numerous lawsuits involving unsuitable sales of annuities. In most cases an accusation was made that the products were unsuitable due to long periods of high surrender charges.

Defining the term “maturity date” for nonforfeiture purposes directly limits the length of the surrender charge period and indirectly the level of the surrender charges. This would eliminate inherently unsuitable products from the marketplace. Utah believes that the proposed change is appropriate and necessary for consumer protection.

The language in the standard nonforfeiture law is somewhat unfortunate in that the paragraph defining maturity date starts with the qualifying phrase “if there are optional maturity dates.” Some companies have interpreted this phrase to mean that if the contract has one fixed maturity date, that maturity date can arbitrarily be far in the future.

Utah believes that this is not what was intended. We believe that the phrase was meant as a clarification for the situation where there are optional maturity dates and was not intended to allow postponing a maturity date to arbitrarily far in the future. As support for this position we offer the following language from documents that precede and are subsequent to the adoption of the model nonforfeiture law:

1. From the proposal of the ALIA Subcommittee on Annuity Nonforfeiture Regulation dated May 18, 1976 and published in the NAIC Proceedings 1976, Vol. II pp. 628-631:

For purpose of the calculations, the paid-up annuity benefit shall be assumed to commence on the latest permitted annuity commencement date specified in the contract but not later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

2. From An Explanation of the Standard Nonforfeiture Law for Individual Annuities published in the NAIC Proceeding 1977, Vol. I pp. 492-498:

For contracts with paid-up annuity nonforfeiture options, whether or not a cash surrender option is also available, a maturity age or date is required for the purpose of determining the amount of such paid-up annuity benefits. For those contracts specifying one or more dates at which annuity payments may commence, the maturity date used to determine the amount of paid-up annuity nonforfeiture benefit is the last date for which election is permitted by the contract. However, if no maturity date is indicated in the deferred annuity contract or if the last optional maturity age is over 70, the proposed legislation states that the maturity date shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or tenth anniversary of the contract, whichever is later.

3. The definition of the term "maturity date" contained in the now retired NAIC Two-Tier Annuity Disclosure Model Regulation:

Maturity date is the latest date permitted by the contract, but not later than age seventy (70) or the tenth anniversary of the contract, whichever is later.

The second quote is particularly significant as it comments on the proposed legislation that already has the phrase, "if there are optional maturity dates." Note that the second quote indicates the same standard regardless of whether there is none, one, or multiple maturity dates in the contract.

The industry maintains that the proposed standard would not allow filing through the Compact products similar to those currently approved in many compacting states. Utah believes that this statement misrepresents the actual state of affairs. Some states, Utah included, have file and use laws and do not affirmatively approve products. The forms are merely filed without review. Some states have either no or limited actuarial staff, and

may rely on the company certification in matters related to compliance with the nonforfeiture law.

It is our understanding that at least one state takes the position that if the cash value can be annuitized prior to the maturity date, the contract effectively has optional maturity dates.

The purpose of an annuity is to provide income. We question whether a maturity date well in excess of one's expected lifetime is fair and reasonable. If the annuitization occurs at a very advanced age, for example age 110, is it possible to offer a reasonable lifetime annuity benefit?

We believe it appropriate that the Compact request examples of product designs currently in the market that would not be allowed under the revised standard and for industry representatives to explain how consumers would be harmed because of the unavailability of the products.