



Comments of the Center or Economic Justice
To the NAIC Life Insurance Illustrations Working Group
Response to Recent Comments by ACLI and NAIFA
August 30, 2019

With these comments, CEJ responds to ACLI's August 23, 2019 comment letter and NAIFA's August 26, 2019 comment letter. Both comment letters miss the mark terribly regarding the working group's efforts.

“ACLI New Considerations”

After opposing the delivery of the Policy Overview and the Buyer's Guide prior to purchase when the documents would actually facilitate shopping by the consumer, Mr. Lovendusky continues ACLI's obstruction of the working group's efforts by urging the working group to abandon its charge and the agreed-upon work product of the Policy Overview.

For anyone following the working group's efforts, the observer might be surprised at the blatant contradiction and abject hypocrisy shown by Mr. Lovendusky in asking the working group to ignore its charge after routinely taking up the working group's time with diatribes and false accusations against others for recommendations allegedly exceeding the working group's charge. Yet, now, as the working group is finalizing its work, Mr. Lovendusky shows neither embarrassment nor shame for engaging in precisely the same offensive act of which he has accused others.¹

Mr. Lovendusky questions the working group's charge arguing that “It is not clear that the policy summary required by Model #580 and the narrative summary of Model #582 are, in fact, unreadable or incomprehensible to consumers.” Of course, this is a straw man argument. The documents need not be “unreadable or incomprehensible” to warrant improvement.

¹ Mr. Lovendusky has made a cottage industry of obstructing the working NAIC Working Groups. In response to a request by the NAIC Market Analysis Procedures Working Group for technical comments on Disability Insurance Market Conduct Annual Statement Scorecard Ratios which had been the subject of numerous stakeholder conference calls over many months and were set for final adoption, Mr. Lovendusky's letter to the MAP WG questions data elements and definitions that had been adopted over a year earlier, the MCAS process and even the application of MCAS to life insurance and disability insurance while inexplicably seeking a delay in reporting. See attached CEJ comments illuminating Mr. Lovendusky's efforts.

It is also a bizarre argument since the documents do, in fact, warrant significant improvement in readability and consumer comprehension to achieve the purposes of the Life Insurance Disclosure Model Act:

The purpose of this regulation is to require insurers to deliver to purchasers of life insurance information that will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs and improve the buyer's understanding of the basic features of the policy that has been purchased or is under consideration.

The Life Insurance (A) Committee recognized this in 2015 when it adopted the charge for the working group:²

Commissioner Gerhart noted that some of the comments appear to merit some review of Model #582. Director Ramage agreed and made a motion, seconded by Commissioner Gerhart, that the Committee establish a new working group with a 2016 Proposed Charge to explore how the narrative summary required by Section 7B of Model #582 and the policy summary required by Section 5A(2) of the *Life Insurance Disclosure Model Regulation* (#580) can be enhanced to promote consumer readability and understandability of these life insurance policy summaries, including how they are designed, formatted and accessed by consumers.

In 2016, Mr. Lovendusky agreed about consumer confusion with complex insurance products. According to the minutes of the April 3, 2016 minutes of the working group:

Mr. Lovendusky said the ACLI work group also discussed whether the best way to accomplish the charge is to develop one simplified disclosure document for each model or whether multiple disclosure documents for each life insurance product— whole, term and universal—are contemplated for each model. He said this is an issue for the Working Group to decide. He said the ACLI work group thinks that most confusion for consumers involves complex products like universal life, and not simple products like term life. He said consumers are mostly confused about options, guarantees and riders.

Mr. Lovendusky's latest suggestion – to forego the Policy Overview in place of the Life Online Buyer's Guide – was considered and rejected by Life (A) Committee in April 2016.

Commissioner Gerhart explained that the American Academy of Actuaries (Academy) wrote a letter suggesting expansion of the Working Group's charge to include a review of the *Life Insurance Buyer's Guide* (Buyer's Guide). He said the American Council of Life Insurers (ACLI) followed up with a letter stating that it did not oppose the addition, but pointed out that the Committee itself already has an existing charge to revise the Buyer's Guide, and the addition of this task to the Working Group might slow down its ability to accomplish the current charge.

² Minutes of the November 20, 2015 Meeting of the NAIC Life Insurance (A) Committee

Birny Birnbaum (Center for Economic Justice—CEJ) expressed support for updating the Buyer’s Guide generally, but said the charges contemplated for the Working Group serve a different purpose. He explained that the Buyer’s Guide is an educational document and the revisions contemplated in the charge to the Working Group focus on plan-specific information.

Mr. Regalbuto said New York is releasing Insurance Regulation 74 focusing on universal life illustration issues and updated its buyer’s guide with respect to universal life. Brenda Cude said the Buyer’s Guide needs a total overhaul, not just a revision. She explained that the products in the marketplace have radically changed since the time the Buyer’s Guide was first written.

The Committee agreed that because there is an existing charge to revise the Buyer’s Guide and the focus of the Buyer’s Guide is different from focus of the Working Group’s charge, the charge should remain as written.

The working group did solicit and review examples of then-current narrative summaries and policy summaries in 2016. The examples submitted by the ACLI showed wildly different formats, lengths and content of the documents across insurers and even across the same category of products. The industry practice was shown to be a document that combined the requirements of the policy summary and narrative summary of the two models without distinction – industry was unable to identify a specific policy summary document.

The working group decided that the best approach would be to create a new, simpler document – called the Policy Overview – to replace the policy summary to fulfill the charge of the working group. The working group presented this approach to the parent Life (A) Committee at the August 27, 2016 Committee meeting and received the Committee’s support.

Mr. Wicka said the Working Group met via conference call to consider the recommendation of its ad hoc group, made up of consumer representatives, industry and regulators. He said the insurance industry provided the ad hoc group with sample narrative and policy summaries to review to consider the best way to accomplish the Working Group charge to “[e]xplore how the narrative summary required by Section 7B of the *Life Insurance Illustrations Model Regulation* (#582) and the policy summary under the *Life Insurance Disclosure Model Regulation* (#580) can be enhanced to promote consumer readability and understandability of life insurance policy summaries, including how they are designed, formatted and accessed by consumers.” He said after hearing the ad hoc group’s report, the Working Group agreed that developing a one- or two-page consumer-oriented policy overview would satisfy its charge to make illustrations more consumer-friendly. Mr. Johnson made a motion, seconded by Director Ramege, to adopt the Life Insurance Illustration Issues (A) Working Group’s report, including its Aug. 22 (Attachment Four) and Aug. 17 (Attachment Five) conference call minutes. The motion passed unanimously.

At each national meeting of the Life (A) Committee following the August 2016 meeting, the Life Insurance Illustrations Working Group report has included an update on the progress developing the Policy Overview without objection by any Life (A) Committee member. It is clear that the efforts of the working group to develop the Policy Overview are supported by the parent committee to fulfill, at least in part, the charges of the working group.

Given the history of the working group, Mr. Lovendusky's comments under "New ACLI Considerations" are – gasp! – clearly beyond the scope of the working group and should be directed to the parent committee (where the recommendations have previously been presented and rejected). The working group should not devote one minute to consideration of the "New ACLI Considerations."

Timing of Delivery of the Buyer's Guide and Policy Overview

Unable to stop himself from utter hypocrisy, Mr. Lovendusky starts his comments about timing of delivery of the Policy Overview with the false – no, absurd – claim that the timing of document deliver – including timing of delivery of the Policy Overview – is beyond the working group's charge:

Explore how the narrative summary required by Section 7B of the Life Insurance Illustrations Model Regulation (#582) and the policy summary required by Section 5A(2) of Model #580 can be enhanced to promote consumer readability and understandability of these life insurance policy summaries, including ***how they are designed, formatted and accessed by consumers***.

It would indeed be a novel interpretation of "consumer access" to exclude the timing of delivery of the document the consumer can access. The working group must reject this argument.

Mr. Lovendusky's next argument is that delivering the Policy Overview and the Buyer's guide prior to delivery of the policy will "empty them of consumer value." This claim will certainly be a surprise to all property/casualty insurers and consumers who are somehow able to deliver quotes to consumers prior to purchase that appear to have value to the consumer shopping for coverage.

Mr. Lovendusky stakes his claim on the premise that the Policy Overview has "personalized information" that can somehow only be provided after the life insurer has issued a policy ***In fact, the Policy Overview, has very limited items personalized to the consumer***. The vast majority of the data elements in the Policy Overview are generic to the product that is the subject of the Policy Overview. The personalized information in the Policy Overview is the premium for the policy – based on information known to the producer or insurer at the time and subject to change based on additional or revised information – and that information can be provided prior to purchase. If an insurer can produce an illustration for a complex, investment-type life insurance product prior to the consumer purchase, it is clearly possible for an insurer to provide the premium for a policy prior to purchase.

It is important to understand what the ACLI – and NAIFA – are claiming in their opposition to delivery of the Policy Overview and Buyer’s Guide prior to policy purchase. The trades are claiming a consumer must purchase a policy to actually get information about the policy. They are claiming that, despite technological advances in the speed and delivery of consumer information, insurers are stuck with mid-20th century technology and capability. They are claiming that they can now use Accelerated Underwriting to provide instant quotes, but that delivery of a Policy Overview and Buyer’s Guide prior to purchase would bring the industry to its knees. Who knew?

One of the purposes of the Life Insurance Disclosure Model and, particularly, the Policy Overview is to assist consumers in selecting the product that best meets their needs and shopping for that product. To provide said Policy Overview – and the Buyer’s Guide – only after purchase by the consumer is inconsistent with the purposes of the model and undermines the role of these documents.

NAIFA

Despite no participation to date in the working group’s efforts over the past four years, NAIFA decides it needs to now weigh in on the important role of agents in the life insurance sales process and that without an agent to interpret these documents for consumers, the consumers will be lost at sea.

Mr. Sanders’s complaint that the working group is ignoring the role of agents in educating consumers is factually incorrect and unrelated to the work product at hand. It is unclear what basis Mr. Sanders has for his allegation. The top of the draft Policy Overview includes the following disclosure:

ABC Insurance Co. Decreasing Term Life Insurance Disclosure

This document lists this product’s key features, benefits and costs. You can get a similar summary of key product features from other insurance companies to help you compare similar products. ***If you have questions about this particular life insurance product, ask the agent, broker, advisor, or a company representative offering this product for clarification. If you have questions about life insurance products generally or about company or agent licensing, contact [insert name of state department of insurance]. Prepared by Agent Joe Smith, [Emphasis Added]***

The explicit charge to the working group is to review specific consumer disclosures, not to promote agents in the sales process.

Further, in a transparent attempt to support the ACLI position on timing of delivery even though such delivery would the responsibility of the insurer and pose no burden for the agent, Mr. Sanders’s plea that disclosures serve no purpose unless interpreted for consumers by agents is slightly outdated – no more than 50 years – in an era of digital technology. Mr. Sanders makes the bold claim:

Without the involvement of an agent—if the consumer relies solely on the written materials provided-- it is unlikely that he or she will have the information and guidance needed to make the right decision in light of the consumer's unique circumstances, regardless of when the policy overview document is provided.

This claim will no doubt surprise the many consumers who purchase life insurance online using digital technology as well as the insurers and insurtechs developing accelerated underwriting to educate and speed consumers through the purchase process.

More important, Mr. Sanders's entire comment letter misses the point of the Policy Overview. The purpose is to provide consumers with basic features about a product in a consistent format that enables the consumer to compare products across insurers. It is not and never has been promoted as substitute for other information needed to help a consumer select and understand life insurance products.

Finally, Mr. Sanders regurgitates ACLI's erroneous claim that delivery of the Policy Overview and Buyer's Guide prior to purchase will rob the Policy Overview of meaningful content. We explain above why this argument is incorrect.

Mr. Sanders's drive-by comments to the working group are based on false assertions and misunderstanding of the working group's efforts. His comments have no relevance for the current efforts of the working group.



Comments for the Center for Economic Justice

To the NAIC Market Analysis Procedures Working Group

Response to AHIP and ACLI Comments on Proposed Disability MCAS Scorecard Ratios

August 26, 2019

Summary

At the Summer National Meeting, the Market Analysis Procedures Working Group (MAP WG) requested technical comments on proposed scorecard ratios for the Disability Income MCAS line of business. The request for comments was so limited because the ratios had been fully vetted by a drafting group consisting of industry, regulator and consumer stakeholders over numerous phone calls during which every industry suggestion and concern was considered.

The comment letters submitted by AHIP and ACLI comment letters go far afield of the request for comments. The bulk of the AHIP comments are a request to clarify or reconsider data elements. In addition to being non-responsive to the MAP WG request for comments, ***the requested action is beyond the scope of the MAP WG's charge*** and is properly directed to the Market Conduct Annual Statement Working Group (MCAS WG) for any needed clarification of data elements and definitions.

The ACLI letter goes even further afield – questioning data elements, definitions, the MCAS process, even the application of MCAS to life insurance and disability insurance – while inexplicably seeking a delay in reporting. Mr. Lovendusky's comments on behalf of ACLI, instead of technical comments on the proposed scorecard ratios, questions not only the ratios themselves, but also questions the data elements and definitions adopted over a year ago.

Displaying no shame for a blatant effort to obstruct regulatory data collection to monitor the disability income insurance market, ACLI, based on egregiously false assertions about lack of clarity, requests a delay in collection of Disability MCAS data. Apparently, ACLI believes it can make regulators jump to their commands, no matter how ridiculous. ***In any event, the changes requested by ACLI are based on false claims, without any evidentiary support, beyond the scope of the request for comments and beyond the scope of the MAP WG charges. The ACLI comments must be rejected.***

Background

The Disability MCAS data elements and definitions were adopted – after development by a drafting group convening many times over many months with full industry participation – by the Market Regulation (D) Committee on July 10, 2018 (over a year ago). The minutes of that D Committee call state:

Ms. Ailor said the Market Conduct Annual Statement Blanks (D) Working Group began drafting the Disability Income MCAS Data Call and Definitions in 2017 and adopted the data call and definitions on May 16, 2018. Ms. Ailor said the Disability Income MCAS Data Call and Definitions were developed with subject-matter experts (SMEs) of regulators, industry and consumers. Ms. Ailor said the development was coordinated with the Market Analysis Procedures (D) Working Group.

The issue before the MAP WG is the adoption of proposed scorecard ratios. Like the data elements and definitions, the scorecard ratios were developed by a drafting group meeting regularly and with full industry participation. Every concern of industry was considered. The ratios were fully vetted and ready for adoption at the Summer 2019 National Meeting, but industry requested more time for comments. The working group agreed to additional comments limited to technical comments on the ratios. The draft minutes of the meeting state:

Birny Birnbaum (Center for Economic Justice—CEJ) said the industry representatives have been involved in the creation of the ratios for the last three of four conference calls, and they have had the opportunity to discuss with their member companies. He noted that there are no unexpected implications to companies by adopting the ratios because the actual data elements of the MCAS blank have not changed.

Randy Helder (NAIC) said the ratios need to be adopted by September to allow enough time to program them into the MCAS system for next year. Ms. Ailor said the Working Group has some time to request comments and decide by September. Ms. Dingus suggested that the Working Group could schedule its next conference call in the last week of August. Mr. Haworth agreed to set a conference call of the Working Group for the last week in August to consider adoption of the ratios. *Mr. Birnbaum said comments should be limited to technical changes and not be allowed to question whether a ratio should be removed. Ms. Burns said there were no concerns with the ratios, and their comments would only be technical in nature.*

AHIP Comments

Despite Ms. Burns' promise on behalf of AHIP, Mr. Cashdollar's comment letter on behalf of AHIP is devoted to questioning data definitions and re-litigating ratios.

Ratios 2 and 3¹

AHIP's purported comments about Ratios 2 and 3 are, in fact, not about the ratios. Rather, AHIP asks for clarification of a data element – when is a claim “received” and complains that long-term disability insurers cannot make initial claim decisions within 90 days. AHIP, despite full industry participation in the development of the data elements and definitions from 2017 to 2018, now asks to revise the data elements involved in Ratio 3. These comments, if they are to be addressed at all, should be addressed to the MCAS WG for any needed clarification of data definitions. ***For purposes of the MAP WG's adoption of the proposed scorecards, the comments are irrelevant and beyond the scope of the working group.***

Ratio 6²:

Despite being fully vetted by the drafting group, AHIP asks that Ratio 6 be eliminated. ***Again, despite the WG's request for technical comments, AHIP seeks to re-litigate a ratio.*** Ratio 6 is one of three complaint ratios:

- complaints for individual disability policies to number of individual policies (which is the same as number of lives in-force) (Ratio 4)
- complaints for group policies to number of lives in force on group policies (Ratio 5)
- complaints for group policies to number of group policies (Ratio 6)

These three complaint ratios provide different and complementary information. It is reasonable and necessary to develop complaint ratios separately for individual and group products because a ratio combining the complaint experience will lead to unreliable results that are not comparable across companies.

With individual policies, if the policyholder wants to register a complaint, it will be filed with the insurance department, producer and/or insurer. (For purposes of the ratios, we ignore the possibility of a complaint to another regulatory agency or third party organization – like the Better Business Bureau.)

¹ Ratio 2 is Percentage of claims processed with initial decisions after 45 days for short term coverage. Ratio 3 is Percentage of claims processed with initial decisions after 90 days for long-term coverage.

² Ratio 6 is the number of complaints relating to group policies to average number of group policies in force during the reporting period.

With group policies, the employer or the group organization is the policyholder and the individual insureds are the employees or group members to whom a certificate has been issued. In addition to the possibility of filing a complaint with the insurance department or insurance company, a certificate holder may also file the complaint with the employer or group administrator. In such a scenario, a significant number of certificate holders might encounter the same issue and complain to the employer or group administrator, who then files a single complaint about the common issue to the insurance company.

Further, individual and group products are sufficiently different to expect different complaint frequencies. We expect a higher frequency of complaints for individual policies because the insured is more actively engaged with the policy administration (application, underwriting, billing, coverage) than a certificate holder is with a group policy as the group policyholder makes many of the decisions that an insured under an individual policy is required to make.

Complaint frequencies for group products should be generated on the basis of both covered lives and average policies in force. To illustrate, assume companies D and E both have complaint ratios calculated on the basis of policies and both have 100 group policies in force and both have a 1% complaint ratio. But company D has 50,000 covered lives while company E has 5,000 covered lives. In this example, company E is producing a much higher frequency of complaints per covered life than company D. While this piece of information alone is not dispositive, it is very useful to supplement and interpret the related ratios.

If, after a few years of experience, individual and group product complaint frequencies are the same, the ratios can be simplified. But, initially, the more refined ratios are necessary to identify whether there are significant differences in complaint frequencies – as expected – between individual and group products.

Ratio 8:

AHIP requests the title of the ratio be changed from “Non-renewals and cancellations to average policies in force” to “**Insurer** non-renewals and cancellations to average policies in force.” CEJ has no objection.

Ratio 9:

AHIP requests the title of the ratio be changed from “Covered lives affected by non-renewals to average policies in force” to “Covered lives affected by **insurer** non-renewals to average policies in force.” CEJ has no objection.

ACLI

Far from comments limited to technical issues with proposed Disability MCAS ratios, ACLI's letter offer comments on many things other than the proposed ratios. The ACLI comments must be rejected.

ACLI starts by questioning the MCAS development process, suggesting that ratios should be developed simultaneously with data elements and definitions. Putting aside the fact that Mr. Lovendusky did not participate in either the development of the data elements and definitions or the development of the ratios, his "I know better than everyone else" approach is unsurprisingly uninformed. As anyone who participates in the development of MCAS data elements and definitions knows, the usefulness of a data element and its potential use in a scorecard ratio are integral to such development.

ACLI's next comment is a request for definitions of "paid" and "denied." Again, putting aside the fact that these terms are explicitly defined in the data element definitions, these comments are unresponsive to MAP WG's request and the requested actions are ***outside the scope of the MAP WG and should be addressed to the MCAS WG.***

ACLI, without the benefit of participating in the extensive discussions during numerous conference calls to develop and refine the ratios suggests changing Ratio 1 – Percentage of claims denied. ***ACLI offers no rationale or explanation for the proposed change. The proposal must be rejected.***

ACLI, again without the benefit of participating in the extensive discussions during numerous conference calls, questions Ratio 6 – "More insight regarding this ratio is desired." We suggest the working group refer Mr. Lovendusky to the CEJ comments on the complaint ratios earlier in this comment letter. ***In any event, ACLI's effort to re-litigate the ratio is inappropriate and must be rejected.***

Regarding Ratio 7, percentage of lawsuits closed with consideration for the consumer, ACLI seeks to re-litigate both the data element and the related definition. ***ACLI's request is outside the scope of the MAP WG and must be rejected.***

Regarding Ratio 8, non-renewals and cancellations to average policies in force, Mr. Lovendusky asks if the ratio pertains to individual coverages – a question he could answer by simply looking at the Disability MCAS Data Call and Definitions. The ratio will be calculated for individual and group coverages. The application to individual and group coverages is important. In combination with Ratio 9 for group coverages, Ratio 8 provides a holistic view of non-renewals and cancellation by relating them to group policies (Ratio 8) and to covered lives on group policies (Ratio 9). ***ACLI's comment must be rejected.***

Regarding Ratio 9, covered lives affected by non-renewals to average policies in force for group coverages only, and again without the benefit of participating in the extensive discussions during numerous conference calls, Mr. Lovendusky questions the value of this ratio. Ratios 8 and 9 are complementary. Ratio 8 relates non-renewals and cancellation to average policies in force. For individual coverages, Ratio 8's denominator – average policies in force – is the same or similar to covered lives. For group coverages, Ratio 8 does not relate non-renewals and cancellations to covered lives – hence, the inclusion of Ratio 9 which does. ***ACLI's comment must be rejected.***

ACLI questions the usefulness of Ratio 10, average pending benefit determinations to claims received. ***ACLI's uninformed attempt to re-litigate the ratio is outside the scope of the request for comments and must be rejected.***

Based on ACLI's false claims about errors in data definitions, ACLI asks that the adoption of ratios be delayed and data definitions be reconsidered. ACLI has provided no actual evidence of errors in data definitions. Instead, the ACLI comment letter is an uninformed drive-by attack on all things MCAS. ***The request for delay and reconsideration must be rejected.***

Finally, not content to obstruct Disability MCAS ratios, ACLI concludes its diatribe by arguing that MCAS isn't needed for life insurance and annuities, based on a false history of the purpose and development of MCAS. ***Clearly, these comments are not appropriate and must not be considered by the MAP WG.***