NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & INVESTMENT PRODUCTS COMMITTEE
NEWPORT, RI
JULY 16, 2011
MINUTES

The National Conference of Insurance Legislators (NCOIL) Financial Services & Investment Products Committee met at the Marriott Newport in Newport, RI, on Saturday, July 16, 2011, at 10:30 a.m.

Sen. Carroll Leavell of New Mexico, acting chair of the Committee, presided.

Other members of the Committee present were:

Sen. Travis Holdman, IN	Assem. William Barclay, NY
Sen. Vi Simpson, IN	Rep. Brian Kennedy, RI
Sen. Ruth Teichman, KS	Rep. Charles Curtiss, TN
Rep. Robert Damron, KY	Del. Harvey Morgan, VA
Rep. Tommy Thompson, KY	Rep. Bill Botzow, VT
Rep. Don Flanders, NH	Sen. Ann Cummings, VT

Other legislators present were:

Rep. Bryon Short, DE	Sen. David O'Connell, ND
Sen. Dean Cameron, ID	Assem. Nancy Calhoun, NY
Rep. Ron Crimm, KY	Rep. Marguerite Quinn, PA
Rep. Steve Riggs, KY	Rep. Craig Eiland, TX
Rep. Paul Brodeur, MA	Rep. Herb Font-Russell, VT
Sen. Jim Marleau, MI	Sen. Maralyn Chase, WA
Sen. Jerry Klein, ND	

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 March 4, 2011, meeting in Washington, DC.

SOCIAL MEDIA

National Association of Insurance Commissioners (NAIC) President Commissioner Susan Voss (IA) reported that the NAIC had formed a working group to develop a white paper that would overview how insurers and producers used social media in their businesses and would identify any regulatory compliance issues. She said that the working group would release an exposure draft later in July and convene a conference call before an August NAIC National Meeting.

Responding to a request from Rep. Botzow, Commissioner Voss said that she had not received many complaints in Iowa. She said that regulators believed social media could present potential regulatory issues and wanted to better understand its uses.

Deirdre Manna of the Property Casualty Insurers Association of America (PCI) said that companies were always looking at ways to modernize and sell products. She said that PCI would monitor NAIC activity and provide comments as regulators exposed work products.

INSURER INVESTMENT REGULATION

Sen. Chase expressed concerns with recently signed Washington State legislation that she said overturned all of the state's insurer investment regulations and permitted investments in high-risk assets. She said that Washington was unique in changing its law to enact a defined standards, or principles-based, version of an NAIC *Investment of Insurers Model Act*—rather than its defined limits approach. She said the new statute would allow insurers to double or triple their investments in commercial real estate, common stock, junk bonds, and derivatives, and that it would also authorize, for the first time, investments in foreign real estate and foreign sovereign debt. She said that the law would require an insurer to establish investment policies that must be annually reviewed and approved by its board of directors, among other things.

Responding to a question from Rep. Damron regarding NAIC accreditation, Commissioner Voss answered that the investment model acts were not part of the accreditation standard. She reported that the NAIC models were drafted in the 1990s and in 2001. She said that the defined standards approach provided benchmarks while permitting insurers to engage in lawful investments, provided they were made in accordance with its board-approved plan. She said that the model limited aggregate amounts of medium and low-grade investments to 20 percent of admitted assets and explained further restrictions on lower-rated investments.

Ethan Sonnichsen of the NAIC clarified that having an investment statute was part of accreditation, but that accreditation did not dictate a model to the states. He reported that every state had some form of insurer investment regulation and said that he did not view the defined standards approach as deregulation. He said that the NAIC analyzed and rated insurer investments. He also noted that developments around the world were leaning towards a principles-based regulation.

Rep. Kennedy asked how many states had enacted the NAIC model acts. Mr. Sonnichsen replied that Washington had enacted the defined standards approach and that other states had either adopted the defined limits version, adopted elements of the model(s) or pursued a blended approach. Sen. Chase said that nine states had enacted the defined limits version.

After further discussion, Rep. Keiser suggested insurer investment regulation as a future topic for NCOIL-NAIC discussions. Commissioner Voss agreed and commented that such discussions should also look at international regulatory developments.

DODD-FRANK ACT IMPACTS

Kevin McKechnie of the American Bankers Insurance Association (ABIA) said that a new Consumer Financial Protection Bureau (CFPB) is prohibited from regulating insurance but will have responsibility for credit cards and mortgage servicing, among other things. He cautioned that the CFPB may want to look into lender-placed insurance, and he questioned how state and federal regulators would interact under such circumstances. Mr. McKechnie also highlighted new limits on fees that banks charge on debit card transactions and Federal Deposit Insurance Corporation (FDIC) powers that he said could require banks to hold greater amounts of capital and result in less lending. He commented that the country could be on the verge of a mini credit crunch resulting from Dodd-Frank Act rules.

Sen. Teichman and Rep. Keiser expressed concerns with Dodd-Frank's potential impact on community banks, with Sen. Teichman noting that many bankers viewed the legislation as a way to eliminate community banks. Rep. Keiser asked about possible insurance impacts. Mr. McKechnie answered that local brokers and small insurers may not have the ability to work with bigger banks that pursue lender-placed and/or mortgage insurance en masse from large institutions.

Scott Cipinko of the Consumer Credit Industry Association (CCIA) said that credit insurance products were unique in that—because of the Truth in Lending Act (TILA)—they were partially regulated by a host of federal entities, including the Federal Reserve Board (FRB). He said that the FRB had decided against pursuing a draft TILA disclosure rule and instead had deferred the issue to the CFPB. He expressed concern that the CFPB would start where the FRB left off—with a bad work product developed using a flawed process. He commented that the draft rule had included such language along the lines of "Stop, you may not need this product."

Julie Gackenbach of Confrere Strategies explained that a new Office of Financial Research (OFR) would soon develop a legal entity identifier (LEI) that would have to be attached to all financial transactions, allowing OFR to track which entities were involved in what businesses. She said that insurers would fall under OFR jurisdiction for data collection and research purposes. Regarding the CFPB, she echoed concerns that it would have authority over insurance transactions. She singled out privacy notices as an insurance item that the CFPB could impact. Ms. Gackenbach also described a new CFPB consumer complaint database that accepted complaints about insurance products and services. She said that the industry was working with the CFPB to find a way to segregate insurance complaints and make sure they are directed to the appropriate state regulators.

Mr. Sonnichsen added that the NAIC had contacted the CFPB about its complaint database to ensure cooperation with state regulators. He said that the NAIC also wanted state regulator contact information—similar to the information on state securities regulators and attorneys general that was already included—to be available on the CFPB website. He said the biggest issue with the OFR would be to ensure that it wouldn't duplicate data collection already happening in the states.

Rep. Botzow asked whether Dodd-Frank imposed any guidelines on the use of consumer complaint information and asked if the information could be shared with state lawmakers. Ms. Gackenbach answered that Dodd-Frank required the CFPB to analyze data, look for trends, and share information with appropriate enforcement personnel. She said that the act did not address sharing with lawmakers but commented that such coordination would be within the spirit of the law. She also explained that industry representatives were concerned, for privacy reasons, that the bureau had the authority to share complaint data with consumer advocates.

FEDERAL PENSION REFORM LEGISLATION

Mr. Humphreys reported that Congressman Devin Nunes (R-CA) had introduced H.R. 567, the *Public Employee Pension Transparency Act* (PEPTA), with 51 cosponsors in the U.S. House and that companion legislation had been introduced in the Senate as S. 347.

Josh Barro of the Manhattan Institute said that PEPTA would only regulate the disclosure of pension plan information in the states and would not require any substantive changes in pension policy regarding payouts and/or contributions. He said that PEPTA disclosures would facilitate better information about the financial condition of state and local pension funds. He described PEPTA-recommended disclosures related to discount rates used to determine liabilities and future cash flows. PEPTA, he said, would require plans to disclose liabilities on a market-value basis using a lower discount rate in line with the private sector so the true size of the liabilities when adjusting for risk would be clearer. He advised states to review the kind of disclosures their plans are making and consider reforms even if PEPTA was not enacted.

Responding to a question from Assem. Calhoun regarding buyouts, Mr. Barro said that he was not aware of any public pension systems offering lump sum buyouts to retirees. Assem. Calhoun later said that New York State wanted to transition from a defined-benefit (DB) approach to a defined-contribution (DC) system but that the change was difficult to implement. Mr. Barro said that the state's constitution made it difficult to touch pension benefits—even benefits to be earned in the future.

Rep. Keiser asked how many states "smoothed" returns or losses over five years and whether smoothing could get states into trouble. Mr. Barro replied that most pension funds smoothed losses/returns over four or five years. He said that because states must annually balance their budgets, a five-year smoothing period was desirable to avoid shocks to pension costs.

After further discussion, Sen. Leavell said that he was concerned that a PEPTA provision would deny tax benefits relating to bonds issued by a state or political subdivision during any period in which it was not compliant with PEPTA reporting requirements.

Tom Lussier of Lussier, Gregor, Vienna & Associates called the discussion of public pension plans and retirement security timely. He commented, though, that he was disappointed with how the issue had been advanced by Congressman Nunes, who reportedly had said the purpose of PEPTA was to "smoke the rats out of their hole." Mr. Lussier said that pension plans were the responsibility of state and local officials and that there was no need for a federal mandate regarding disclosures or any other pension requirement. He said that while Congressman Nunes said PEPTA would be optional, anything that had a loss of tax exempt bond status as a hammer was not optional.

Mr. Lussier also said that PEPTA:

- conflicted with the objectives of the U.S. House majority to pursue a smaller federal government and fewer federal regulations impacting state and local governments
- had nothing to do with transparency and instead was aimed at driving state and local governments to abandon DB programs for DC plans
- didn't solve any problem, as a one-size-fits-all federal solution wouldn't aid pension woes

Sen. Simpson said that university employees were considered public employees in Indiana but that they participated in a private pension plan. She asked how PEPTA reporting requirements would impact such plans. Mr. Lussier replied that the reporting requirements would only apply to government-sponsored retirement plans.

ADJOURNMENT

There being no further business, the meeting adjourned at 12:00 p.m.

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