

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & INVESTMENT PRODUCTS COMMITTEE
SAN FRANCISCO, CALIFORNIA
NOVEMBER 22, 2014
MINUTES

The National Conference of Insurance Legislators (NCOIL) Financial Services & Investment Products Committee met at the Grand Hyatt, in San Francisco California, on Saturday, November 22, 2014, at 8:00 a.m.

Rep. Tommy Thompson of Kentucky, chair of the Committee, presided.

Other members of the Committee present were:

Sen. Travis Holdman, IN	Rep. Bob Hackett, OH
Rep. Robert Damron, KY	Rep. Bill Botzow, VT
Rep. Joseph Fischer, KY	Sen. Mike Hall, WV
Rep. George Keiser, ND	Rep. Don Flanders, NH
Sen. Carroll Leavell, NM	Rep. Will Barclay, NY
Sen. Rapert, AR	

Other legislators present were:

Rep. Kurt Olson, AK	Sen. David O'Connell, ND
Sen. Mike Parson, MO	Del. Harry Keith White, WV
Sen. Joyce Elliot, AR	Rep. Janice Cooper, ME
Sen. Joe Hardy, NV	Rep. Deborah Ferguson, AR
Sen. Jerry Klein, ND	Rep. Kathie Keenan, VT
Rep. Pete DeGraaf, KS	Rep. Willem Jewett, VT
Sen. Neil Breslin, NY	Rep. Steve Riggs, KY
Rep. Ken Goike, MI	Rep. David Livingston, AZ

Also in attendance were:

Susan Nolan, Nolan Associates, NCOIL Executive Director
Candace Thorson, Nolan Associates, NCOIL Deputy Executive Director
Molly Dillman, Nolan Associates, NCOIL Director of Legislative Affairs
Andrew Williamson, Nolan Associates, NCOIL Director of Legislative Affairs

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 12, 2014, meeting in Boston, Massachusetts.

CYBERSECURITY & INSURANCE

Julie Gackenbach of Confrere Strategies reported that cybersecurity has quickly become a top priority among government agencies, and that FIO is very active in the subject and is currently working with the Department of Homeland Security (DHS) and the White House. She said earlier this week a number of insurance companies and representatives from Commerce, National Institute of Science and Technology (NIST), DHS and the White House met and discussed implications of insurers in cybersecurity and development of cybersecurity insurance.

Ms. Gackenbach noted that Director McRaith wants to see the development of underwriting principles for cybersecurity insurance and is asking for information on the topic. Ms. Gackenbach said there is strong opposition from industry regarding developing principles, but Director McRaith said there will be follow-up on both developments of underwriting and risk management principles. She said the position of Treasury is companies “are doing what they want and that has to be fixed.”

Ms. Gackenbach noted agency action on cybersecurity has had an effect on the insurance industry. She said that the National Institute of Science and Technology (NIST), as an example, just closed a comment period to gather information and develop new standards related to security for mobile devices to access to company resources. She also said that the National Highway Transportation Safety Administration had just closed a comment period on creating cybersecurity standards for vehicle-to-vehicle communication and vehicle-to-highway communication.

Ms. Gackenbach said the Federal Financial Institutions Examination Council (FFIEC) created a web page and pilot program where financial institutions will be tested for cybersecurity risk in order to create uniform standards for financial institutions. She said the Securities and Exchange Commission (SEC) is also looking at new standards for publicly traded companies and has started the examination of 50 broker/dealers where security procedures will be observed. She said after the observation, it will be decided if new cybersecurity standards for broker/dealers are necessary.

Ms. Gackenbach noted that the Office of the Comptroller of the Currency (OCC) developed updated guidance for banks to use related to third-party contractors. She said she does not expect to see legislation move, as it has been bogged down because every committee in Congress feels they should have jurisdiction.

Ms. Gackenbach said she felt that information sharing legislation will be done next year, as each agency is moving forward with the sectors they regulate. She said she also foresees new regulatory initiatives dealing with specific company security and how third party relationships are handled.

CONSUMER FINANCIAL PROTECTION BOARD (CFPB)

Sen. Rapert noted a draft letter to CFPB in regards to CFPB overreach into areas normally regulated by states had been circulated to the Committee. He expressed a desire to dialogue about this, especially with Director Cordray. He noted the letter, over the NCOIL President’s name, should initiate conversation in line with directives received from the Task Force Working Groups.

Scott Cipinko of the Consumer Credit Industry Association (CCIA) expressed concern that CFPB is going into financial institutions, asking questions about insurance products and giving opinions and suggestions. He said this goes beyond CFPB authority and has had a chilling effect on the market. He said when approached about this, CFPB leadership have said that this is not their position. Mr. Cipinko said NCOIL will see that what people in Washington say is not necessarily translated to troops on the ground. He noted that Dan Smith, the CFPB government liaison, said at an American Bankers Association (ABA) meeting, that the CFPB is comparable to “building an airplane in flight”. Mr. Cipinko suggested NCOIL meet the CFPB Office of Government Liaison in

addition to other efforts. Sen. Rapert asserted that a CFPB representative should participate in the next NCOIL meeting.

Mr. Cipinko also noted that finance company lenders have alerted state legislators of their concerns that CFPB will make their product unavailable to consumers, if not by regulation then by intimidation. He said CFPB has proposed high interest rates and high fees and excluding the ability to sell product. He noted the goal should be to protect consumers and that is not happening.

After a motion made and seconded, the Committee voted to send the letter and invite a CFPB representative to dialogue with NCOIL.

PENSION DE-RISKING REGULATION

Rep. Keiser reported on a proposed resolution concerning best practices for pension de-risking through private annuitization. He explained de-risking is a relatively new tool created for defined benefit programs. He said that de-risking is an option that allows people in defined benefit programs to have an opportunity to retain their benefits, but as de-risking was developed and implemented, people in the plans began to raise concerns.

Rep. Keiser said a statutory approach to this issue existed and that the two groups, representing plans and the American Council of Life Insurers and member companies, worked extremely well together. He said that after numerous discussions, it was suggested that a best practices approach might be better strategy. He said it was a challenge to convince those affected that having a resolution adopted by NCOIL would put this issue in the forefront, but industry had helped develop the best practices based on concerns expressed by representatives of people in the plans.

Rep. Keiser noted that once again NCOIL has been able to lead policy development. He said that within the last month pension de-risking has come onto the Congressional radar screen.

Edward Stone of the Association of Bell-Tel Retirees (ABTR) noted that NCOIL leadership on this issue has been invaluable. He said that in the past year his group and life insurers through ACLI have managed to come to consensus on several important issues. He said the consensus model act was suggested in Boston, by Rep. Keiser, with the thought that some issues would not be resolved, but that some could be. Mr. Stone noted major issues included protection from creditors, oversight and restriction on subsequent transfers, and disclosure. He noted that consensus was not received on disclosure, but work will continue moving forward.

Mr. Stone said NCOIL taking the lead on this issue will focus attention on the types of companies that take on long-duration liabilities. He said fly-by-night insurers will not be participating in de-risking transactions, but instead insurance companies who take liability-driven investing seriously and have adequate financial resources and insight to manage this type of liability over a long time. He added that oversight and focus will bring out a healthier group of annuity providers.

Kate Kiernan (ACLI) said the resolution process started with a working group of member companies interested in this issue formed after last year's meeting in Boston. She said the group heard the concerns of plan participants. She said after many meetings and much dialogue

the group came up with best practices, which then lead to the resolution being considered today. She noted that while some areas still need work, the resolution covered four important areas.

Ms. Kiernan explained the resolution defined pension plans transfers and guaranty association coverage. She said that NAIC *Financial Guaranty Insurance Model Act* was developed in 1971, and has gone through a number of iterations, last being in 2009. She said the 2009 revision raised the annuity coverage limit from \$100,000 to \$250,000. She said that most states have upgraded their model, except those experiencing issues such as Massachusetts and New Hampshire. She while is it hopeful Massachusetts will be done soon, more help will be needed in New Hampshire.

Ms. Kiernan noted the resolution suggested states have uniform creditor protections for annuity contracts. She said there is agreement that de-risking transactions should be protected from creditors and that she will work with Mr. Stone to look at the law and see where changes need to be made in certain states to insure that protection.

Ms. Kiernan said that another important issue addressed in the resolution is annuities disclosure and that although there is not total agreement on specifics, there is agreement on additional disclosure for plan participants. She said this was an educational process for industry to know more about the concerns of the plan participants and that there will be continued work with Mr. Stone towards meaningful types of disclosure.

Ms. Kiernan said the resolution addressed protection surrounding subsequent transfer, dealing with protections once the block of annuity business is transferred to the insurer. She said that while this is an already highly-regulated area of the law, she will work with Mr. Stone and his group to ensure that the law that governs this is the NAIC *Assumption Reinsurance Model Act*. She noted that states have adopted this law in a relatively uniform matter.

C. William Jones, executive director of the Association of BellTel Retirees, thanked everyone who helped create and move this resolution, including Rep. Keiser. He noted that Prudential had taken the time to discuss the issue and that the two groups were able to have a very good working relationship over the past year. He noted that while the issue is far from being resolved, this resolution will be a big part of the insurance business in the coming years, and by ironing wrinkles out now, consumers can be saved from a lot of angst in the future.

Rep. Fischer asked about the "protection from creditors" piece of the resolution and noted that most laws provide 100 percent protection for qualified pension payments but have limited protection for unqualified annuity payments. He asked when the transfer occurs between plan and the annuity company, does it lose its character as a qualified payment? Mr. Stone responded that a pension loses Employee Retirement Income Security Act (ERISA) coverage when it goes into a group annuity contract because it is then governed under state law, so it depends on how individual states deal with it. He said his group would like to see protections mirror what was protected under ERISA and are working towards consensus-driven legislation at the state level to ensure that individuals receiving retirement benefits under a group annuity contract, would be exempt from creditors across the board. He said that this would avoid the confusion that exists today.

Rep. Keiser asked that the 30-day rule be suspended to consider the resolution and a motion was made, seconded and passed. The Committee voted after to a motion made and seconded in pension de-risking. The resolution was then passed by a roll call vote. All voted in favor, but Rep. Damron, who had previously expressed reservations regarding the resolution.

Ms. Gackebach brought up Rep. Keiser's mention of a letter issued by Senate Finance Committee Chairman Ron Wyden (OR), and Senate Health, Education, Labor, and Pensions (HELP) Committee Chairman Tom Harkin (IA), which was directed to the heads of the Department of Treasury, Department of Labor (DOL), Pension Benefit Guaranty Corporation (PBGC), and the Consumer Financial Protection Bureau (CFPB). She said the Chairmen were asking in that letter that the four agencies together develop guidance on pension de-risking, including issues directly related to choice of annuity providers and disclosures.

Ms. Gackebach said it is clear that under Dodd Frank, the CFPB is not allowed to enter into any rule-making authority with relation to persons regulated by a state insurance commissioner and that CFPB is also not allowed to go into the area of employee benefits unless it gets a specific request from DOL and the Department of Justice (DOJ). She said that this letter is worrisome for some in Congress because of the inclusion of CFPB and the notion that CFPB will be brought into conversation about how annuity providers are chosen. Ms. Gackebach recommended that this issue be further addressed by NCOIL.

Upon a motion made and seconded, the Committee unanimously adopted the following 2015 Committee charges:

- evaluate state and federal pension initiatives and seek opportunities to influence debate, i.e. best practices
- dialogue with the CFPB regarding state insurance regulation/consumer protections and continued examination of Dodd Frank Act implementation/affects on state regulation (e.g., FSOC, SIFIs, Federal Reserve, etc.) and communicate with officials and others as needed
- explore growing concerns related to cyber security and consider public, private-sector responses
- continue to explore developments in the municipal bond insurance market
- continue to monitor state, federal lender-placed insurance developments

ADJOURNMENT

There being no further business, the Committee adjourned at 9:00 a.m.