

Louisiana Issues Advisory Letter Regarding Use of the Social Security Administration's Death Master File

September 16, 2014

On September 4, the Louisiana Department of Insurance issued Advisory Letter 2014-04 (the "Advisory") to advise all life and annuity insurers licensed in Louisiana regarding use of the Social Security Administration's Death Master File ("DMF"). The Advisory acknowledges several points:

- There is significant uncertainty and confusion in the life insurance industry regarding whether, when, and in what states, use of the DMF is required.
- Louisiana life insurance companies are under no statutory obligation to search the DMF or any other database or service similar to the DMF to determine if a person has reportedly died.
- Decisions by the courts of several states have considered the issue and found no general obligation on the part of life insurers to search the DMF or otherwise.

However, the Advisory identifies Louisiana Ins. Code 22:1964(14)(f), as the statutory basis that may impose an obligation on all life and annuity insurers licensed in the state of Louisiana to compare an insurer's in-force life insurance policies to the DMF if the insurer previously used the DMF to determine whether to stop payments in connection with its annuities (i.e. - asymmetric use). Louisiana Ins. Code 22:1964(14)(f) provides that it is an unfair and deceptive insurance practice in the settlement of claims to not attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. The Advisory's focus on asymmetric use of the DMF appears consistent with National Association of Insurance Commissioner (NAIC) Unclaimed Life Insurance Benefits Working Group's movement from focusing on lead states to asymmetric use. The Advisory is unclear about the scope of asymmetric use. For example, it does not address whether use of the DMF for anti-fraud purposes constitutes asymmetric use. In addition to developments at the NAIC, the Uniform Law Commission (ULC) is

actively revising the Uniform Unclaimed Property Act (Uniform Act), and has identified several insurance-related issues, including:

- Whether to reinstate the provisions of the 1981 Act relating to unclaimed life insurance policy proceeds;
- Whether to impose a duty on life insurers to perform DMF matching on a regular basis, whether to make a related change to the Uniform Act's definition of "proof of death"; and
- Whether to incorporate the salient provision of the National Conference of Insurance Regulator's (NCOIL) Model Act into the revised Uniform Act.

Co-chairs and the reporter of the ULC's drafting committee will meet on October 10 and 11 to compile comments received by the committee from stakeholders and to offer suggestions as to policy options that may be available to the committee. A memo containing the compiled comments and policy options is expected to be posted on the ULC's website on or by October 29. The ULC's drafting committee for the Uniform Act will meet on November 7 and 8 in Washington, D.C., to consider changes to the Uniform Act. The committee will not commence drafting proposed revised statutory language until after the meeting. A first read is expected in July 2015.

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