

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

LEGISLATIVE TOOLKIT
ADVOCATING FOR STATE-BASED REGULATION
IN INTERNATIONAL INSURANCE DISCUSSIONS

APRIL 2015

PURPOSE

The goal of this toolkit is to empower state legislators with information, in order to advocate more effectively for the U.S. insurance regulatory system with congressional and other federal officials and with international entities. State legislators play a vital role in the development and implementation of the effective U.S. system—indeed, they are the final arbiters of the insurance laws that affect every consumer and every business in this country—but too often the voices of state legislators are unheard.

Global efforts that could erode the U.S. system are moving fast. This is the most vital time for all state regulatory supporters to work together.

The [NCOIL INTERNATIONAL ISSUES TASK FORCE](#) was created in November 2013 to help ensure that international regulatory discussions do not erode the U.S. state-based system. The Task Force, among other things:

- [reaches out](#) to federal, global officials to warn of negative impacts of certain efforts
- [works](#) to give state legislators a voice internationally
- [educates](#) state lawmakers on critical international initiatives and concerns
- [partners](#) with state officials through a Task Force State Officials Working Group and with consumer, insurer, and other representatives through a Task Force Advisory Council

The NCOIL International Issues Task Force developed the Toolkit with input from the Task Force's State Officials Working Group and Advisory Council, listed in Appendix A at end of Toolkit.

PROTECTING STATE INSURANCE REGULATION FOR THE BENEFIT OF U.S. CONSUMERS AND COMPANIES

The U.S. national system of state-based insurance regulation has served Americans well for 150 years, in good times and bad. Our system has prevailed despite natural and manmade catastrophes, economic downturns, and even global financial crises. This record of success for our state-based insurance regulatory system is unmatched here or abroad and has been a key factor in creating the largest, most financially sound and competitive insurance market in the world.

Yet, our system of state-based regulation has never been subjected to more challenges—not driven by any objective need to reform but rather by other agencies seeking to increase their roles in insurance regulation, potentially at the expense of the states, our consumers and our companies. Ironically, some of these institutions actually failed to perform well, thereby helping cause the recent global financial crisis. And, some of these agencies do not function with the direct accountability to the public, openness to all interested parties, and the rule of law that are hallmarks of state-based insurance regulation.

PRESSURES FROM SOME AGENCIES COULD:

- result in acceptance of bank-type, one-size-fits-all regulation on insurers that:
 - IGNORES the unique aspects of each state's insurance market
 - POTENTIALLY JEOPARDIZES insurance tax revenues
 - ADDS unproductive higher costs for our consumers—estimated at up to \$100 per year for each personal lines policy—without any real additional protection
 - ESPECIALLY BURDENS well-functioning smaller local companies, forcing them to leave the market or merge, resulting in less competition
 - MAKES IT MORE DIFFICULT for you to advocate for your constituents on their insurance issues
- result in an effort to create a single global regulatory standard that:
 - ACTUALLY CREATES systemic risk in insurance that does not now exist—as regulators and companies are driven to using the same model worldwide

States must be vigilant and act against this unprecedented threat to state-based insurance regulation. As the leading voice of state legislators in insurance, NCOIL has identified the issues, provided a toolkit of background information, passed resolutions against unwarranted incursions into state-based insurance regulation, and advocated with our Congressional colleagues.

In response to the solid track record of state insurance regulators, Congress for more than 50 years has repeatedly made clear that it intends insurance to be regulated by the states. Dodd-Frank allowed limited additional roles for Treasury and the Federal Reserve Board to supplement and complement the states, not replace them. It is therefore critical that Congress reiterate its intent and enact legislation to require that federal agencies must reach consensus with the states on all international insurance regulatory matters and that international standards recognize our regulatory standards.

NCOIL has strongly endorsed Congressional actions to assure the pivotal role of states, and requiring increased consultation with Congress, consensus with the states and accountability to the public. However, this fight is not over. Because this issue is critical to the people of each and every state, we urge state legislators to study these materials. Then, contact your Congressional representatives in support of legislation that preserves our highly effective state-based insurance regulatory system for the benefit of our consumers and markets.

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TALKING POINTS

- State-based insurance regulation has a long and storied history of protecting consumers and promoting healthy markets.
- Our more than 150 years of effective oversight may be affected by international officials who may not understand or appreciate what state regulation does so well.
- Our system, which came through the financial crisis relatively unscathed, is at risk of being changed by officials from countries that had a far different experience.
- Global insurance discussions:
 - must be open and allow for broad comment during development of proposed standards
 - must “do no harm” to state regulation
 - absolutely must include a vehicle for state legislators, as well as regulators, to weigh in
- While state regulation is not perfect,
 - state legislators and regulators are always working to enhance areas where reform is needed
 - and NCOIL and the NAIC have worked together over the years to effect such change
- There is real harm in international insurance discussions that would challenge a U.S. system that may be different from other insurance regulation around the world—*but that works*.

EXECUTIVE SUMMARY

INTERNATIONAL DEVELOPMENTS CHALLENGING U.S. STATE-BASED INSURANCE REGULATION (Section II)

- Congress gave to the states the primary role of insurance regulation in the McCarran-Ferguson Act. This was largely reaffirmed in the Dodd-Frank Act (DFA) in 2010, in recognition of the comparatively good performance of the insurance sector and its state-based regulation during the financial crisis of 2007-2009.
 - Nonetheless, DFA in 2010 created the Federal Insurance Office (FIO) in the Treasury Department to fill a few perceived gaps, including in international representation of the U.S.

- The competition between state regulators and the federal agencies that was triggered by DFA has not resulted in positive outcomes for the U.S. FIO has often advocated positions at odds with those of the states, most recently on capital standards and IAIS procedures to close its meetings, thereby weakening the voice of the U.S.

IAIS TRANSPARENCY – STAKEHOLDER PARTICIPATION *(Section III)*

- The International Association of Insurance Supervisors (IAIS), founded in 1994 and headquartered in Basel, Switzerland, is the international standard setter for insurance regulation. Its purpose is to develop and maintain fair, safe, and stable insurance markets for the benefit and protection of policyholders and to contribute to global financial stability.
- As of January 2015, all IAIS committee meetings are now closed to all interested stakeholders. However, Committees have the authority to invite select stakeholders to attend meetings when they want to hear their perspective.
 - The IAIS has announced a series of stakeholder meetings around the world on one issue Insurance Capital Standards. These meetings do not include the full committee and are being held around the globe in a manner that may separate industry discussions into North American, European, and Asian perspectives. While these exchanges are useful, no other topic of committee work has been open to stakeholders.
- The NAIC and industry strongly oppose the closed process and selective invitations, NCOIL adopted a resolution in opposition to these changes at its 2014 Summer National Meeting, and the U.S Congress introduced a resolution in opposition to the change in transparency as well.

INTERNATIONAL GROUP CAPITAL REQUIREMENTS *(Section IV)*

- Proposed capital standards being developed by international officials could:
 - conflict with existing state and U.S. requirements
 - jeopardize consumer protections
 - cause insurers to raise prices and/or reduce the coverage they offer
 - prove unnecessary and/or misguided
- The global standards are a “solution in search of a problem” for U.S. companies.

- Imposing uniform global standards could result, in effect, in U.S. insurance regulators surrendering their authority.
- The proposed global standards are being developed with creditors in mind—consistent with the EU regulatory approach.
 - U.S. regulation focuses on consumer protection, including a strong guaranty fund system.

RECENT EVOLUTION OF GROUPWIDE SUPERVISION *(Section V)*

- Enhancements to state regulation to help ensure that all entities in an insurance group are supervised effectively should involve cooperation/coordination between state legislators, regulators, and others.
- Periodic reviews of regulatory efforts and checks and balances are important, as is ensuring confidentiality of data.
- State regulation looks at companies within an insurance group as individual entities—while regulators overseas take a broader approach, looking at the insurance group as a whole.

INTERNATIONAL DEVELOPMENTS ON MARKET CONDUCT *(Section VI)*

- The U.S. approach to market conduct oversight is well-developed and effective.
- The strength of state-based market conduct regulation helps to prove that U.S. regulation is committed to consumer protection.
- Any international effort to create a uniform market conduct regime that differs from the U.S. approach is unneeded and potentially problematic.

INTERNATIONAL DEVELOPMENTS IN CORPORATE GOVERNANCE *(Section VII)*

- The U.S. has significant corporate governance requirements, established by state and federal law, among other things, and one-size-fits-all international requirements are not needed and may not be appropriate.
- Care should be taken to avoid arbitrariness and undue burdens.
- International proposals should be consistent with the U.S. approach.

COVERED AGREEMENTS *(Section VIII)*

- Covered agreements between the U.S. and foreign governments—including agreements related to reinsurance collateral—should in no way diminish state insurance regulation.
- State officials, including legislators, should work together to help ensure that the U.S. system is fair and flexible and responds to the changing needs of the global financial services marketplace.
- State legislators and regulators should encourage dialogue with the Federal Insurance Office (FIO) and Office of U.S. Trade Representative (USTR) regarding the scope and content of any covered agreement.

INTERNATIONAL TRADE: IMPLICATIONS FOR U.S. INSURERS AND STATE OFFICIALS *(Section IX)*

- State officials—including state legislators—feel it necessary to have expanded and continuous consultations on current and future trade negotiations to ensure that international agreements do not unnecessarily infringe on state regulation and protections.
- State legislators currently do not have an established dialogue with trade negotiators other than through the Intergovernmental Policy Advisory Committee on Trade (IGPAC), although the Federal Insurance Office (FIO), state insurance commissioners, and some other state officials regularly consult with trade negotiators.
- Greater transparency and information sharing between federal and state officials are needed regarding the substance and likely impacts of agreements being negotiated.

INTERNATIONAL DEVELOPMENTS CHALLENGING U.S. STATE-BASED INSURANCE REGULATION

Background:

Congress gave to the states the primary role of insurance regulation in the McCarran-Ferguson Act. This was largely reaffirmed in the Dodd-Frank Act (DFA), in recognition of the comparatively good performance of the insurance sector and its state-based regulation during the financial crisis of 2007-2009.

Nonetheless, DFA created the Federal Insurance Office (FIO) in the Treasury Department to fill a few perceived gaps, including in international representation of the U.S., and assigned lead regulatory authority over systemically important insurers and those in thrift holding companies to the Federal Reserve Board.

Issues:

The competition between state regulators and the federal agencies that was triggered by DFA has not resulted in positive outcomes for the U.S. Instead, FIO has often advocated positions at odds with those of the states, most recently on capital standards and IAIS procedures to close its meetings, thereby weakening the voice of the U.S. This has resulted, in turn, in the growing influence of banking regulatory bodies, such as the Financial Stability Board (FSB), over insurers and insurance regulators internationally at the IAIS. This in turn, creates greater pressure on the states to adopt new regulation that is not suitable for the U.S. insurance market. Meanwhile, the FSB has remained unclear as to its objectives and direction. Recently, however, there has been greater cooperation among the FIO, the FSB, and the states.

Actions:

State legislators should work closely with their Members of Congress on legislation to remedy the issues set forth above.

State legislators should work to require U.S. representatives to advocate in international discussions only positions agreed to by state regulators in consultation with state legislators. State legislators should be a fundamental part of all discussions, including "Team USA" on capital standards, by any U.S. representatives in connection with issues that may affect U.S. insurance regulation.

State legislators should work closely with their Members of Congress to cut off funding for international organizations that function contrary to U.S. state transparency standards and that propound policies contrary to U.S. state-based insurance regulation as it evolves over time.

IAIS TRANSPARENCY - STAKEHOLDER PARTICIPATION

Background

The International Association of Insurance Supervisors (IAIS) is a voluntary membership organization created “to promote effective and globally consistent supervision of the insurance industry in order to develop and maintain fair, safe and stable insurance markets for the benefit and protection of policyholders and to contribute to global financial stability.” The IAIS is the international standard setter for insurance regulation. Until this year, IAIS allowed meeting participation by interested parties known as “Observers.” Observers paid significant fees to participate in the policy discussions, to draft reviews, and to have access to the materials produced by the IAIS. The organization was primarily funded through these fees.

As a result of questions about this industry funding mechanism, as well as the increasingly complex agenda since the financial crisis, the decision was made in 2014 to eliminate the “Observer” status and to make other changes to the IAIS procedures.

- Beginning in 2015 all interested stakeholders have the same access to IAIS materials. So far that access has been limited to consultation drafts that were public prior to 2015. Observers previously had access to all drafts of supervisory materials and supporting information shared with committee members.
- All IAIS committee meetings are now closed to all interested stakeholders. However, Committees have the authority to invite select stakeholders to attend meetings when they want to hear their perspectives.
- The IAIS has announced a series of stakeholder meetings around the world on one issue Insurance Capital Standards. These meetings do not include the full committee and are being held around the globe in a manner that may separate industry discussions into North American, European, and Asian perspectives. While these exchanges are useful, no other topic of committee work has been open to stakeholders.
- The web site and communication system is also much less robust in 2015.

The NAIC and industry strongly oppose the closed process, NCOIL adopted a resolution in opposition to these changes at its 2014 Summer National Meeting, and the U.S Congress is considering a resolution in opposition to the change in transparency as well.

Issues

- All interested parties should have access to the work of the IAIS and should have a voice in the development of global principles, standards, and guidance for insurers, so that the U.S. trade organizations do not oppose the elimination of the special Observer status and related fees. Unfortunately, the access to the work of the IAIS has been uniformly limited instead of uniformly open.
- The growing importance of IAIS and the need for “efficiency” require more not less transparency. The importance of the issues requires the meaningful input of interested parties now more than ever.
- Transparency and meaningful participation will give those standards enhanced global credibility. Without the input from interested parties, the IAIS will be unable to fulfill its mission globally.
- The benefits of public participation recognized by other global standard-setters include: learning from the expertise of impacted companies, balancing opposing views, identifying unintended consequences and practicalities, providing a cost/benefit analysis, and identifying overlapping and interactive regulations.
- The combination of closed meetings and the ability to admit selected “guests” will create the appearance of impropriety, undue influence, and most importantly will result in faulty supervisory outcomes. Hearing from only selected portions of the industry may unintentionally create unworkable policies for many market players or unlevel playing fields with potentially disastrous results.

Action

- State legislators should work closely with Governors and state insurance regulators to cut off state funding for international organizations that function contrary to U.S. state due-process standards and that propound policies contrary to U.S. state-based insurance regulation as it evolves over time.
- State legislators should work closely with their Members of Congress to cut off funding for federal participation in international organizations that function contrary to U.S. state due-process standards and that propound policies contrary to U.S. state-based insurance regulation as it evolves over time.

INTERNATIONAL GROUP CAPITAL REQUIREMENTS

Background

The International Association of Insurance Supervisors (IAIS) is charged with establishing Insurance Core Principles (ICPs) that represent the international standards for insurance regulation. The Insurance Core Principles were developed to be used by the World Bank and IMF for their Financial Sector Assessment Program (FSAP) reviews. After the financial crisis, the IAIS began work on a Common Framework for the Supervision of Internationally Active Insurance Groups (IAIGs), also known as ComFrame. ComFrame was conceived as framework of international supervisory requirements focused on effective group supervision. This new framework, which started as new standards for cooperation and coordination among insurance supervisors, became a series of new requirements for these IAIGs, using the ICPs as a foundation.

The regulatory importance of IAIGs accelerated in the last year, when the IAIS was directed by the G20 enforcers, known as the Financial Stability Board (FSB), to create group capital requirements applicable to Global Systemically Important Insurers (G-SIIs) and IAIGs to protect against another financial crisis. The directive for a quantitative capital standard dates back to the 2013 G-SII list announcement by the FSB. IAIS has finalized a Basic Capital Requirement (BCR) for G-SIIs this year. Now they are developing an Insurance Capital Standard (ICS) by the end of 2016 that will apply to IAIGs. The proposed principles for the ICS (applicable to GSIIIs and IAIGs) were issued in September 2014. The first ICS consultation draft came out in December 2014, and the comment period ended in February 2015. For such an important, complex topic the 60-day comment period was insufficient to give stakeholders the opportunity to analyze and evaluate the merits of the proposal. Several commentators around the world opposed the aggressive timeline for completion of the ICS.

Issues

- Countries around the world supervise insurers and apply capital requirements very differently – some with a focus on the overall group and some focused on the individual legal entities. No country wants to change its local practice. Those adopting the EU's Solvency II approach have significant influence at the IAIS.
- The movement away from the focus on supervision and capital requirements at the legal entity level raises questions about the possibility of a supervisor requiring movement of capital between legal entities, also known as “fungibility” of capital.
- The structural changes would significantly impact the insurance business model in the U.S. and could eventually influence state corporation law.

- Despite the potential concerns, the NAIC is already talking about changing their regulatory structure to include group level supervision and group level capital requirements for U.S. insurers.
- While internationally the requirements of the ICS would only apply to IAIGs, at both the IAIS and the NAIC they are discussing application of the group capital requirement to a much larger segment of the industry.
- Industry has advocated for a flexible, principle-based approach that considers the solvency record of each jurisdiction. The IAIS insists on a capital formula based on the same accounting information. U.S. companies rely on Statutory Accounting and on U.S. generally accepted accounting principles (GAAP) and this is not consistent globally. Changes in accounting basis would be very disruptive.
- If the U.S. supervisory, corporate law, and accounting systems are required to change significantly to accommodate new group capital requirements that are more consistent with existing European standards, this will create a significant competitive disadvantage for certain large U.S. insurers.

Action

- State legislators should work with Governors and members of Congress to propose that the Administration offer official public comment opportunities on international policy positions related to capital requirements for U.S. insurers.
- State Legislators should communicate to the Administration and to their representatives on the FSB that the direction from the FSB demanding immediate action on insurance capital standards is reckless and that the insistence on comparable standards world-wide is impacting the competitiveness of U.S. firms.
- State legislators should work to require U.S. representatives to advocate in international discussions only positions agreed to by state regulators in consultation with state legislators.

RECENT EVOLUTION OF GROUPWIDE SUPERVISION

Unregulated activities within a diversified “group” became the heart of the 2008 – 2009 financial crises. The challenge for the U.S. regulators and legislators is synchronizing state-based entity regulation with developing international standards that are based upon group-wide supervision.

1. Domestic Response

Dodd Frank Act (DFA)

The DFA changed the regulatory environment for two types of insurance companies: (1) those insurers designated as Systemically Important Financial Institutions (SIFIs) with two such designations as of May 2014 – AIG and Prudential and as of December 2014, MetLife; and (2) insurers that are structured as Savings and Loan Holding Companies (i.e. thrifts – insurers with deposit institutions, which equal about 20 companies). MetLife has repeatedly indicated its intent to contest any such designation. Because of DFA, the Board of Governors of the Federal Reserve System (Federal Reserve) now functions as the national prudential supervisor for these two categories of insurance groups, which represent approximately 30 percent of the U.S. life insurance industry and 21 percent of the U.S. non-life insurance industry.

Under the DFA, the Federal Reserve will apply Basel capital rules to the banking entities within the bank holding company group. For the insurance members, the Federal Reserve has acknowledged that the insurance business model is different from that of banks. At the end of 2014, Congress amended DFA to clarify that banking capital rules should not be applied to insurance entities. The underlying premise that “there are important differences between the insurance business and banking” has been accepted.¹ Maintaining this premise remains an important challenge as the Federal Reserve develops prudential standards for insurers that it supervises.

National Association of Insurance Commissioners (NAIC) Solvency Modernization Initiative (SMI)

Due to interest in the European Union’s new insurance regulatory system, known as Solvency II, as well as concern over the near failure of AIG, the NAIC initiated a study in 2008 of the U.S. solvency regime, called the Solvency Modernization Initiative (SMI). Particular focus was placed on capital requirements, international accounting, valuation issues, reinsurance, and group supervision. The NAIC eventually modified its model insurance holding company law and, additionally, developed an Own Risk and Solvency Assessment (ORSA) process for companies. Phase I of the NAIC’s SMI project resulted in: (1) amendments to the model Holding Company System Regulatory Act (#440) and Insurance Holding Company System Model Regulation (#450); (2) development of the Risk Management and Own Risk and Solvency Assessment Model Act

¹ *Monetary Policy and the State of the Economy Before the H. Comm. On Financial Services*, 113th Cong. (2014) (response of Janet Yellen, Chair of the Board of Governors of the Federal Reserve System, to a question from Rep. Gary Miller (R-CA)).

(#505) and the ORSA Guidance Manual; and (3) amendments to the Credit for Reinsurance Model Law (#785) – all of which have been sent to the states for adoption. Phase II includes development of a Corporate Governance Annual Disclosure Model Act and companion Model Regulation, which have been approved by the NAIC membership and have been sent to the states for adoption into law.

Holding Company Model Act and Regulation. The NAIC approved the insurance holding company model law and the related model regulation in December 2010 and sent them to the 56 states and territories that are members of the NAIC for adoption. The American Insurance Association (AIA) has been tracking the adoption of this model law, with 38 states and territories having adopted it as of February 2015. The effective dates vary from state to state, but generally the holding company provisions – and, particularly, the requirement to file the new Enterprise Risk Report (i.e. Form F) – take effect in 2014 or later. Several states have recently adopted versions in which the confidentiality sections deviate from the model language.

The NAIC agreed to re-open the model law and regulation and to address any issues that have arisen since the 2010 amendments, with particular focus on the development of uniform group-wide supervisor language, and focusing on specific objectives: (1) clear legal authority and delineated powers to act as the group-wide supervisor for an Internationally Active Insurance Group (IAIG) and other large insurance groups; (2) direct legal authority over the insurance holding company, including the authority to set group capital requirements; and (3) group-wide financial reporting for large insurance groups. NAIC's Group Solvency Issues Working Group (GSIWG) decided to not pursue a group financial reporting requirement and focused its efforts on adopting language to provide authority for insurance regulators to act as group-wide supervisors. The NAIC also intends to address resolution plans for IAIGs and other large insurance groups, but it is unclear where the model will need to be revised on this issue.

RMORSA Model Act and Guidance Manual. In 2011, the GSIWG began a process that would require an insurer to file an ORSA summary report. The ORSA requirement is another response to recommendations from the International Monetary Fund's (IMF) 2010 Financial Sector Assessment Program (FSAP) review for U.S. regulatory enhancements to develop a group-wide supervision approach. The GSIWG adopted an ORSA Guidance Manual and the Risk Management and Own Risk and Solvency Assessment (RMORSA) Model Act. AIA has been tracking the adoption of the model law, with 20 states and territories having adopted it as of February 2015. The next FSAP review is now underway, with a final report expected during the summer of 2015, which is also the first year that some insurers will be required to file their ORSA reports.

The Manual provides guidance to an insurer as to the reporting of its ORSA, which is one element of an insurer's broader Enterprise Risk Management (ERM) framework. An insurer that is subject to the ORSA requirement will be expected to (1) regularly conduct an ORSA to assess the adequacy of its risk management and current and projected future solvency position, (2) document the internal process and results of the assessment, and (3) provide a high-level summary report annually to the lead state commissioner, if the insurer is a member of an

insurance group, and upon request to the domiciliary regulator. The ORSA summary report should discuss three major areas as follows: (1) Section 1 – Description of the Risk Management Framework; (2) Section 2 – Insurer Assessment of Risk Exposures; and (3) Section 3 – Group Economic Capital and Prospective Solvency Assessment.

Corporate Governance Model Act and Regulation. The NAIC’s Corporate Governance (E) Working Group (CGWG) spent two years outlining high-level corporate governance principles for use in U.S. insurance regulation and developing regulatory guidance, including detailed best practices, for the corporate governance of insurers. After summarizing the existing corporate governance standards and practices in place within the U.S. regulatory system, the CGWG performed a comparative analysis between the existing standards and international standards, company best practices, and regulatory needs. The CGWG adopted a document titled “Proposed Response to a Comparative Analysis of Existing U.S. Corporate Governance Requirements,” which formed the basis for developing a model law and regulation that contains specific requirements for an annual corporate governance filing. The CGWG has since finalized the Corporate Governance Annual Disclosure Model Act (CGAD), which the NAIC membership approved at the end of 2014 and sent to the states. An outstanding concern is the need to simultaneously remove any duplicative regulatory requirements created by adoption of the model law. As of February 2015, three states have introduced legislation to adopt the CGAD into law.

2. Global Response

International Association of Insurance Supervisors (IAIS)

G-SII Designations. Charged by the G-20 and the Financial Stability Board (FSB) with developing criteria for identifying systemic risk in the global insurance market, the International Association of Insurance Supervisors (IAIS) has implemented a Global Systemically Important Insurer (G-SII) designation process. The G-SII assessment methodology focuses on “non-traditional” insurance and non-insurance activities (NTNI Activities). The initial G-SII designations were announced on July 18, 2013, as follows: AIG, MetLife, Prudential Financial, Allianz, Assicurazioni Generali, Aviva, Axa, Ping An Insurance (Group), and Prudential plc. The FSB will perform an annual review of existing and potential new G-SIIs *each* November, commencing in 2014.

The IAIS has proposed enhanced regulatory oversight of G-SIIs to include:

- tailored regulation
- greater supervisory resources
- direct supervision over the holding company
- development of a Systemic Risk Management Plan (SRMP), and
- higher loss absorbency (HLA) in the form of additional capital

The insurance industry is concerned that the capital standards to be applied to G-SIIs might influence the IAIS’s Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) process, which will also include a global insurance capital standard for IAIGs.

The IAIS’s timing for the policy measures to be imposed on the initial G-SII companies is as follows:

- Recovery and Resolution Plans (RRPs), including liquidity risk management plans, should be developed and agreed to by crisis management groups (CMGs) by the end of 2014.
- The SRMP should be completed within 12 months after designation and its implementation assessed by national authorities in 2016.
- The HLA capacity will be developed by the IAIS by the end of 2015 for implementation by 2019.

IAIS' ComFrame and Development of Global Capital Standards. The goal of ComFrame is to establish a uniform approach to group-wide supervision of Internationally Active Insurance Groups (IAIGs) and to establish international governance, capital, risk management, and reporting standards. Industry has criticized the draft as too prescriptive and imposing a new layer of requirements in addition to those of local jurisdictions. Instead, industry has recommended that ComFrame focus principally on developing appropriate procedures for jurisdictions to coordinate with each other based on experience gained from supervisory colleges.

A major piece of ComFrame is the development of a global group capital standard for IAIGs. There are three capital standard work streams underway:

- BCR – envisioned as a “backstop” capital requirement (referred to as “Basic Capital Requirement”) that will be applicable to all group activities and will serve as a “foundation” for application of Higher Loss Absorbency (HLA) requirements for G-SIIs; to be implemented in 2015.
- HLA – additional capital applicable to Non-Traditional and Non-Insurance (NTNI) activities of G-SIIs; the assumption is that NTNI activities are “systemically risky”; to be implemented in 2019.
- ICS (Insurance Capital Standard) – is intended to be a “quantitative capital standard” that can be applied to the global insurance industry; it would be part of comprehensive group-wide supervision framework for IAIGs under ComFrame; to be implemented in 2019.

Another major obstacle is getting agreement on the valuation methodologies that will be used in ComFrame for assessing capital. The IAIS has been reluctant to incorporate local accounting standards into their capital proposals, preferring a market-based valuation, an approach that sometimes conflicts with U.S. generally accepted accounting principles (GAAP)

Solvency II (S2). Solvency II establishes a revised set of E.U.-wide capital, risk management, and reporting requirements for insurers. It is based on a “three pillar” approach: (1) solvency/minimum capital; (2) qualitative risk management and corporate governance; and (3) common reporting and disclosures. On October 1, 2013, the European Commission (EC) resolved existing differences and announced that Solvency II would go into effect on January 1, 2016. It contains a complicated procedure for determining whether other non-EU (“third country”) jurisdictions qualify as equivalent regimes. Lack of equivalence recognition may disadvantage U.S. insurers that do business in Europe.

INTERNATIONAL DEVELOPMENTS ON MARKET CONDUCT

Background:

The oft-stated ultimate objective of U.S. insurance regulation is protection of consumers. A key part of achieving that objective is the system of market conduct that has evolved in the states and includes NAIC model laws, data collection, and cooperative activity. It is safe to say that no other insurance regulatory system is as comprehensive as that of the U.S. in terms of market conduct regulation. At the same time, the NAIC is engaged in reviewing its market conduct system to set forth accreditation standards, with a target date of 2016.

Issues:

In the fall of 2014, the IAIS issued an application paper on conduct of business, apparently the first of the international standards setters to do so. Its contents will seem familiar to U.S. observers, as it reflects U.S. practices. The IAIS is expected to continue work on this topic.

Actions:

State legislators should monitor this area to make sure that developments continue to track the U.S. system as it evolves and that it does not impose multiple layers of new regulation on U.S. insurers and reinsurers. State legislators should seek to assure greater recognition of the leadership of the U.S. in this area and actively participate in international discussions where market conduct is an issue.

INTERNATIONAL DEVELOPMENTS IN CORPORATE GOVERNANCE

Background:

The International Association of Insurance Supervisors (IAIS) issues global standards, called Insurance Core Principles (ICPs), which are used by the World Bank and International Monetary Fund (IMF) to create a public report card on U.S. compliance with international standards. The main ICPs relating to governance are: ICPs 4, 5, 7, and 8 (available on the IAIS public web site). The IAIS is also doing work on corporate governance as it relates to insurance groups. A paper on that topic, approved in October, 2014, is found on the IAIS web site under supervisory materials. Other international organizations such as the Organization for Economic Cooperation and Development (OECD) and the Financial Stability Board (FSB) have issued governance guidance for insurers.

Issues:

The U.S. has extensive corporate governance mandates imposed as a result of general federal and state law and judicial decisions that may not be in state insurance codes. In response to international developments that require insurance-specific mandates, the NAIC has approved a new model law and regulation that focuses on disclosure, entitled *Corporate Governance Annual Disclosure Model Law and Model Regulation*.

The international developments tend to place a heavy burden on the Board of Directors, as opposed to the CEOs. In addition, there is a danger that the regulators may arbitrarily apply the subjective “fit and proper” standard used for approval of directors, senior managers, and major investors, so as to blur the line between the regulator and the regulated entity. Finally, there is a danger that remuneration may be limited by regulation and not market competition and performance.

Actions:

State legislators should follow the development of, and hopefully adopt in their states, the new NAIC model law and regulation on governance, after determining that their state does not already have governance standards that would accomplish the objectives of the NAIC work and adequate confidentiality protections are in place.

State legislators as well should engage with the U.S. representatives to the IAIS, as that organization reviews the governance-related ICPs to assure that the outcomes are consistent with U.S. state-based regulation and do not blur the line between regulators and regulated entities.

State legislators should reject subjective standards of “fitness” and arbitrary regulatory remuneration limits on directors, officers, and key owners.

COVERED AGREEMENTS

What is a Covered Agreement?

The Federal Insurance Office (FIO) was created by the 2010 Dodd-Frank Wall Street Reform Act. The FIO's authority includes: (1) the power to assist the Treasury Secretary in negotiating "covered agreements" and (2) the power to determine whether State insurance measures are preempted by such covered agreements.

A "Covered Agreement" is a written bilateral or multilateral agreement regarding prudential measures with respect to the business of insurance or reinsurance that:

1. is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and
2. relates to the recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation

Why is a Covered Agreement Important?

- It is important that the U.S. and the European Union (EU) resolve how U.S. companies doing business in the EU will be treated after Solvency II goes into effect on January 1, 2016.
- Solvency II has several unilateral processes for evaluating third-country jurisdictions for equivalence. To the extent jurisdictions are deemed equivalent, companies from those jurisdictions would be treated as if they were an EU-based company.
- State regulators advised the EU several years ago that they would not participate in this unilateral process, but would pursue a mutual recognition process. The two jurisdictions began the EU-U.S. Dialogue Project to better understand each other's regulatory regime.
- Several other jurisdictions (Bermuda, Japan, Switzerland, Brazil, China, etc.) are pursuing equivalence and will receive a decision in early 2015.
- It is important for U.S. companies to know that the U.S. issue will be resolved in the same time frame.

If this occurs:

- U.S. (re)insurers will have the same market access as European (re)insurers and, we believe, soon Bermuda, Swiss, and Japanese (re)insurers.
- U.S. (re)insurance will be treated in the same manner as European reinsurance for purposes of solvency calculations.
- U.S. (re)insurers will not be subject to additional requirements imposed by EU Member States that currently exist, including collateral requirements (France), special reporting (The Netherlands), or requirement to form a local branch (Poland), or a local subsidiary (UK).

If this does not occur:

- U.S. (re)insurers will be subject to any requirements European individual Member States choose to impose. There are no European rules regarding cross border sales; these are left entirely to the Member States.
- U.S. companies may be subject to subgroup supervision in the EU/forced to form subgroup holding companies. Solvency II laws would be applied to the subgroup, including governance, risk management, and capital requirements.
- U.S. (re)insurers may be required to commit capital to form a branch or subsidiary to do business in the EU. These entities will be subject to Solvency II requirements.
- EU insurance companies (including affiliates of U.S. companies) may not be permitted to take full credit for reinsurance provided by a U.S. reinsurer for regulatory capital purposes under Solvency II, which puts U.S. reinsurers at a competitive disadvantage vis-à-vis EU and equivalent jurisdiction reinsurers.

Process for a Covered Agreement:

The process for negotiating a Covered Agreement includes:

- joint authority by the Treasury Secretary and the United States Trade Representative (USTR) to negotiate and enter into Covered Agreements
- joint consultation with four Congressional Committees (House Financial Services, House Ways and Means, Senate Banking, and Senate Finance) at three points:
 - before initiating negotiations;
 - during negotiations; and
 - before entering into the agreement

- The final legal text must be submitted jointly to the four committees on a day when both Houses are in session. The agreement is in force 90 calendar days after that date.
- “Joint consultation” must include consultation with respect to:
 - nature of agreement;
 - how, and to what, extent the agreement will achieve the applicable purposes, policies, priorities, and objectives; and
 - implementation of the agreement, including the general effect of the agreement on existing State laws

Preemptive Authority of a Covered Agreement

A state insurance measure shall be preempted by a Covered Agreement if, and only to the extent that, the FIO Director determines the measure:

1. results in less favorable treatment of a non-U.S. insurer domiciled in a foreign jurisdiction that is subject to a Covered Agreement than to a U.S. insurer domiciled, licensed, or otherwise admitted in that State; and
2. is inconsistent with a Covered Agreement

The savings provision provides that nothing shall preempt (A) any State insurance measure that governs any insurer’s rates, premiums, underwriting, or sales practices; (B) any State coverage requirements for insurance; (C) the application of the antitrust laws of any State to the business of insurance; or (D) any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure results in less favorable treatment of a non-United States insurer than a United States insurer;

Process for Preempting State Law

FIO must provide notice to the relevant state regulator(s) and public notice before the preemption determination is made. The Director’s determination shall be limited to “the subject matter contained within the Covered Agreement involved and shall achieve a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.”

After the decision is made, the Director must notify the State(s) and the four Congressional Committees. After the notice period expires and there has been a notice in the Federal Register regarding the effective date of the preemption, the preemption is in effect and no state may enforce a state insurance measure to the extent it has been preempted under this provision.

Role for State Legislators

- Pass NAIC model law on credit for reinsurance revisions.

By passing such legislation, states strengthen the argument that state regulation is flexible, adaptable to changes in the global insurance and reinsurance markets, and respectful of other competent regulatory structures. Recognizing the competence of other countries' regulatory structures is important in their reciprocal recognition of the competence of U.S. state-based system. Also, as FIO has stated, the NAIC model credit for reinsurance legislation is the starting point for covered agreement discussions; states with the NAIC model law revisions have a reduced likelihood of material preemption of state provisions.

- Pass NAIC model insurance holding company law provisions on group supervision.

Since the financial crisis, there is international regulatory pressure for insurance regulators to have explicit authority to act as the group-wide supervisor for the insurance holding company group, not just the insurer(s) in the group. The NAIC is revising the model insurance holding company laws to address this issue. U.S.-domiciled, internationally active insurance groups need their regulators to have the appropriate statutory authority to assume the role of group-wide supervisor as defined in the model law. In the absence of such authority, the U.S. insurance groups may be subject to duplicative, costly and/or onerous regulation that will create a competitive disadvantage vis-à-vis those companies based in other jurisdictions, including the EU (and companies that are deemed equivalent to the EU).

- Coordinate with NAIC and state regulators on the scope and content of covered agreements.

NCOIL and state legislators should coordinate with the NAIC and state regulators to facilitate an effective dialogue with the FIO and USTR regarding the scope and content of any covered agreements.

INTERNATIONAL TRADE: IMPLICATIONS FOR U.S. INSURERS AND STATE OFFICIALS

Issues:

U.S. insurers are arguably the most competitive in the world. However, barriers to U.S. insurers in other markets create a need for international trade agreements that level the playing field between U.S. insurers and foreign insurers. At the same time, state-level officials should be an integral part of the process for developing U.S. trade policy in order to ensure that trade agreements do not unintentionally and unnecessarily infringe upon the role of state governments in the regulation of insurance.

Background:

While international trade evokes images of manufactured, raw, and agricultural goods being sold across borders, services trade (including insurance trade) is now an essential component of modern trade negotiations. Insurers conduct international trade in two significant ways: through cross-border sales (for example, a U.S. reinsurer covering maritime risk from a primary insurer in Italy), and through sales by affiliates located in host markets (for example, a subsidiary of a U.S. insurer in Italy selling auto insurance to Italian citizens). Though the sale of insurance through a foreign affiliate takes place entirely in a foreign country, it is considered an export from the U.S. to the country where the affiliate is located.

Despite being the most competitive insurers in the world, U.S. insurers face significant anti-competitive barriers in other markets. The U.S. International Trade Commission (ITC) conducted a 2009 investigation which demonstrated the value of insurance trade liberalization to U.S. insurers and the U.S. economy. The ITC found that, though most countries maintain legitimate prudential regulation of insurance, many countries also maintain barriers that restrict participation of U.S. and other foreign insurance firms in their markets. Trade negotiations are one way to encourage governments in other markets to reduce those barriers to U.S. insurance trade and investment.

As a state-regulated industry, insurance has a unique standing in trade agreements that is not applicable to other sectors and is intended to protect the autonomy of the states. For instance, existing state-level regulatory measures in the U.S. receive a blanket exemption from most trade commitments, even if they would otherwise violate the agreement. U.S. trade agreements also recognize the important role of the National Association of Insurance Commissioners (NAIC) and therefore can defer to the NAIC's model law process in lieu of making commitments.

Nonetheless, it is important that state regulators and state legislators maintain a robust dialogue with the U.S. Trade Representative (USTR) and other federal agencies in order to ensure that the concerns of state-level officials are taken into consideration. USTR and NAIC

have historically had an ongoing consultative relationship and jointly maintain bilateral international trade dialogues (for example, the U.S.-China Insurance Dialogue). However, state legislators feel that the relationship between NCOIL and USTR should be closer and that NCOIL should have more regular input into the process. USTR recently reached out to NCOIL to discuss ongoing negotiations, and we hope that this relationship will continue to grow. Another option would be to expand the number of members on the Intergovernmental Policy Advisory Committee on Trade (IGPAC), an official group of advisors from state and local governments to the USTR. IGPAC members consult with USTR on the text of ongoing trade negotiations.

INTERNATIONAL INSURANCE REGULATORY ABBREVIATIONS

BaFin	German Insurance Regulatory Authority
BCR	Basic Capital Requirements for G-SIIs
ComFrame	Common Framework for the Supervision of Internationally Active Insurance Groups
DFA	Dodd-Frank Act
EC	European Commission
EIOPA	European Insurance and Occupational Pensions Authority
FASB	Financial Accounting Standards Board
FCA	Financial Conduct Authority of the UK
FIO	Federal Insurance Office of the U.S. Treasury Department
FRB	Federal Reserve Board
FSAP	Financial Sector Assessment Program of the IMF and World Bank
FSB	Financial Stability Board
FSOC	Financial Stability Oversight Council
GFIA	Global Federation of Insurance Associations
G-SII	Global Systemically Important Insurer
HLA	Higher Loss Absorbency (capital add-ons to BCR for G-SIIs)
IAIG	Internationally Active Insurance Group
IAIS	International Association of Insurance Supervisors
IASB	International Accounting Standards Board
ICPs	Insurance Core Principles of the IAIS
ICS	Insurance Capital Standard
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
NAIC	National Association of Insurance Commissioners
NCOIL	National Conference of Insurance Legislators
ORSA	Own Risk and Solvency Assessment
PRA	Prudential Regulatory Authority of the UK
SIFI	Systemically Important Financial Institution
SII	Solvency II
VaR	Value at Risk

NCOIL LEGISLATIVE TOOLKIT - APPENDIX A

MEMBERSHIP INFORMATION

NCOIL INTERNATIONAL ISSUES TASK FORCE

Chair: Sen. Dan “Blade” Morrish, LA

Sen. Joyce Elliot, AR	Sen. David O’Connell, ND
Sen. Jason Rapert, AR	Sen. Carroll Leavell, NM
Rep. Rich Golick, GA	Assem. William Barclay, NY
Sen. Travis Holdman, IN	Sen. Neil Breslin, NY
Rep. Matt Lehman, IN	Assem. Kevin Cahill, NY
Rep. Joe Fischer, KY	Sen. James Seward, NY
Rep. Steve Riggs, KY	Rep. Bill Botzow, VT
Rep. Greg Cromer, LA	Rep. William Jewett, VT
Rep. Ken Goike, MI	Rep. Kathie Keenan, VT
Sen. Mike Parson, MO	Sen. Daniel Hall, WV
Rep. George Keiser, ND	Del. Harry Keith White, WV
Sen. Jerry Klein, ND	

STATE OFFICIALS WORKING GROUP

National Association of Attorneys General (NAAG)
National Association of Insurance Commissioners (NAIC)
National Conference of State Legislators (NCSL)

ADVISORY COUNCIL TO TASK FORCE

Aflac
American Academy of Actuaries (AAA)
American Association of Managing General Agents (AAMGA)
American Council of Life Insurers (ACLI)
American Insurance Association (AIA)
America’s Health Insurance Plans (AHIP)
Assoc. for Cooperative Operations Research and Development (ACORD)
Association of Bermuda Insurers and Reinsurers (ABIR)
Barnert Global Ltd.
Center for Economic Justice (CEJ)
Colodny, Fass, Talenfeld, Karlinsky, Abate & Webb, P.A.
CNA
Dentons US LLP
Genworth
Guardian
Independent Insurance Agents & Brokers of America (IIABA)
Liberty Mutual
Lloyd’s America
Manatt, Phelps & Phillips, LLP

National Association of Health Underwriters (NAHU)
National Association of Mutual Insurance Companies (NAMIC)
National Association of Professional Insurance Agents (PIA)
National Conference of Insurance Guaranty Funds (NCIGF)
Nelson Levine de Luca & Hamilton
Property Casualty Insurers Association of America (PCI)
Reinsurance Association of America (RAA)
Sonja L. Larkin, Consumer Advocate
State Farm
Transamerica
United Health Group
Unum
Westfield Group

NCOIL LEGISLATIVE TOOLKIT - APPENDIX B

NCOIL OUTREACH TO FEDERAL AND INTERNATIONAL OFFICIALS

- General Overview -

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

Resolution Regarding Guiding Principles for U.S. and International Insurance Regulatory Discussions

Adopted by the NCOIL Executive Committee on July 13, 2014, and by the NCOIL International Insurance Issues Task Force on July 10, 2014. Sponsored by Sen. Jason Rapert (AR), chair of the Task Force's Coordination & Transparency Working Group

WHEREAS, U.S. federal entities, including the Department of Treasury, Federal Insurance Office (FIO), and Federal Reserve Board are pursuing initiatives, individually and/or through interactions with key international organizations, that could affect how U.S. insurers operate in this country and elsewhere; and

WHEREAS, developments at the Financial Stability Board (FSB) and the International Association of Insurance Supervisors (IAIS) have the potential to directly impact U.S. insurance regulation and insurers and, as a result, U.S. consumers; and

WHEREAS, state regulation successfully has fostered robust, competitive markets that have served consumers well for more than 150 years, in both good and trying financial times, and represents one-third of the insurance market worldwide; and

WHEREAS, the state insurance regulatory system in the U.S. is transparent and open to all stakeholders, is accountable to the public, and is governed by the rule of law; and

WHEREAS, the National Conference of Insurance Legislators (NCOIL), an organization of state legislators dedicated to the proper regulation of U.S. insurance markets, recognizes the importance of transparent dialogue and cooperation between stakeholders involved in and affected by the oversight of insurance in the states and internationally; and

WHEREAS, transparency and open deliberations are a foundation of the U.S. state legislative process and likewise are critical if state lawmakers, who enact the laws regulating insurance in this country, are to have confidence in the proposed insurance regulation they are asked to consider, including regulation that emanates from international initiatives; and

WHEREAS, working with state insurance regulators and other state officials, as well as with consumer and industry representatives, NCOIL legislators through their International Issues Task

Force are moving to ensure that efforts here and abroad, though well-meaning, do not endanger protections afforded under state-based insurance regulation; and

WHEREAS, there currently is no meaningful avenue in current international dialogues for state legislators to weigh in.

WHEREAS, failure to include and respect the voice of state legislators and regulators in development of federal and global proposals regarding insurance could have far-reaching, troubling consequences for U.S. markets; and

NOW, THEREFORE, BE IT RESOLVED that NCOIL calls for creation of a meaningful mechanism so that state legislators and insurance regulators can effectively participate in international discussions affecting insurance.

BE IT RESOLVED that NCOIL strongly believes that any international initiatives impacting state insurance regulation should be guided by a need for due process and transparency.

BE IT RESOLVED that NCOIL is committed to engaging with federal and global officials in the months and years to come and will further its collaborations at the state level and with other key parties.

BE IT FINALLY RESOLVED that a copy of this resolution be sent to state legislators and regulators, to Congressional leadership, to the Financial Stability Board and the International Association of Insurance Supervisors, and to the Consumer Financial Protection Bureau, Department of Treasury, Federal Insurance Office, and Federal Reserve Board.

**NCOIL Comments to International Association of Insurance Supervisors (IAIS)
on Proposal re: IAIS Meeting Participation & Consultation with Stakeholders**

(submitted on September 2, 2014)

The National Conference of Insurance Legislators (NCOIL)—an organization of state legislators who chair and are guiding forces in the committees responsible for introducing, debating, and endorsing insurance laws in each U.S. statehouse—appreciates the opportunity to comment on the IAIS *Draft Procedures on Meeting Participation and the Development of Supervisory and Supporting Material and Draft Policy for Consultation of Stakeholders*. While we recognize the increasing role that the IAIS is playing in international discussions and understand IAIS interest in promoting efficiency, we would like to stress certain practices that need to be observed regarding the approach that IAIS may take.

NCOIL believes that openness and transparency are a requirement in any and all international dialogues that would impact the successful U.S. regulatory system and continue to encourage such methods of due process, most recently in resolutions adopted on July 13 relating to capital standards and to guiding principles for insurance regulatory discussions. We called for a meaningful mechanism for state insurance legislators to weigh in and highlighted the importance of coordination and cooperation among legislators, regulators, and interested parties.

Though the draft IAIS procedures express support for a more open and transparent process, NCOIL is unclear as to how closing IAIS meetings would advance that goal. In the U.S., discussions regarding proposed legislation and other matters must, with very limited exceptions, be open to all who may be interested—to help ensure that policymakers are held accountable for their decisions and that the product of those deliberations are given credence. We respect the integrity and dedication of regulators active in the IAIS, and so we caution that closing meetings could call IAIS decision-making into question.

The growing importance of IAIS initiatives, particularly regarding capital standards and corporate governance, demands a more, not less open approach. That means, we believe, that a range of interested parties should continue to have a say throughout development of IAIS work products. Limiting stakeholder input will actually endanger the efficiency that IAIS is seeking, as it would be difficult for state legislators in the U.S. to support a proposal affecting U.S. insurance oversight without a full understanding of its impacts and without a belief that the proposal reflects open and balanced discussion. Global standards, though well-intentioned, will fail to meet their objectives without approval at home.

While choosing a small group of interested parties to offer comments in closed IAIS meetings may be thought of as a way to encourage efficiency while retaining transparency, NCOIL urges you to reconsider, as this approach could create an unlevel playing field and the appearance of favoritism. It also could lead to work products that pose inadvertent harm to certain segments of the industry, such as small and medium-sized companies that lack significant resources to participate in international discussions.

NCOIL again thanks you for the opportunity to comment. In addition to our submission, we strongly encourage you to consider carefully the comments submitted by the National Association of Insurance Commissioners (NAIC) on behalf of state insurance regulation and in support of an IAIS process that is transparent and accountable.

**NCOIL Comments to International Association of Insurance Supervisors (IAIS) on
Revised Draft Procedures on Meeting Participation and the Development of Supervisory and
Supporting Material and Draft Policy for Consultation of Stakeholders**

(submitted on December 17, 2014)

The National Conference of Insurance Legislators (NCOIL), which represents state legislators who develop and enact the insurance laws throughout the U.S., welcomes the opportunity to comment on the *Revised Draft Procedures on Meeting Participation and the Development of Supervisory and Supporting Material and Draft Policy for Consultation of Stakeholders*. We believe the new proposal contains certain changes that could possibly instill more transparency into the proposed IAIS system, a tenet that we urged you to follow in our September 2 comments. As the IAIS takes an increasingly significant role in international insurance discussions, NCOIL believes that transparency and inclusiveness—which are foundations of the U.S. state legislative process—are essential to IAIS decision-making.

Proposed changes in the draft procedures that may be potential steps forward include provisions to make more public the process for selecting which stakeholders can weigh in during IAIS deliberations and to allow parties to register for committee/subcommittee “interested stakeholder” lists that IAIS officials might consult when seeking outside comments. It also may be helpful to recognize that consumer representatives have a perspective to share.

We believe, though, that the draft procedures could go further in order to give confidence that IAIS materials have benefited from a broad range of technical and other expertise. We are concerned, in line with our previous comments, that the revised draft procedures still could allow only a select group of interested parties to comment during IAIS discussions and that broad public input would be limited to commenting at the beginning and at the end of IAIS decision-making. We again caution that the integrity of regulators active in the IAIS could be called into question by closing the doors on IAIS debates and that a limited approach to public input could cause inadvertent harm to segments of the industry that lack the resources needed to participate in international insurance dialogues.

NCOIL respects the IAIS effort to increase efficiency but maintains strong reservations regarding the IAIS proposal to do so.

***(SIMILAR LETTER SENT TO U.S. SENATE BANKING COMMITTEE
REGARDING SENATE RESOLUTION 561)***

October 16, 2014

The Honorable Edward R. Royce, Chair
The Honorable Eliot L. Engel, Ranking Member
Committee on Foreign Affairs
2170 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Royce and Engel:

As President of the National Conference of Insurance Legislators (NCOIL), I write to express NCOIL support for House Resolution 735, which calls for transparency and broad interested-party involvement in International Association of Insurance Supervisors (IAIS) efforts. NCOIL—as an organization of state legislators who chair and are instrumental in the committees that develop and adopt insurance laws in each U.S. statehouse—recently stressed to the IAIS those same guiding principles and urged the organization to rethink its proposal to close meetings and curtail input.

In line with H. Res. 735, our September 2, 2014, comments to IAIS reassert our fundamental belief that openness and transparency are critical in any and all international dialogues affecting U.S. regulation. In the comments, we noted our specific efforts to ensure due process—including July 13 resolutions regarding global capital standards, meaningful ways for state legislators to weigh in, and the need for coordination and cooperation.

H. Res. 735 makes a critical point to which we wholeheartedly agree: The growing importance of IAIS initiatives, particularly related to capital standards and corporate governance, demands a more, not less open approach. State legislators in the U.S. should not be asked to accept, and would be hard-pressed to support, IAIS-inspired proposals that have not benefited from the transparency and inclusiveness that are hallmarks of U.S. policymaking. We cannot fully appreciate the impacts of an IAIS standard if all parties have not had a chance to comment on what such impacts are.

We are concerned as well that pursuing IAIS efficiency by limiting who can access IAIS discussions could result in an unlevel playing field and an appearance of favoritism. While perhaps a well-intentioned way to streamline IAIS activity, the proposal could create inadvertent harm to small and medium-sized insurers without resources to engage internationally.

We agree with H. Res. 735 that the IAIS should take into account the concerns of the National Association of Insurance Commissioners (NAIC). NCOIL, through an NCOIL International Issues Task Force, is working with the NAIC and with other advocates of state oversight to ensure that federal entities—particularly those involved at the IAIS and at the Financial Stability Board (FSB)—stand up for the U.S. system and challenge any attempt to disregard its principles. We welcome dialoging with you toward this shared goal.

The issues raised in House Resolution 735 are critical in protecting an insurance regulatory system that, unlike counterparts around the world, came through the financial crisis well. We encourage enactment of the resolution.

Please feel free to contact Susan Nolan, NCOIL Executive Director, in the NCOIL National Office at snolan@ncoil.org or 518-687-0178 should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Neil D. Breslin". The signature is written in a cursive, slightly slanted style.

Sen. Neil Breslin (NY)
NCOIL President

cc: The Honorable John Boehner
Members of the Committee on Foreign Affairs
Members of the Committee on Financial Services

**(LETTER SENT TO THE FIO, U.S. DEPT. OF TREASURY, SEC, AND
FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS)**

VIA E-MAIL

July 21, 2014

Honorable Michael T. McRaith
Director, Federal Insurance Office
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220-0002

Dear Director McRaith:

I write as President of the National Conference of Insurance Legislators (NCOIL), an organization of state lawmakers dedicated to the proper regulation of U.S. insurance markets, to express NCOIL's strong interest in working with you in the months and years to come, in light of the critical role that state legislators can and should play in international efforts affecting insurance.

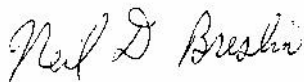
As we move forward in a smaller, increasingly interconnected world, we believe it is incumbent upon federal agencies to recognize the importance of state-based insurance regulation and the legislative voice that NCOIL provides. State legislators who debate and enact the insurance laws in this country—including those emanating from overseas initiatives—must have a part in international efforts in order to be confident that the proposals legislators are asked to adopt are in the best interests of their constituents. The absence of a legislative voice in international discussions may present an inadvertent danger to effective U.S. insurance markets, which represent one-third of the global insurance industry, and to the consumers and businesses they serve.

As insurance legislators we work with regulators constantly to shape our markets so they best respond to today's complex insurance environment. The recent financial crisis was a further cause to step back and reevaluate what works well and what might be enhanced in insurance regulation both here and around the world. We are looking today to make certain that current international endeavors are not a solution in search of a problem and do not negatively impact the successful U.S. approach.

Through a recently created NCOIL International Issues Task Force, NCOIL is strengthening its collaborations with state insurance regulators and other officials as well as with consumer and insurer representatives to ensure that U.S. consumers remain well-protected. We look forward to dialoging—through more formalized channels than now exist—with you also.

Should you have questions or wish to discuss future outreach, please feel free to contact Susan Nolan, NCOIL Executive Director, in the NCOIL National Office at snolan@ncoil.org or 518-687-0178.

Sincerely,



Sen. Neil Breslin (NY)
NCOIL President

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(LETTER SENT TO THE IAIS AND THE FINANCIAL STABILITY BOARD)

VIA E-MAIL

July 21, 2014

The Honorable Yoshihiro Kawai
Secretary General
International Association of Insurance Supervisors
c/o Bank for International Settlements
CH-4002 Basel
Switzerland

Dear Secretary General:

I write as President of the National Conference of Insurance Legislators (NCOIL), an organization of state lawmakers dedicated to the proper regulation of U.S. insurance markets, to express NCOIL's strong interest in working with you in the months and years to come, in light of the critical role that state legislators can and should play in international efforts affecting insurance.

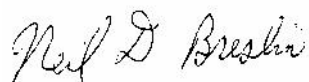
As we move forward in a smaller, increasingly interconnected world, we believe it is incumbent upon international organizations to recognize the importance of state-based insurance regulation and the legislative voice that NCOIL provides. State legislators who debate and enact the insurance laws in this country—including those emanating from overseas initiatives—must have a part in international efforts in order to be confident that the proposals legislators are asked to adopt are in the best interests of their constituents. The absence of a legislative voice in international discussions may present an inadvertent danger to effective U.S. insurance markets, which represent one-third of the global insurance industry, and to the consumers and businesses they serve.

As insurance legislators we work with regulators constantly to shape our markets so they best respond to today's complex insurance environment. The recent financial crisis was a further cause to step back and reevaluate what works well and what might be enhanced in insurance regulation both here and around the world. We are looking today to make certain that current international endeavors are not a solution in search of a problem and do not negatively impact the successful U.S. approach.

Through a recently created NCOIL International Issues Task Force, NCOIL is strengthening its collaborations with state insurance regulators and other officials as well as with consumer and insurer representatives to ensure that U.S. consumers remain well-protected. We look forward to dialoging—through more formalized channels than now exist—with you also.

Should you have questions or wish to discuss future outreach, please feel free to contact Susan Nolan, NCOIL Executive Director, in the NCOIL National Office at snolan@ncoil.org or 518-687-0178.

Sincerely,



Sen. Neil Breslin (NY)
NCOIL President

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

**Resolution Reaffirming Support for the U.S. State-Based System
in International Insurance Regulatory Discussions**

Adopted by the NCOIL Executive Committee on November 24, 2013, and by the International Insurance Issues Committee on November 22, 2013. Sponsored by Rep. Craig Eiland (TX), Sen. Travis Holdman (IN), Rep. Kathie Keenan (VT), and Sen. Carroll Leavell (NM)

WHEREAS, for 150 years the U.S. state-based insurance regulatory system has overseen the solvency of insurers and consumer protection, thereby helping to create the largest insurance market in the world; and

WHEREAS, even during times of financial crisis, the U.S. state-based insurance regulatory system has assured that companies meet their obligations to insurance customers, including the establishment of mechanisms to protect consumers in case of insurance insolvencies; and WHEREAS, the state-based insurance regulatory system is second to none in the world in terms of consumer protection and has assured that regulated companies are capitalized at record levels; and

WHEREAS, the state-based insurance regulatory system is transparent and open to all stakeholders, is accountable to the public and is governed by the rule of law; and WHEREAS, insurers subject to U.S. state-based insurance regulation have engaged in individual and collective actions to dramatically improve highway, workplace and building safety, resulting in millions of lives saved, millions of injuries prevented and billions of dollars of losses avoided; and

WHEREAS, the Congress has repeatedly, as recently as in the Dodd-Frank Act, affirmed the U.S. state-based insurance regulatory system as the U.S. system for regulating insurers; and

WHEREAS, the state-based insurance regulatory system is constantly evolving to address new market conditions and challenges and to improve its effectiveness and efficiency; and

WHEREAS, despite this record of performance, attempted intrusions into the U.S. state-based insurance regulatory system are multiplying from many sources, including the International Association of Insurance Supervisors and especially the Financial Stability Board, which has issued directives far beyond its charter with the apparent participation and approval of U.S. federal agencies;

NOW THEREFORE BE IT RESOLVED, that

1. NCOIL reaffirms its unqualified support for the U.S. state-based insurance regulatory system and calls on all state and federal organizations and agencies to do the same; and
2. NCOIL formally requests regular consultations with the NAIC, FIO and other relevant federal agencies with regard to international insurance regulatory matters; and

3. NCOIL formally requests that the U.S. Congress direct all federal agencies representing the U.S. in the Financial Stability Board, to oppose all proposals by the Financial Stability Board that make recommendations applicable to any entities not officially designated by the U.S. as systemically important financial institutions; and
4. NCOIL formally requests that the Administration, U.S. Congress and NAIC assure that all representatives of the U.S. in international insurance regulatory discussions advocate only positions that are consistent with the insurance regulatory policies determined by the states, which continue to have the authority to regulate the business of insurance.

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- Group Capital Requirements -

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

Resolution Regarding the States' Response to International Proposals
for Insurer Solvency Regulation and a Global Insurance Capital Standard (ICS)

Adopted by the NCOIL Executive Committee on July 13, 2014, and by the International Issues Task Force on July 10, 2014, and amended on July 11, 2014. Sponsored by Sen. James Seward (NY), chair of the Task Force's Capital Standards Working Group

Whereas, the Financial Stability Board (FSB) has directed the International Association of Insurance Supervisors (IAIS) to establish a quantitative insurance capital standard (ICS) for Internationally Active Insurance Groups (IAIGs), including a number of U.S. companies, and

Whereas, the FSB also issued a "peer review" critical of the U.S. insurance regulatory system (specifically focusing on group-wide supervision) despite the fact that our system aligns with the insurance business model and has well served markets and consumers for over a century, and proved resilient during the global financial crisis, and

Whereas, the IAIS has agreed to follow the FSB instructions to develop the ICS according to an unrealistic timeframe, and

Whereas, the IAIS and the FSB are private associations of financial service regulators without legal authority beyond their individual, respective jurisdictions, and

Whereas, those private associations lack independent accountability to elected legislatures, and

Whereas, the original FSB mandate and development of international insurance regulatory standards are being conducted in a manner that does not provide the level of opportunity for open public comment and deliberation that are due process hallmarks of law and rulemaking in the United States, and

Whereas, some global standards for solvency regulation and accounting may conflict with existing regulation and standards within the United States and the individual states, and

Whereas, the National Association of Insurance Commissioners (NAIC) Model Holding Company Act allows state insurance regulators to participate in and even lead global supervisory colleges without surrendering the domestic regulator's authority, and

Whereas, a group capital requirement may erode policyholder protection, and

Whereas, the U.S. state insurance legislatures and regulators responsible for establishing, implementing and overseeing standards for solvency regulation and policyholder protection may find that the IAIS ICS requirements, once identified, are misplaced, unnecessary and duplicative, and

Whereas, as systemic risk to the financial system and solvency risk to insurers arises from causes other than insufficient capital, the ICS focus on capital requirements is only a partial approach to preventing financial crises and prudential regulation of insurers, and

Whereas, a one-size-fits-all global ICS would fail to adequately recognize jurisdictional differences such as different accounting standards throughout the world, specifically in the United States the effective and state-required use of Statutory Accounting Principles, or significant and complex differences in risk and capital needs from one insurance group to another, and

Whereas, unlike the other approaches to solvency regulation, the United States system of solvency regulation and insurance regulatory principles are focused on policyholder protection, including guaranty funds, not on investors, creditors or other stakeholders.

THEREFORE, BE IT RESOLVED the National Conference of Insurance Legislators calls upon the NAIC, the U.S. representatives to the Financial Stability Board (FSB), and the Federal Insurance Office (FIO) to oppose the creation of any additional set of international solvency standards, including a global ICS, that fails to adequately and appropriately accommodate the proven US approach to insurer solvency regulation;

AND, BE IT RESOLVED the National Conference of Insurance Legislators opposes mandating the Fair Value measurements and market consistent valuation methodologies favored by the IAIS and encourages the NAIC, the FSB, and the FIO to likewise oppose;

AND, BE IT ALSO RESOLVED the National Conference of Insurance Legislators coordinate with U.S. state insurance regulators and federal agencies to formulate a unified U.S. position that is consistent with the policies and laws of the states on global insurance capital standards for the benefit of policyholder protection and to further the competitiveness of the U.S. insurance industry;

AND, BE IT ALSO RESOLVED the National Conference of Insurance Legislators encourages all state legislatures to support our state-based system of insurance regulation by enacting resolutions similar to this one;

AND, BE IT ALSO RESOLVED the National Conference of Insurance Legislators urges the states' governors and Congressional delegations to write letters and to otherwise communicate these concerns to US representatives on the FSB, including the Secretary of the Treasury, the chair of the Board of Directors of the Federal Reserve and the chair of the Securities and Exchange Commission;

AND, BE IT FURTHER RESOLVED that a copy of this Resolution be sent to each state legislature, each state insurance regulator, the NAIC, the FIO, the FSB, the IAIS, the US Department of the Treasury, the Board of Governors of the Federal Reserve System, the SEC, and to members of Congress to encourage coordination among these parties in the formulation and articulation of U.S. policy on global insurance capital standards.

VIA E-MAIL

July 29, 2014

The Honorable Jeb Hensarling
Chair, Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Hensarling:

As President of the National Conference of Insurance Legislators (NCOIL), I write to express NCOIL support for H.R. 4510, the *Insurance Capital Standards Clarification Act*, legislation that seeks to ensure that capital standards that insurers are required to meet are appropriate for the industry.

As an organization of state lawmakers dedicated to the proper regulation of U.S. insurance markets, we have expressed our concerns through resolution and letters to Congress and others that application of bank-like capital standards to insurance companies would harm policyholders and businesses alike. H.R. 4510 would address this concern and mitigate the imposition of "one size fits all" bank-centric standards to insurers. It would make clear in current law that insurers should be held to capital rules that acknowledge the inherent, critical differences between how insurers and banks operate.

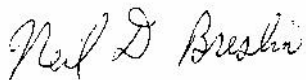
H.R. 4510 would not relax capital standards for any insurer or bank. Insurance companies under H.R. 4510 would still abide by the strict capital rules mandated under state insurance regulation, which have protected insurance consumers and businesses for more than 150 years. State regulation recognizes that insurers have long-term liabilities, while banks have short-term liabilities and need to cover a depositor run.

The legislation is a commonsense approach that would remove any confusion regarding the original intent of Section 171 of Dodd-Frank. Senator Susan Collins (ME) has testified that imposing bank capital rules on insurers had not been her intent when writing Section 171. Senator Collins has introduced Senate companion legislation that easily passed that chamber. H.R. 4510 also enjoys broad support among both Republicans and Democrats in the House and Senate, and insurance regulators and industry experts.

NCOIL believes that regulation of insurance companies should be strong and fair. We continue to urge Congress, as well as federal and state entities in international dialogues, to acknowledge the success of state-based insurance regulation. H.R. 4510 would accomplish that goal by allowing the Federal Reserve the flexibility to apply capital standards that are appropriate to the insurance industry.

Please feel free to contact Susan Nolan, NCOIL Executive Director, in the NCOIL National Office at snolan@ncoil.org or 518-687-0178 should you have any questions. Thank you for your attention.

Sincerely,



Sen. Neil Breslin (NY), NCOIL President

cc: The Honorable John Boehner
Members of the Financial Services Committee

- International Trade -

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

Resolution Concerning Principles of State Sovereignty in International Trade

Adopted by the NCOIL Executive Committee on July 13, 2014, and by the International Issues Task Force on July 10, 2014. Sponsored by Rep. Kathleen Keenan (VT), chair of the Trade Agreement Working Group

WHEREAS, a history of free trade agreements, including the North American Free Trade Agreement (NAFTA), the Central American Free Trade Agreement (CAFTA), and numerous bilateral free trade agreements have resulted in enormous economic and legal impacts on the states; and

WHEREAS, the United States, through the U.S. Trade Representative (USTR), is currently in the process of negotiating two broad multilateral agreements, the Trans-Atlantic Trade and Investment Partnership (TTIP) and the Trans-Pacific Partnership (TPP), as well as a Trade in Services Agreement (TISA); and

WHEREAS, ongoing negotiations regarding TTIP, TPP, and TISA need more transparency, accountability to elected officials and regulators, and mechanisms for serious consultation with the states; and

WHEREAS, conflict resolution provisions of international trade agreements have significant implications for state sovereignty and raise concerns regarding open debate and potential cost burdens for the states; and

WHEREAS, these negotiations are being conducted in a manner that does not provide the opportunity for an appropriate degree of public debate and deliberation in relation to the size and importance of the proposed agreements; and

WHEREAS, extreme caution is needed in international trade negotiations to avoid preempting state-level decisions with regard to the regulation of insurance and reinsurance; and

WHEREAS, it is appropriate and necessary that state legislators make clear the principles for which they stand on matters of sovereignty, transparency, due process, and the preservation of an historically effective system of regulation that has endured numerous challenges including the 2008 financial crisis.

WHEREAS, the voice of state legislators is largely unheard in the context of international trade despite the consequences borne by states as a result of previous international trade agreements; and

WHEREAS, NCOIL has, on a number of occasions, urged the USTR to expand state legislative participation on the Intergovernmental Policy Advisory Committee (IGPAC), but to date the USTR has not done so;

WHEREAS, the National Association of Insurance Commissioners, representing state insurance regulators, and the Federal Insurance Office (FIO) have venues through which they can input into international trade activity; and

NOW, THEREFORE, BE IT RESOLVED that the National Conference of Insurance Legislators supports expanded and continuous involvement by the states, through their elected legislative and other representatives, in all ongoing and future international trade agreement negotiations.

AND, BE IT RESOLVED that federal-state consultation should include the timely and comprehensive sharing of information on the substance and likely impact of trade agreements on state laws and regulations; appropriate use of state single points of contact (SPOCs); and a reasonable opportunity for meaningful input by the states;

AND, BE IT ALSO RESOLVED that the National Conference of Insurance Legislators opposes preemption of non-discriminatory state laws and regulations adopted for a public purpose and with due process by “no more burdensome than necessary” and similar standards.

AND, BE IT ALSO RESOLVED that the National Conference of Insurance Legislators supports according state regulations presumptive validity under any international trade agreement;

AND, BE IT ALSO RESOLVED that the National Conference of Insurance Legislators opposes any provision of an international trade agreement that grants greater substantive or procedural rights to foreign investors than to citizens and domestic businesses;

AND, BE IT ALSO RESOLVED that the National Conference of Insurance Legislators supports international trade conflict resolution proceedings that apply due process principles to affected states, including open hearings, state access to documents, and an opportunity for state governments to participate in the proceedings;

AND, BE IT FURTHER RESOLVED that a copy of this resolution will be sent to each state legislature, each state insurance regulator, the National Association of Insurance Commissioners, the U.S. Trade Representative, the U.S. Department of Commerce, the U.S. Department of State, and members of Congress.