Comments for the Center for Economic Justice

To the Indexed Universal Life Subgroup of the NAIC Life Actuarial Task Force

Proposed Revisions to AG 49

April 30, 2020

The Center for Economic Justice (CEJ) has reviewed the ACLI proposal to address loopholes in AG49 that have resulted in IUL products designed to game AG49 to produce unrealistic, deceptive and misleading illustrations. While CEJ appreciates the effort by ACLI, we urge LATF to reject the ACLI proposal and adopt the Independent Party (IP) proposal.

Our concerns with the ACLI proposal – and which are addressed with the IP proposal – are:

1. The ACLI proposal is complex extension of an already complex set of AG 49 calculations that will move illustrations further away from the core purposes of an illustration – to demonstrate how a product operates and to provide realistic expectations and understanding to the consumer about the product. The ACLI proposal is a classic example of losing sight of the forest because of the trees. In contrast, the IP proposal leads to illustrations and consumer disclosures that improve the outcomes for consumers compared to the current AG49

2. The ACLI proposal is a substantial re-write of large swaths of AG49 and introduces new terms undefined in the policy contract which would result in less accountability to and comprehension by consumers and regulators. In contrast, the IP proposal has revises minimal sections of AG49 to achieve the broader consumer protection and comprehension goals.
3. The ACLI proposal makes the 145% return on the option budget the de facto guardrail for crediting rates in illustrations. This is a radical departure from the current AG49 framework and effectively sets the key guardrail on an arbitrary value that is simply not supportable for a long-term investment horizon. Stated differently, it transforms AG49 compliant illustrations and incentives for product designs into life insurance as an option play. In contrast, the IP proposal does not rely upon an arbitrary value for long-term option return, but relies upon actual market values using the Black-Scholes methodology that has been the standard for nearly 50 years.

4. The ACLI proposal narrowly addresses some loopholes while creating incentives for other product designs to game AG49. In particular, the ACLI proposal encourages the use of data-mined proprietary indices instead of discouraging such practice. In addition, the ACLI proposal introduces new discretion for illustration actuaries that lessen accountability to consumers and regulators and promote disparity of illustration results across similar or identical product design. The IP proposal does not create these additional loopholes because no additional discretion is created and incentives for gaming AG49 through, among other things, proprietary indices is eliminated.

5. It is unclear why LATF would defer the design of fixing the loopholes in AG49 and deceptive nature of current IUL illustrations to the same industry participants who have abused IUL illustrations to create the need for AG49 and then further abused IUL illustrations to create the need for fixing loopholes in AG49. This is a classic example of what economist George Akerlof described as the market for “lemons” – products sold in markets with information asymmetry.\(^1\) In such a market – like the market for IUL – those sellers seeking to provide realistic and comprehensible information (illustrations) to consumers lose out to sellers willing to employ unrealistic, deceptive and incomprehensible illustrations to consumers. Given the nature of a market in which competition rewards the bad players, it seems bizarre for regulators to defer the development of market problem solutions to those players benefiting from the current abuses.

In summary, while we appreciate the efforts of the ACLI to respond to LATF’s directive, the problems with the ACLI approach are obvious and severe. In contrast, the IP proposal provides a better solution to the problems of multipliers and bonuses without creating new problems and while providing a more comprehensive solution for AG49 that will improve IUL illustrations in a manner consistent with the goals and purposes of those illustrations.

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\(^1\) https://www.sciencedirect.com/science/article/pii/B978012214850750022X