

# **ENHANCED CASH SURRENDER VALUE (ECSV) OFFERS**

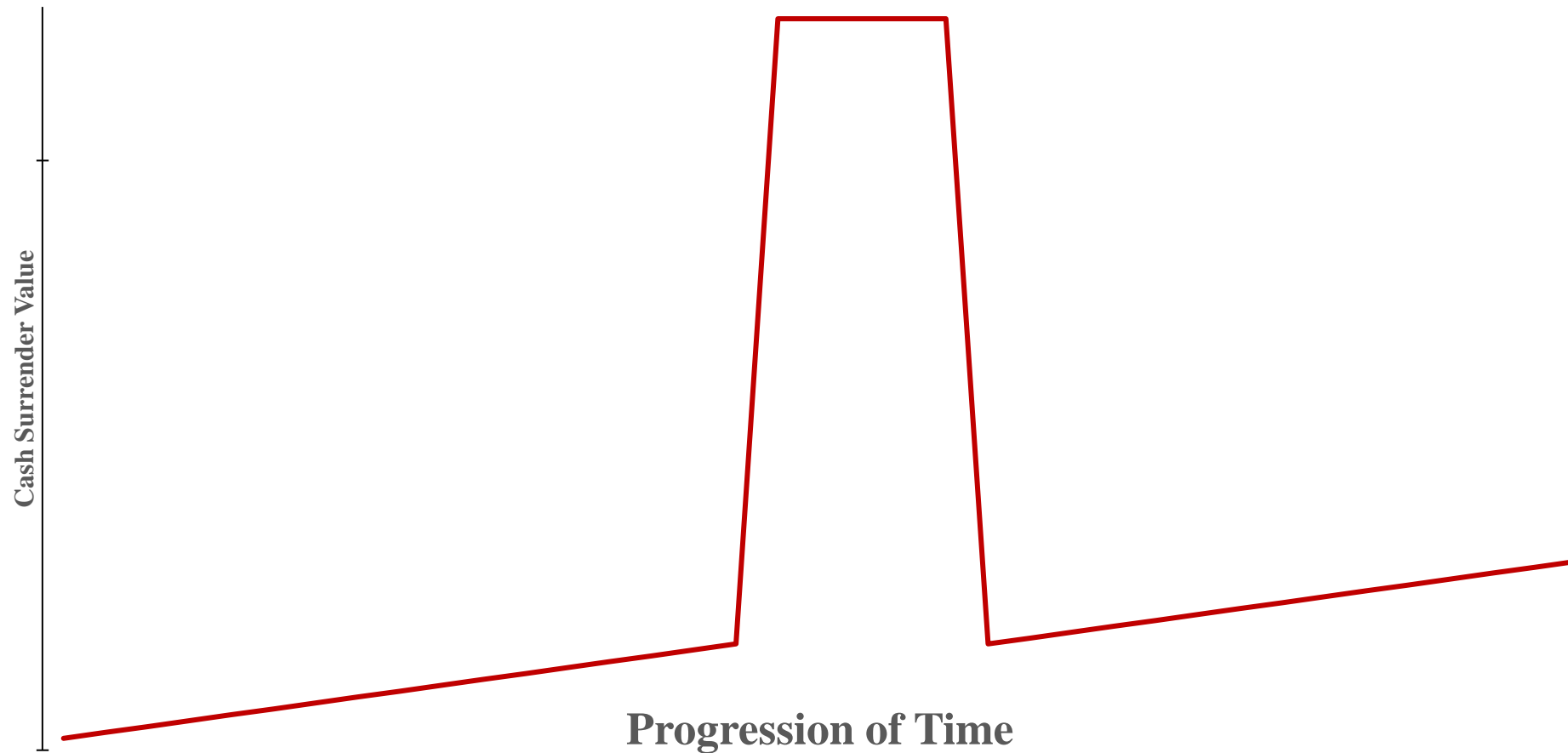
Life Insurance Settlement Association (LISA) Presentation  
NCOIL Life Insurance & Financial Planning Committee  
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**THE ISSUE: CARRIERS MAKING  
SPIKED, LIMITED TIME CASH  
OFFERS TO INDUCE SURRENDER  
OF BENEFITS**

# Enhanced Cash Surrender Value Offers

- Offered by only two or three life insurers.
- Examples seen in the market:
  - Enhance CSV from \$4,756.20 to \$14,682.45 for four and a half months.
  - Enhance CSV from \$19,037 to \$360,601 for three months.
  - Enhance CSV from \$0 to \$561,000 for 15 days.

# Progression Of Cash Surrender Value In Typical ECSV



**STANDARD NONFORFEITURE  
LAW SMOOTHNESS  
REQUIREMENT**

# Standard Nonforfeiture Law

- Smoothness Requirement Added 1980.
  - DOI actuaries examined issue, concluded smoothness necessary consumer protection.
  - Added Section 8 to the NAIC SNFL Model: “Consistency of Progression of Cash Surrender Values with Increasing Policy Duration.”
  - Intended to create additional requirement “even if each cash surrender value...is equal to or **greater than the minimum.**” (Technical Task Force Report, Dec. 1978)

# Purpose/Reason For New Rule

- Report to NAIC Technical Task Force, Oct. 1979:
  - “Primary concern is...equity among policyholders in different policy durations....The current [SNFL]...places no constraints upon the progression of actual values.”
  - Underlying policy goal: “All cash value scales...will follow an equitable pattern.”

# NAIC Adopts SNFL Smoothness

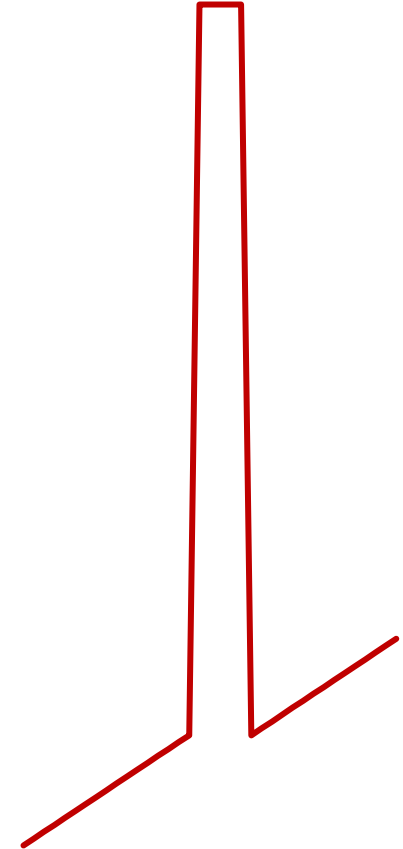
- Explained By Drafters—DOI Actuaries, LAH Technical Subcommittee—in their Reports:
  - “Changes...are extensive and dramatic.”
  - “Underlying purpose is to require a reasonably orderly sequence of increases.”
  - Corrects previous SNFL defect whereby “sharp increases in...cash value” were “not in violation.”

# Implementation Of Smoothness Requirement

- Society of Actuaries' descriptions of rule:
  - “Companies that have erratic cash values...need to revise.”
  - Prohibits “sharp jumps,” “spikes in the nonforfeiture structure.”
  - Prohibits “benefits discontinuous in nature... available only during certain windows of time.”

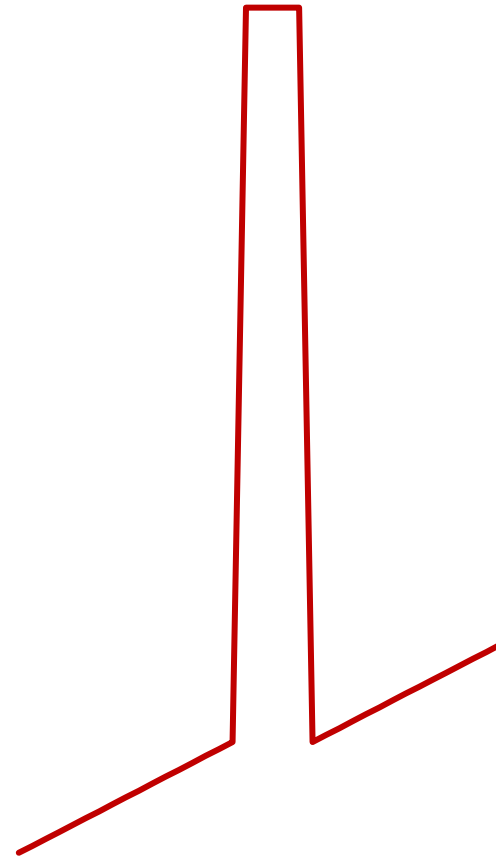
# ECSV Progressions Under SNFL Legal Standards

- Does this follow the required “reasonably orderly sequence of increases”?
- Are these “erratic cash values”?
- Is there a “spike,” a “sharp increase,” a “sharp jump” during the ECSV offer period?
- Are the ECSV offers in the middle of the graph “benefits discontinuous in nature” that are “available only during certain windows of time”?



# Do ECSV Offers Comply With The Standard Nonforfeiture Law For Life Insurance?

- No. It would be hard to intentionally design a product less compliant, or with a less smooth progression of CSVs.



# Smoothness Requirement Prevents Inequitable Consumer Treatment

- “Unfortunately, some cash value scales in actual use do not even remotely resemble any kind of asset share pattern. Typical...case...where actual values are zero for nine years and arbitrarily set equal to a desired value for year ten well in excess....In such a case one must well question whether those who surrender in year nine...are treated fairly in relation to those who surrender in year ten.” --1979 Technical Subcommittee Report
- Such CSV progressions banned by 1980 SNFL amendments.
- Same unfair result today if you surrender right before ECSV offers mailed.
- What if you surrender based on an illustration showing regular CSV; then the next day the insurer offers an 1,800% higher CSV to an identical risk with an identical policy who paid identical premiums as you for the same period of time?
  - An identical risk has received 18 times the benefit for the same price.

**ECSVs MIMIC LIFE  
SETTLEMENTS, BUT DON'T  
PROVIDE RELEVANT  
CONSUMER PROTECTIONS**

# ECSVs Mimic Life Settlements

- Comparison #1 of life insurer, life settlement provider marketing:
  - First line of carrier solicitation letter: “We believe in the importance of life insurance coverage. But we also understand that life changes over time.”
  - Opening of life settlement marketing piece: “Life insurance represents a valuable financial solution to the various needs of families and businesses. Over time, however, these needs change.”

# ECSVs Mimic Life Settlements (Cont.)

- Comparison #2

- Carrier ECSV offer letter: “If your needs have changed, this is an opportunity to receive...a cash payment greater than your existing policy cash surrender value.”
- Life settlement provider materials: “A life settlement is a financial transaction in which a policy owner possessing an unneeded or unwanted life insurance policy sells...for more than the cash value.”

# ECSVs Mimic Life Settlements (Cont.)

## • Comparison #3

- Carrier solicitation letter: “Life keeps changing. Does your life insurance still meet your needs?...A need for more benefits that can be used to address health-related expenses.”
- Life settlement marketing piece: “One way to financially plan for, and protect against...increasing costs associated with...healthcare...is with the proceeds from...a life settlement.”

# Similar Products, Similar Risks, But ECSVs Avoid Important Consumer Protections

- Limited time, big cash offers in exchange for forfeiting policy and death benefit.
- Substantial Life Settlement Act protections are tailored to these risks.
- ECSVs don't provide these consumer protections required in life settlements.

# Legislative Protections In Life Settlement Statutes Not Observed In ECSV Offers

- Required *rescission rights* 15-60 days after a life settlement to remedy seller's remorse. Automatically applies if insured dies during rescission period—saving beneficiaries millions.
- Required *fiduciary duty* for brokers.
- Required physician *certification of (elderly) consumer competence.*
- Required disclosure of *relevant competing options.*

# ACLI On Whether Life Insurers Should Mimic Life Settlements

- Enhanced carrier offers discussed during 1997 NAIC Model drafting; ACLI testifies:
  - “An accelerated death benefit is not the same as a viatical settlement and is regulated by the insurance department. If an insurer is doing viatical settlements, it needs to be regulated as a viatical settlement company.”

# Bottom Line On ECSV Offers

- Violate Standard Nonforfeiture Law smoothness requirement for surrender value progression.
- Avoid key legislation that protects consumers from risks of surrendering benefits for limited-time cash offer.

**SNFL SMOOTHNESS  
REQUIREMENT PLAINLY  
APPLIES TO UNIVERSAL LIFE**

# Statutory Plain Language: SNFL Smoothness Applies To UL

- SNFL Section 8 instructs that its smoothness requirement “shall apply to all policies.”
- SNFL Section 9, “Exceptions”: “This Act shall not apply to any of the following” enumerated products—exceptions which do not include universal life.

# SNFL Authorizes Rulemaking For Universal Life—For Minimums Only

- SNFL Section 6 instructs that “The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this Standard Nonforfeiture Law for Life Insurance, as determined by regulations promulgated by the commissioner.”
- Provision, added in same 1980 SNFL amendments as smoothness requirement, is silent on SNFL smoothness—thus leaving the statutory smoothness requirement fully intact for UL.

# NAIC UL Model Reg Does Not Excuse UL Products From SNFL Smoothness Requirement

- UL Model Regulation Sect. 2, “Purpose,” states that it “does not supersede existing requirements.”
- UL Model Reg Sect. 6, “Nonforfeiture,” following its limited statutory authorization, applies to minimums only—not smoothness, as per its subject headings:
  - “A. Minimum cash surrender values for flexible premium universal life insurance policies”;
  - “B. Minimum cash surrender values for fixed premium universal life insurance policies”; and
  - “C. Minimum paid-up nonforfeiture benefits.”

# Contemporaneous/Relevant Authorities: SNFL Smoothness Applies To UL

- American Academy of Actuaries Universal Life Task Force, June 1987, Preliminary Report to NAIC on UL Model Regulation: “Universal life policies should comply with Section 8 of the Standard Nonforfeiture Law—the ‘smooth cash value’ test.”
- AAA UL Task Force, Sept., 1987, Statement on UL Model rulemaking: “In our report, we stated what we believe to be obvious: Universal life should comply with Section 8 of the Standard Nonforfeiture Law regarding smooth cash values. It should not be necessary to add this requirement to the model regulation; the requirement already exists.”
- Society of Actuaries, 2002 Annual Meeting, Regulatory Discussion: “The universal life model, when it was created, had as its apparent main purpose the creation of a commissioners reserve valuation method standard [affecting reserves and taxation]....Because of this, the universal life model only addressed a small part of nonforfeiture. It controlled front-end loads and surrender charges. It doesn’t mention... smoothness.”

# CONCLUSION

- We appreciate your interest and consideration.
- Questions??
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