

Comments of the Consumer Federation of America and the Center for Economic Justice on Proposals to Weaken Life Insurers Capital and Reserve Requirements

Submitted to the NAIC Capital and Surplus Relief Working Group

December 26, 2008

Summary of Comments

The major investment banks Bear Stearns and Lehman Brothers failed because of weak capital standards. When insurance giant AIG failed, the NAIC and individual state insurance regulators were quick to point out that, because of stronger capital and reserve requirements, AIG's insurance units were financially sound. Instead, it was brought down by unregulated holding company activity. Yet now, state insurance regulators appear to be on the brink of loosening the very standards that have helped keep insurance companies sound when other financial institutions were failing or teetering on the brink.

The actions being contemplated by the NAIC threaten the security consumers enjoyed in previous years, a security being slashed by regulators at the behest of the regulated, despite the need in today's weak economic situation for greater, not lower consumer protection.

The Consumer Federation of America (CFA) and the Center for Economic Justice (CEJ) adamantly oppose the various proposals to weaken capital and reserve requirements for life insurers for the following reasons.

1. No justification has been provided for the "emergency" actions proposed by the life insurance industry. It is inconceivable that state regulators – who touted the strength of state solvency regulation following the collapse of AIG – would weaken capital and reserve requirements for life insurers at a time of financial stress when consumers most need assurance of insurer financial strength.
2. There is no basis to conclude that the proposed changes will accomplish what the life insurance industry desires – stronger ratings from the ratings agencies.
3. The process by which regulators have considered and will take action on the life insurance industry proposals has provided no public accountability and likely violates public meetings and public records laws of states represented by the officers and working group members. There has been no meaningful public participation in this project. It appears that regulators may have directed industry to ask for more than industry wanted so regulators could reject some proposals, preserving the appearance of independence while giving industry most all it really wanted.

4. It is a poke in the eye to consumers for the NAIC to jump through hoops to take emergency action on a request by industry for weakened capital and reserve requirements after the NAIC has refused to help consumers suffering from the subprime and financial crises and the severe downturn in the economy. Despite huge increases in unemployment and financial stress, the NAIC has refused to rein in the abuses of insurance scoring during this hard economic period, with the result that more and more consumers are forced to go uninsured. State regulators should be ashamed of themselves for putting industry interests so far ahead of the interests of consumers.
5. We call on the NAIC to hold a public meeting prior to any action on the industry proposals. The public meeting must provide for meaningful public participation and substantive information from regulators explaining the proposals and answering questions from the public, including, but not limited to:
 - Why are the actions to weaken capital and reserve requirements necessary? Are many life insurers in a very weak financial condition that insolvency is likely without the proposed actions?
 - Why must the NAIC act on the industry proposals in an emergency manner?
 - What are the results of regulator analysis regarding the impact on these proposals on stated versus meaningful capital, surplus, reserves and RBC ratios for the industry generally and for individual companies most affected by the changes?
 - How will the proposals, if adopted, work to address the alleged problems driving the proposals?
 - Why do regulators believe that rating agencies will view any or all of these proposed actions as strengthening insurer capital and reserves?
 - What is the mechanism by which the proposals, if adopted by the NAIC, become adopted by the states? Will any of the proposed actions, if adopted by the NAIC, be automatically imposed on states because of state laws referencing NAIC work products or any other reason?
 - Why would state regulators who are considering and acting upon the proposals, which will have the effect of law in their states, NOT be subject to their states' open meetings and public records laws during the consideration of these proposals?
 - How will the proposals, if adopted, policyholders generally and policyholders of individual companies most affected by the changes specifically?

Discussion

On its face, the NAIC, through the “capital and surplus relief” emergency actions, is placing at risk the security consumers enjoyed in previous years, for no reason other than the plea of the regulated, despite the need in today’s environment of financial market chaos and recession economics for greater, not lower, consumer protection.

We have been around the NAIC long enough – decades of experience – to know when a deal is done. The NAIC, normally slow in its deliberations, has been falling all over itself to try, by year-end, to significantly reduce the current cushion of monetary protection of life insurance consumers. Yet, it was not until November 11, 2008 that the ACLI formally asked the NAIC to sharply weaken capital and reserve requirements for life insurance and annuities, lower risk-based capital requirements and the alter deferred tax accounting, all of which will appear to raise capital without a dollar of capital being raised.

No Transparency and Public Accountability

Let us recount the process as we understand it.

- The NAIC officers and other regulators gave the ACLI – an industry trade association – a private meeting to allow the life insurance industry an opportunity to plead their case for significant actions to less capital and reserve requirements because of “current market turmoil.”¹ Despite the industry being represented by a trade association, the meeting was not publicly noticed and the NAIC did not even notify the NAIC’s own designated consumer representatives. At this private meeting, the NAIC took action – to establish a new working group to address the industry proposals. While the NAIC responded immediately to a request by industry presented at a private meeting with officers, the NAIC has refused for months to address issues raised by consumers in response to the meltdown of financial markets and severe downturn in the economy.
- At the regulator’s request, the ACLI sent the NAIC a set of specific proposals in a letter dated November 11, 2008. The letter states that the NAIC had already agreed to establish an Executive Committee working group to consider the ACLI’s proposals – even though the proposals were not formally presented until the November 11, 2008 letter.
- On November 14, 2008, an article appeared in the Wall Street Journal describing the ACLI proposal and regulator response. The article quoted Commissioner Susan Voss saying the NAIC leadership generally agrees with the ACLI proposals.

¹ ACLI letter to NAIC President Praeger of November 11, 2008

- On November 14, 2008, Birny Birnbaum of CEJ e-mailed Susan Voss and NAIC Acting Executive Vice President Andy Beal asking for a copy of the ACLI request.
- On November 19, 2008, Andy Beal responded with a brief summary of the ACLI proposal, but did not include a copy of the ACLI letter requested by Birnbaum. No explanation was provided for not providing a copy of the ACLI letter. CFA and CEJ subsequently obtained a copy of the letter from other sources.
- On November 28, the NAIC announced a 30 minute public meeting on December 5, 2008 of the new Capital and Surplus Relief Working Group. No notices of other meetings of the working group were provided. The Working Group did, in fact, meet in private with no public notice.
- On November 30, 2008, Birnbaum sent an e-mail to the NAIC officers, asking for more transparency in the process of considering the ACLI proposals and specifically asked that all meetings of the Capital and Surplus Relief Working Group be publicly noticed and open to the public. Birnbaum also asked the NAIC to address consumer issues arising from the crisis in financial markets, such as abuses posed by insurers' use of consumer credit information.
- Following its creation, the Capital and Surplus Relief Working Group asked other NAIC working groups to consider the ACLI proposals. Information requests were sent to the ACLI and the ACLI responded to the regulator requests. None of this activity was publicly noticed for made available to the public.
- On December 3, 2008, Birnbaum again wrote to the NAIC officers asking for more transparency in the process, including a request for copies of all correspondence to or from the NAIC and the ACLI or other insurance industry organizations (not including documents with individual company specific information) related to the ACLI proposals; a request that all regulator and regulator/industry meetings on this topic be publicly noticed and open to the public to allow the public to follow the regulatory process; a request you provide a timeline of proposed actions by the NAIC so the public understands how the NAIC is considering these proposals and how and when decisions will be made; and a request for a response to the November 30 e-mail regarding relief for insurance consumers suffering from the financial market turmoil in the same end-of-year time frame as being provided to the industry.

- On December 5, 2008, the Capital and Surplus Relief Working Group meet in private to discuss the work of the “technical working groups” analyzing the ACLI proposals. The meeting was not publicly noticed nor open to the public in apparent violation of both the NAIC open meetings policy and the open meetings laws of the states who participated in the meeting.
- On December 5, 2008, during the private Capital and Surplus Relief Working Group meeting, a letter from NAIC President Sandy Praeger and NAIC President-Elect Roger Sevigny was hand-delivered to Birnbaum purportedly responding to Birnbaum’s November 30 and December 3, 2008 e-mails. The letter did not respond to any of Birnbaum’s requests. The letter did state, with great irony as the Working Group was meeting in executive session, “As always, public review and comment is an integral part of that due consideration.”
- On December 5, 2008, the Capital and Surplus Relief Working Group held an open session to obtain “public comment.” No information provided to the Working Group from the “technical groups” was available to the public. The Working Group provided no discussion of the proposed actions and did not respond to any questions raised by consumer advocates Bob Hunter, Joe Belth or Birnbaum submitted prior to the December 5, 2008 meeting.
- On December 16, 2008, Birnbaum again wrote to the NAIC pointing out that no documents had yet been posted to the NAIC web site and repeated the requests from earlier e-mails.
- On December 16, 2008, Commission Hampton, chair of the Capital and Surplus Relief Working Group wrote Birnbaum stating the Working Group had again met in a private meeting on December 15, 2008 with no notice to the public to “review and accept analysis provided by the technical groups.” No explanation was provided for making the December 15, 2008 meeting closed to the public.
- On December 17, 2008, the NAIC sent an e-mail to interested parties stating that documents were now posted to the NAIC web site and that comments were due on the proposals by December 26, 2008. The documents were posted at the end of day on December 17, 2008, leaving all of five working days prior to the deadline of the day after Christmas. The document posed was a 27-page single-spaced document with technical responses from various NAIC technical groups.

- On December 18, 2008, the NAIC invited selected media to participate in “a teleconference to review discussions by the Capital and Surplus Relief Working Group.” Participating for the NAIC were President and New Hampshire Insurance Commissioner Roger Sevigny, NAIC Vice President and Iowa Insurance Commissioner Susan Voss, Connecticut Insurance Commissioner Tom Sullivan, District of Columbia Insurance Commissioner Tom Hampton, New Jersey Insurance Commissioner Steven Goldman, and Virginia Insurance Commissioner Al Gross. The notice was sent three hours prior to the meeting with no notification to NAIC interested parties and no notice to any consumer advocates who had expressed interest in the topic.

The history of the NAIC’s consideration of the ACLI proposal shows a process with no transparency and no public accountability. It shows that industry and regulators have met in private to work out a deal and “public” activities simply providing cover for the back-room deal.

The "public process" used by the NAIC in response to the ACLI request is a sham. This “study” of the proposals has been conducted in private -- private meetings with insurer trade associations, private meetings of regulators, private briefings of regulators and decision-making in private. The NAIC not only never posted the ACLI letter until well after major decisions had been made, but even refused to provide a copy of the letter to one of its designated consumer advocates following his request. The one-half hour public meeting NAIC held in Texas at the end of the ex-parte process with almost no notice was clearly just for show, tacked on when consumer requests for information finally forced the association to reveal the ACLI request letter. The opportunity for public comment due December 26, 2008 is also a charade -- giving the public only a handful of days packed tightly around the Christmas holiday to comment on nine detailed, not fully explained, technical proposals -- when the regulators running this process have already made up their mind.

That the deal is apparently already made is clear not only because of the lack of due process for consumers but also because of your use of "emergency" as the excuse to push through industry proposals that would otherwise either not get through at all or get through only with significantly more time and amendment based on adequate, unrushed analysis. No case has been made why normal NAIC procedures had to be abandoned to get this industry Christmas wish list approved so quickly, yet here we are, at the threshold of action without due process for the public.

Despite our repeated requests, the NAIC continued to hold non-public meetings with no justification. The Capital and Surplus Relief Working Group received reports from “technical working groups” prior to the public meeting on December 5, 2008. That meeting was, of course, only for show as members of the public had no information on which to base any discussion with or comments to regulators. The Working Group again met in executive session to discuss the industry proposals prior to the posting of the “technical working group” reports.

To date, members of the public have had exactly 30 minutes to present any views to assembled regulators, while industry has had all the time it wants to present its views. There is a reason for public meeting and public records laws – to hold government accountable to the people for the government’s actions. While regulators have fallen all over themselves to work on and approve industry wishes, our earlier questions (copies attached for your convenience) to the NAIC on this very matter have not been answered. Not one of the questions raised by consumer groups has been responded to! Instead of holding a public meeting to provide dialogue with consumers about the proposals, the NAIC invited selected reporters to a briefing by NAIC officers – with no notice to or opportunity for participation by the public or even to the NAIC’s own designated consumer advocates.

No Response to Consumer Problems Resulting from the Financial Crisis and Recession

It is an insult to consumers that the NAIC rushes at breakneck speed to bail out insurers while refusing to help consumers who are victims of insurers’ practices greatly magnified by the economic crisis. The *Wall Street Journal* recently reported increases in the numbers of uninsured motorists due to financial pressures on consumers² -- a problem exacerbated by insurance credit scoring, which the NAIC has failed to tackle even now when use of credit scores in a financial meltdown punishes those people who are laid off or behind on mortgage payments or otherwise financially distressed through no fault of their own.

No Rationale for Action, Let Alone Emergency Adoption

It appears that industry is taking advantage of the financial crisis to cow regulators into action they would either never take or do so only in a more deliberate and thoughtful fashion. **Before any action is taken, we ask the NAIC to hold a public meeting to allow the public to learn more about the proposals, including, but not limited to, the following:**

- No rationale has been provided for the emergency nature of these actions. Is the life insurance industry on the verge of collapse? Regulators say no. If that is true, what is the rush?
- Why do regulators believe these actions will help life insurers? What evidence is there that rating agencies will be fooled by these cosmetic changes into providing higher ratings?
- What requirements will there be for insurers to disclose the impact of these changes to policyholders and investors?

² “Road Risks Rise as More Drivers Drop Insurance,” *The Wall Street Journal*, December 17, 2008

- Will there be a requirement for public disclosure of the before and after impact on capital, reserves and risk-based capital ratios of any changes adopted?
- How will regulators ensure that consumers have information sufficient to understand the changes industry wants? In our one conversation with the insurers, ACLI flatly told us their insurance members do not want clear disclosure of the changes they seek from you. Surely, as you move ahead without granting reasonable opportunity for input by the public based on sufficient time and information for study, you will not aggravate this problem by allowing the public to be misled. Consumers are very vulnerable in this complex area, and you owe them at least the information they need to understand the impact of the change you are granting – information that is specific for the product they own from the specific insurer that sold it to them.
- Is it the regulators' intent to keep policyholders as uninformed about the impacts of the proposals as regulators have kept members of the public seeking to follow the regulators' deliberations? Is it the regulators' intent that policyholders and consumers not know what the regulators have done and how these acts change the standard industry metrics?
- What provisions are there for evaluation of the effectiveness of any adopted proposals? What are the reporting requirements to track the impacts of these changes? Will regulators follow the failed strategy of the Department of Treasury and provide a bailout without any tracking of the results of the bailout?
- Will regulators be honest with the public and state clearly that the adopted changes weaken existing capital and reserve requirements for life insurers or will regulators deceive the public by spinning the actions with Orwellian characterizations? Given the process to date, forgive our skepticism that regulators will be forthcoming with the public.

Documents Cited in Comments

From: Birny Birnbaum [<mailto:birny@sbcglobal.net>]

Sent: Friday, November 14, 2008 10:40 AM

To: Beal, Andrew; Susan Voss

Subject: wsj regulators may relax life insurer capital standards 081114.pdf

Andy, Susan,

Can you email me the proposal from ACLI referenced in the attached article?

Thanks,

Birny

From: Beal, Andrew <ABeal@naic.org>
To: Birny Birnbaum birny@sbcglobal.net
Subject: RE: wsj regulators may relax life insurer capital standards 081114.pdf
Date: Wed, 19 Nov 2008 17:20:56 -0600

Birny, here's what I can provide you at this point --

The NAIC Officers received a request from the ACLI to consider modifications to various solvency framework provisions to provide capital and surplus relief to life insurers in today's distressed economic environment. The NAIC has formed the Capital and Surplus Relief Working Group, reporting directly to the Executive Committee, to consider what, if any, response is appropriate. We anticipate additional information will be made available in the near future.

A summary of the ACLI request follows.

Life Insurance:

1. Publish support for the following, subject to the consent of the domestic Commissioner:
 - Allow the 2001 Preferred Mortality Tables to be used for any 2001 CSO product;
 - Make Section 8C of Actuarial Guideline 38 retroactive to 7/1/05; and
 - Clarify that 2001 Non-preferred Mortality Tables can always be used for determining segments within Actuarial Guideline 38.
2. Eliminate artificial constraints in Regulation XXX for the calculation of X factors with consent of the domestic Commissioner.
3. Facilitate Commissioner's use of current discretionary authority to exercise judgment to determine allowable US collateral for reinsurance.

Variable Annuities:

1. Eliminate redundant use of stand-alone asset adequacy analysis required by Actuarial Guideline 39, which covers only Variable Annuity living benefit guarantees and associated revenue under the contract.
2. Waive the Standard Scenario as the floor in the C-3 Phase 2 calculation of risk-based capital for year-ends 2008 and 2009.

Investments:

1. Temporarily fix the calculation of the Mortgage Experience Adjustment Factor in the risk-based capital calculation.

Accounting:

1. Change Statutory Accounting requirements to follow GAAP rules regarding recognition of the Deferred Tax Asset.

Birny, hope this information is helpful. At this point, I'm not sure if the new working group will be meeting in Grapevine, but I'm assuming it probably will. Andy

Subject: Capital and Surplus Relief Working Group / Consumer Relief Working Group
From: Birny Birnbaum
Date: 11/20/2008 7:57 PM
To: Sandy Praeger

Dear Commissioner Praeger,

I write on behalf of the Center for Economic Justice (CEJ) to express our concerns with the establishment of the new Capital and Surplus Relief Working Group, including the absence of any consumer participation. We ask for specific actions to address our concerns.

The ACLI's letter of November 11, 2008 sets out a laundry list of regulatory actions to lessen capital requirements for the life insurance industry. The letter states that life insurance industry representatives met with a number of regulators prior to November 11, 2008 and that the regulators directed the ACLI to submit specific proposals. The letter also states that during your private meeting with industry you and other regulators made a commitment to industry to create an Executive Committee working group to quickly consider the ACLI's proposals.

First, we are concerned that the NAIC is considering relaxation of life insurer capital requirements during a period when consumers need to be assured of insurer financial strength. We are troubled by this additional action when the NAIC has already taken action to relax life insurer capital requirements with changes to Triple X reserve requirements and with principles-based reserving.

Second, we are disturbed by the lack of public accountability and public involvement in the discussions leading to the decision to create the new working group. The NAIC has a consumer participation program whose stated purpose is to assist the NAIC by providing consumer views on insurance regulatory issues. Towards this end, the NAIC has designated a number of consumer representatives for that purpose. Yet, the meeting between regulators and industry to discuss the industry proposal was not publicly noticed and none of your consumer representatives were asked to participate. Consumers cannot provide our views if the discussions and decisions are done in meetings which exclude consumers. With this private regulator-industry meeting, the NAIC provided industry with yet another opportunity to lobby assembled regulators while excluding other members of the public.

Third, we are astonished that the NAIC has been indifferent to the impact of the financial market crisis on individual insurance consumers while aggressively responding to industry concerns – with the creation of yet another Executive Committee working group in response to an industry request. Despite the fact that insurance scoring is penalizing millions of consumers who are victims of abusive lending and unfair risk classification schemes, the NAIC has ignored our repeated requests to help consumers and has taken no action on these or any other issues resulting from the financial and economic crises.

We ask the following:

1. That the NAIC establish an EX working to address consumer issues arising from the financial crisis, including but not limited to a moratorium on insurance scoring.
2. That the NAIC provide minutes of the meeting or meetings between regulators and industry referenced in the ACLI letter, including the names of all participants.
3. That the NAIC provide public notice of all meetings of regulators and industry regarding NAIC business, that such meetings be public unless the meeting deals with issues of a specific regulated entity and that the consumer participation program provide travel expense reimbursement for at least one of the NAIC-designated consumer representatives to attend such meetings.
4. That the NAIC adopt a public records and public meetings policy as strong as the public records and public meetings laws in Texas and Florida.

We ask the NAIC to act upon our requests with same speed and attention given to industry requests and that the NAIC commit itself to much greater transparency and public accountability.

Sincerely,

Birny Birnbaum
Executive Director

Subject: Capital and Surplus Relief Proposal
From: Birny Birnbaum
Date: 12/3/08 3:18 PM
To: Andy Beal, Thomas Hampton

Dear Commissioner Hampton and Mr. Beal,

We follow up on our e-mail of November 30 and again ask for greater transparency of the NAIC's consideration of the ACLI's proposal for capital and surplus relief.

We understand that the regulators have had several non-public calls regarding this issue and have asked the ACLI for additional information. We understand that regulators will meet in private for an hour before the 1/2 hour public session on December 5, 2008. This is an example of the NAIC holding critical policy deliberations without public notice or public accountability. Clearly, 30 minutes of public discussion is not sufficient for a thorough public vetting of the proposals.

We request copies of all correspondence to or from the NAIC and the ACLI or other insurance industry organizations (not including documents with individual company specific information) related to the ACLI proposals.

We request that all regulator and regulator/industry meetings on this topic be publicly noticed and open to the public to allow the public to follow the regulatory process.

We request you provide a timeline of proposed actions by the NAIC so the public understands how the NAIC is considering these proposals and how and when decisions will be made.

We request your response to our e-mail of November 30 regarding relief for insurance consumers suffering from the financial market turmoil in the same end-of-year time frame as being provided to the industry.

Sincerely,

Birny Birnbaum
Executive Director
Center for Economic Justice

Subject: Re: ACLI Capital and Surplus Relief Proposal
From: loonlakeme@aol.com (Bob Hunter)
Date: 12/4/08 10:42 AM
To: Andy Beal, Thomas Hampton

Dear Commissioners,

Because of a long-standing conflict, I am unable to be at the meeting on Friday so I would like to file these comments for the record of the Friday proceeding relating to the ACLI November 11, 2008 proposal.

As Jane Bryant Quinn points out in her excellent article (below), a financial meltdown is not the right time for the NAIC to lower consumer protections on life insurance products. It is time to be even stronger in protecting consumers!

Consumer Federation of America opposes the changes to weaken consumer protection proposed by ACLI in their November 11, 2008 proposal. These cosmetic changes proposed to be rushed through without the normal careful consideration and imposed even retroactively should be rejected. If you decide to go forward, please give us the answers to the questions we raise below so we can determine the full basis for your decision.

ACLI reached out to consumer groups just yesterday to explain their request. We certainly appreciate their willingness to do so and also to provide some key information on the potential impacts of their proposals on capital and RBC levels.

From these discussions, we understand that the proposed changes would add roughly \$25 billion to the life industry's capital accounts and have the apparent effect of raising the overall RBC ratio by about 35 points. We further understand that the typical RBC at year-end 2007 was of the order of 380 and would be 300 or so at year end 2008 if action is not taken (understandably, this projection of 300 is very tentative given current market volatility). The fear, as I understood the ACLI discussion, is that some rating agencies might downgrade firms that fall below the 300 RBC level and with the typical level at 300, many companies might face such analysis. Thus, raising the RBC to the 335 level is anticipated if NAIC acts.

The ACLI presentation did not dispel several questions in my mind, questions I expect NAIC would also have.

Will the rating agencies be impressed with any NAIC action to raise capital by mere accounting change? Have you researched what their reaction will be? If you have contacted these agencies, please send the correspondence to the rating agencies and their replies to us so that we can better understand if these changes will have the desired effect of reducing the number of downgrades at year-end 2008.

Even more important, would you regulators believe the new numbers? If an insurer fell below an RBC trigger point, say company action level, on the current basis, would that trigger not fire for you if the calculation was just over the level on the new basis? In short, would you view the change as substantive or cosmetic? Please explain your answer.

Does NAIC know with certainty that the current level of reserves is excessive? If so, how excessive are they and how does that excessiveness compare to the impact of the proposed changes? Please send us your research/proof of excessiveness and how the proposed changes would impact that excessiveness.

During our discussion yesterday, CFA asked ACLI if they would honestly and transparently disclose these changes as reserve weakening. As I understood their response, they said they would not. Which raises the question of what sort of disclosure would NAIC require should you make these significant changes? If this proposal is adopted, will NAIC courageously say to consumers that this is weakening reserves? Or will you try to sell it as something else? Please explain how you intend to explain your action, should you take it. Most importantly, in the transition period, will you require that the insurers disclose capital under both the current and the changed method so consumers, agents, rating agencies and policyholders can see the precise impact of any change on the specific insurer they are interested in? This transparency seems essential for the public to understand what is going on for any insurer they are researching.

Certainly, I got a better understanding of ACLI's concerns related to the impact of the remarkable current economic situation on life insurance companies. I share much of their concern but do not support their approach to resolving the crisis. To make such major changes to the rules of the game as ACLI proposes, the NAIC must take the time to assure a process where consumers and other interested parties can be fully heard. A single one-half hour public session after many hours of ex-parte input from the industry is grossly insufficient and unfair, particularly given the very short time that this request has been public. I have, for instance, long been a panelist on tomorrow's CFA event, "The Consumer in the Financial Services Revolution" in Washington, DC so it was impossible for me to attend your public session. Further, the short public availability of the proposal and the high degree of complexity of the proposals makes full understanding difficult at best.

A better solution, we believe, would be for the NAIC not to act precipitously on major, highly complex changes such as these but to, on a specific company-by-company basis, undertake to assist in any specific problem caused by current practices. Presumably, only the insurers facing some sort of negative outcome, such as a rating downgrade, would apply for such review. I am unsure exactly what the process might be but, for instance, NAIC might put an asterisk on any RBC calculation that the insurer can demonstrate is not realistic because of current conditions, explaining the NAIC rationale for agreeing or disagreeing with the insurer on that specific set of circumstances. Being company specific, such NAIC action should have much more weight with rating agencies than a

wholesale change such as that under consideration which rating agencies can easily look through and ignore.

Over the next year, as part of the normal NAIC processes, changes such as those proposed by ACLI can be more fully explained to the public, be carefully vetted by the Commissioners and receive more knowledgeable and complete input from all interested parties.

CFA encourages you not to lower consumer protections such as reserve requirements during these rough economic times when consumer must rely even more on your consistent and steadfast protection.

Bob Hunter
Director of Insurance
Consumer Federation of America
703-528-0062

Re: ACLI Capital and Surplus Relief Proposal
From: Joseph M. Belth
Date: 12/4/08 12:50 PM
To: Andy Beal, Thomas Hampton

I am Joseph M. Belth, professor emeritus of insurance in the Kelley School of Business at Indiana University and editor of *The Insurance Forum*. The views expressed here are my own and I am not being compensated for providing them. I concur with what Robert Hunter said in his e-mail earlier today about the ACLI proposal to the NAIC. I would like to add a few comments.

During the second half of the twentieth century, the late Spencer L. Kimball was recognized as the world's leading scholar in the area of insurance regulatory law. In his writings he often said the primary purpose of insurance regulation was to promote not merely the solvency of insurance companies, but rather their "solidity."

Over the years statutory accounting rules have evolved in such a way as to require life insurance companies to maintain conservatively large liabilities, thereby requiring the companies to maintain conservatively large amounts of assets in order to be deemed solvent. The conservatism is especially important in the case of contracts that may span several decades: life insurance policies, annuity contracts, disability policies, and long-term care policies. As a result of the conservatism, there has been a fairly small number of life insurance company failures. During the recent global financial meltdown, state insurance regulators have been pointing proudly to the fact that no major insurance companies have failed, and have been using that fact as a vindication of state regulation of insurance.

In the midst of the current financial crisis, it is unseemly even to discuss the idea of weakening the conservative statutory accounting rules that have long been in place for insurance companies. In recent years, "principles based reserving" (PBR) has been under discussion. At its heart, the purpose of PBR is to weaken statutory accounting rules and place greater reliance on the professional judgment of actuaries in calculating liabilities. It would seem that the current crisis would cause implementation of PBR to be postponed and even scrapped. The ACLI proposal, however, is an effort to accelerate at least part of PBR.

The late R. Carlyle Buley, a professor of history at Indiana University, wrote a monumental history of the life insurance business entitled *The American Life Convention 1906-1952*. His book illustrates that the idea of state insurance regulators increasing the capital of life insurance companies by weakening statutory accounting rules is not unprecedented. In 1931, the Dow-Jones industrial average stood at 150.18 on June 30 and 77.90 on December 31. In October 1931, the valuation committee of what is now the NAIC announced that "the companies might take for their [1931] year-end valuation of securities the market prices as of June 30, 1931, which seemed appropriate under the circumstances and would help considerably."

The committee opined that "under present conditions the market quotations ... for a particular day are not a fair standard for the ascertainment of fair market value of such securities." Similarly, in December 1932, "the commissioners voted to retain the rule of the preceding year, that is, to value securities as of June 30, 1931, for the year-end reports for 1932." Even those actions in 1931 and 1932 were not unprecedented. In the depression of 1907, the "shrinkage in security values gave the insurance commissioners some concern." In November 1907, "the commissioners of eleven states ... decided to recommend that securities held by life insurance companies be valued [in year-end 1907 statements] at their market prices as of December 31, 1906."

I have two questions for regulators. (1) Would you view the proposed changes relating to reserves and assets as improvements in a company's financial condition for regulatory purposes, or would you view the changes as cosmetic? (2) Would you view the proposed changes relating to RBC ratios as improvements in a company's RBC ratio for purposes of the various RBC "levels," or would you view the changes as cosmetic?

In conclusion, insurance regulators should retain their conservative statutory accounting rules in order to encourage the "solidity" of insurance companies, especially those issuing contracts that span several decades. On the other hand, the seriousness of the financial crisis facing some insurance companies must be recognized, and the idea of weakening statutory accounting rules is not unprecedented. In my opinion, insurance companies should try to bolster capital through the issuance of stock--or, in the case of mutual companies, surplus notes--to private investors. Where private capital is not available, the companies should try to utilize the U.S. Treasury's capital purchase program. In other words, the companies should try all other possible avenues before asking regulators to weaken the statutory accounting rules that have stood the test of time for more than 150 years.



National Association of Insurance Commissioners

December 5, 2008

Mr. Birny Birnbaum
Center for Economic Justice
1701 A S. Second St.
Austin, TX 78704

Dear Mr. Birnbaum:

Thank you for your recent letter expressing the concerns of the Center for Economic Justice (CEJ) regarding the establishment of the new Capital and Surplus Relief (EX) Working Group. We assure you that the CEJ, along with all interested persons and regulators, will have full opportunity to express any general thoughts regarding the ACLI's proposals beginning with the upcoming meeting of the Capital and Surplus Relief (EX) Working Group on Friday, December 5, 2008, from 9:30 a.m. – 10:30 a.m. Going forward, any final positions or recommendations of the Working Group will also be open for public comment before being considered for adoption by the NAIC.

Insurer solvency is the most basic, yet strongest, source of consumer protection. As such, when ACLI representatives approached the NAIC Officers with their request to provide life insurers with capital and surplus relief during a time when public attention continues to highlight signs of economic distress within the life industry, the Officers gathered the Executive Committee to give the ACLI an opportunity to explain their request. Recognizing the need to act quickly to review the merits of the proposal, the Executive Committee established the Capital and Surplus Relief (EX) Working Group. Please rest assured the NAIC will make no move to modify the existing strong solvency standards without due consideration and sound reasoning. As always, public review and comment is an integral part of that due consideration.

Sincerely,

Sandy Praeger
Kansas Insurance Commissioner
NAIC President

Roger Sevigny
New Hampshire Insurance Commissioner
NAIC President-Elect

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Subject: Capital and Surplus Relief WG Activities
From: Birny Birnbaum
Date: 12/16/08 5:16 PM
To: Thomas Hampton

Commissioner Hampton,

At the public portion of the December 5, 2008 meeting of the Capital and Surplus Relief Working Group, you stated that the activities of the working group would be transparent, that recommendations from technical groups would be posted on the NAIC web site and that there would be a public timeline for decision-making milestones.

As of today, nothing has been posted on the working group's NAIC web page. The Center for Economic Justice once again urges you and the NAIC to:

1. Provide public notice and public participation at all meetings in which the ACLI proposals are being discussed by state regulators.
2. Post to the NAIC web site in a timely fashion all work products from technical and other working groups at the NAIC related to the ACLI proposal.
3. Provide a timeline setting out the decision-making process by the NAIC in response to the ACLI proposal, including the opportunities for public participation.

Thanks for your assistance,

Birny Birnbaum
Executive Director
Center for Economic Justice.

Subject: Re: Capital and Surplus Relief WG Activities
From: Thomas Hampton
Date: 12/16/08 6:41 PM
To: Birny Birnbaum

Birny:

Thanks for the e-mail. You are correct, I did state that the process for determining a final decision on the ACLI Capital and Surplus Relief would be transparent and that information on the recommendations from the technical group would be exposed to the public.

As you are aware, we have been working with several NAIC technical groups to provide sufficient and expeditious review of the nine items proposed by the ACLI. The Capital and Surplus Relief working group held a regulators conference call yesterday to review and accept the analysis provided by the technical groups. Tomorrow, the working group will be sharing our determinations on each of the nine items to the public. Also, we will provide copies of the technical group analysis for public exposure.

It should be noted that we anticipate exposure of these items until December 26th with recommendations being made to the Executive Committee for final adoption the last week of 2008.

I hope this information is sufficient. Please contact me if you do not receive access to the exposed documentation tomorrow.

Happy Holidays!!

Thomas E. Hampton
Commissioner
Department of Insurance, Securities and Banking
810 First Street NE
Washington, DC 20002