

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
FINANCIAL SERVICES & INVESTMENT PRODUCTS COMMITTEE  
NEW YORK, NEW YORK  
JULY 10, 2008  
MINUTES

The National Conference of Insurance Legislators (NCOIL) Financial Services & Investment Products Committee met at the Marriott Marquis in New York City on Thursday, July 10, 2008, at 10:30 a.m.

Assem. Ivan Lafayette of New York, chair of the Committee, presided.

Other members of the Committee present were:

Sen. Joseph Crisco, CT	Sen. Carroll Leavell, NM
Sen. Ralph Hudgens, GA	Assem. William Barclay, NY
Sen. William R. Haine, IL	Assem. Nancy Calhoun, NY
Rep. Dennis Keene, KY	Rep. Brian Kennedy, RI
Sen. Pete Pirsch, NE	Rep. Kathleen Keenan, VT

Other legislators present were:

Rep. Greg Wren, AL	Sen. Jerry Klein, ND
Sen. Vi Simpson, IN	Rep. Donald Flanders, NH
Sen. Chris Steineger, KS	Assem. Joseph Morelle, NY
Rep. Jeff Greer, KY	Sen. James Seward, NY
Rep. Dennis Horlander, KY	Sen. Stewart Greenleaf, PA
Rep. Rick Rand, KY	Rep. Anthony Melio, PA
Sen. Alan Sanborn, MI	Sen. David Thomas, SC
Sen. Linda Scheid, MN	Rep. Charles Curtiss, TN
Sen. Robert Dearing, MS	Rep. Gini Milkey, VT
Rep. Henry Zuber, MS	

Also in attendance were:

Susan Nolan, NCOIL Executive Director  
Candace Thorson, NCOIL Deputy Executive Director  
Mike Humphreys, NCOIL Director of State-Federal Relations  
Jordan Estey, NCOIL Director of Legislative Affairs & Education

#### MINUTES

After a motion made and seconded, the Committee voted unanimously to approve the minutes of its February 28, 2008, meeting in Washington, DC.

#### CREDIT FREEZE LEGISLATION

Eric Ellman of the Consumer Data Industry Association (CDIA) said that credit freeze legislation allows a consumer to place a freeze on his/her credit report. He said that such legislation was prompted by identity theft concerns. He reported that 48 states had enacted laws that permit consumers to freeze their credit, and noted that the California security freeze law was the first to take effect in 2003. He added that all nationwide credit bureaus have initiated voluntary programs that allow all consumers in all 50 states to request a credit freeze.

Mr. Ellman described several initiatives to prevent and remediate identity theft, including: free credit reports, security alerts and active duty alerts, security freezes, Social Security Number truncation on credit reports, and an ability to opt-out of preapproved credit card offers, among others. He said that some of the programs were required by federal or state statute while others were voluntarily developed by credit reporting agencies.

Mr. Ellman, citing several studies, reported that the number of identity thefts has consistently declined. He said that while the number of security breaches has increased, the number of people victimized has decreased by 26 percent from 2007.

Responding to a question from Sen. Sanborn, Mr. Ellman said that in more than 50 percent of all identity theft crimes, the victim and the perpetrator know each other. He noted that family members, coworkers, and roommates had been responsible for committing identity thefts.

In response to a question from Assem. Barclay regarding whether a credit theft could impact a credit score, Mr. Ellman said that a credit bureau can not differentiate a fraud from an ordinary credit transaction unless contacted by a consumer. He said that after a consumer contacts the bureau about a fraud, the bureau would remove fraudulent information from the credit report and it could not be used to calculate a credit score.

#### FEDERAL PRIVACY NOTICES

Julie Gackenbach of Confrere Strategies, representing the National Association of Mutual Insurance Companies (NAMIC), said that since the *Gramm-Leach-Bliley Act* (GLBA) and the *Fair Credit Reporting Act* (FCRA) in 2001, all financial institutions have been required to send initial and annual privacy notices to consumers that explain a right to opt out of certain disclosures. She reported that under current law, the federal government has provided sample language that companies could use and, she noted, that companies that used the sample language were provided a safe harbor with regard to their privacy notices.

Ms. Gackenbach reported that Congress directed eight (8) federal regulatory bodies to develop a model privacy notice when it passed a *Regulatory Relief Act of 2006*. She said that the federal regulators released a model privacy notice in 2007 and added that the regulators hope to finish the project before 2009. She said the 2007 draft was highly prescriptive; failed to recognize the difference between various financial institutions; and did not allow financial institutions to disclose privacy rights not included in GLBA or the FCRA.

Ms. Gackenbach said that NAMIC recommended changes to the Summer 2007 draft, including that it should preserve the safe harbor for sample languages, be optional for companies, and permit more flexibility in form and content.

#### SUBPRIME LENDING DEVELOPMENTS

Superintendent Richard Neiman of the New York State Banking Department said that the New York State Assembly had approved two initiatives to address subprime mortgage lending that could be instructional for other states and serve as models for the federal government. He said that the State had adopted a licensing of mortgage loan initiators proposal that requires the licensing of all individuals that originated mortgages. He noted that the legislation requires fingerprinting, background checks, and education requirements for loan initiators. He stated that the licensing system will use a *Nationwide Mortgage Licensing System* (NMLS) that, he said, will be accessible to the public and to financial institutions. He said that eight (8) states have signed

on to NMLS in 2008 and added that 20 and 22 states plan to join later in 2008 and in 2009, respectively. He reported that pending federal legislation would grant the U.S. Department of Housing and Urban Affairs (HUD) jurisdiction over mortgage broker licensing in the states that did not join NMLS.

Superintendent Neiman said that New York had also passed one of the most comprehensive housing bills in the country. He said that the bill requires lenders to provide a written notice prior to 90 days before a foreclosure filing that will give borrowers the names of HUD-approved housing counselors. He noted that the legislation authorizes a judge to schedule a mandatory settlement conference between borrowers and lenders if the foreclosure proceeds. He said the bill addresses underwriting standards and foreclosure rescue scams, among other things.

Superintendent Neiman described federal legislation that, he said, would expand Federal Housing Administration (FHA) insured programs to provide additional opportunities for subprime borrowers to refinance. He said that he believed minimum standards had to be established nationwide that would not distinguish between state- and federally chartered institutions and said that the New York legislation could serve as a model for Congress.

#### BOND INSURANCE

Chris Evangel of the National Association of Insurance Commissioners (NAIC) Securities Valuation Office (SVO) reported that \$2.5 trillion of municipal debt exists in the market, insurance companies own nearly \$420 billion of that debt, and that \$145 billion is insured. He said that rating agencies had traditionally rated bond insurers “AAA” but stated that, because of deterioration in bond insurer credit quality, four (4) out of the ten (10) bond insurers were rated below investment grade. He added that three (3) insurers had negative outlooks and that only three (3) companies remained AAA. He said that holders of the debt, municipalities, and ultimately the taxpayers were affected by bond insurer downgrades.

Mr. Evangel said that beginning on July 1, 2008, the NAIC authorized the SVO to re-rate municipal issuers that did not have underlying ratings on their own. He said that the SVO ratings could exceed nationally recognized statistical rating organization (NRSRO) ratings.

Assem. Barclay asked about factors that contributed to the downgrades. Mr. Evangel said that companies had moved out of the traditional business of insuring municipal debt and into structured finance areas. He said that insuring structured securities was the primary reason that companies needed to raise additional capital.

Robert Mackin of Mackin & Company, representing the Association of Financial Guaranty Insurers (AFGI) said that bond insurers have always insured municipal debt and asset-backed securities and stated that *Article 69* authorized the sale of asset-backed securities. He said that a common misperception was that municipalities do not default and noted that since 1980, there have been 2,788 defaults on municipal bonds in the U.S. He said that a second misperception surrounded a bond insurer’s ability to pay claims. Mr. Mackin said that bond insurers had increased their capital by \$3 billion since the 2008 NCOIL Spring Meeting. He said that bond insurers had high reserving requirements and statutory standards and stated that bond insurers were regulated by rating agencies, state insurance departments, and the U.S. Securities and Exchange Commission (SEC).

## U.S. DEPARTMENT OF DEFENSE REPORT ON PREDATORY LENDING

Colonel Marcus Beauregard of the U.S. Department of Defense (DoD) said that in 2007 Congress gave the DoD authority to develop a regulation to protect service members and their families from predatory lending. He reported that the regulation went into effect on October 1, 2007, and addressed payday lending, vehicle titles, and refund anticipation loans. He said the DoD had developed a model memorandum of understanding (MOU) for states to use that would permit them to work with the DoD to enforce the October 2007 regulation.

Col. Beauregard said that the DoD found that most states could coordinate with it to enforce the regulation and that all states could work with the DoD on information sharing projects. He commented that although 22 states did not have the statutory structure to enforce the regulation, three (3) states had recently changed their statutes to participate.

## ADJOURNMENT

There being no further business, the meeting adjourned at 11:45 a.m.

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