

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS  
LIFE INSURANCE & FINANCIAL PLANNING COMMITTEE  
PORTLAND, OREGON  
JULY 14, 2016  
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Life Insurance & Financial Planning Committee met at the Portland Marriott Waterfront Downtown on Thursday, July 14, 2016, at 11:30 a.m.

Senator Mike Hall of West Virginia, Chair of the Committee, presided.

Other members of the Committee present were:

Sen. Jason Rapert, AR	Sen. Jerry Klein, ND
Rep. Richard Smith, GA	Sen. David O'Connell, ND
Rep. Ronald Crimm, KY	Rep. Don Flanders, NH
Rep. Jeff Greer, KY	Sen. Robert Hackett, OH
Rep. Joseph Fischer, KY	Sen. Roger Picard, RI
Sen. Dan "Blade" Morrish, LA	Rep. Bill Botzow, VT
Rep. George Keiser, ND	Rep. Kathleen Keenan, VT

Other legislators present:

Rep. Sam Kito, AK	Rep. Gary Moore, OK
Rep. Deborah Ferguson, AR	Sen. Gary Stanisklawski, OK
Asm. Kevin Cahill, NY	

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO  
Paul Penna, Executive Director, NCOIL Support Services, LLC  
Will Melofchik, Legislative Director, NCOIL Support Services, LLC

## MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its February 28, 2016, meeting in Little Rock, Arkansas.

### DISCUSSION OF INDEXED ANNUITIES - DISCUSSION OF PRODUCTS THAT RELY ON POLICYHOLDER BEHAVIOR (E.G. BUNDLED ANNUITIES) - DISCUSSION OF CONTINGENT DEFERRED ANNUITIES

Due to the amount of overlap among the first three items on the agenda, they were discussed together. Sen. Hall made introductory remarks about annuities and the current marketplace. Sen. Hall stated that those like himself who have been involved with annuities for a long time have seen changes in terms of how the public understands the products. Sen. Hall further stated that the training involved in order to sell the products has become increasingly complex and difficult to comprehend.

Birny Birnbaum of the Center for Economic Justice (CEJ) spoke first. Mr. Birnbaum started by saying there is broad agreement that there is a national retirement income problem. Defined

benefit plans have been phased out and replaced by defined contribution plans. Today, one typically has to work their whole life and, assuming they have participated in a defined contribution plan like an IRA or 401k, have to actively manage their retirement investments in order to secure a safe retirement. A wide array of advisors and products have emerged to assist consumers in retirement income planning. As the industry has developed, different advisors sometimes recommending/selling the same products are subject to different standards of care. Some are subject to a fiduciary standard in which the advisors are required to put the interest of the client above his or her own interests – others are subject to a suitability standard in which the advisor may put their own interests above their clients. This is important because putting consumers into high-fee retirement income products instead of lower fee products that meet the consumer's needs can strip the consumer of assets and worsen their retirement situation. Also, different standards of care lead to regulatory arbitrage which leads to advisors taking advantage of said standards and creating an un-level playing field, and also consumers being confused about the standard of care they are receiving which reduces competition and ultimately leads to complex product design. Consumers receiving conflicted advice leads to lower returns.

There are low-fee, high-value products being offered but they are not being sold much – they are out-numbered by the high-fee, complex products. FINRA has issued an alert on equity-indexed annuities and stated that before consumers buy them, they need to understand all the features and ask advisors many questions. But if the advisor is not subject to a fiduciary standard there is no guarantee you will get advice that is in your best interests. There is also an issue of high surrender charges, which are linked to high commissions. It is argued that the DOL fiduciary rule will change advisor compensation and annuity product design for the better because with a limit on compensation/commissions, product design will be more transparent and surrender charges will mostly vanish because in reality they are nothing more than a penalty that a company looms over the client in order to recover the commissions paid up front to the advisor. With regard to contingent deferred annuities, they are high fee products that provide very few benefits in relation to those high fees.

John Gerni of the American Council of Life Insurers (ACLI) then spoke and stated that annuities are not necessarily for everyone – there are many different products out there from which consumers can choose. There are also a number of regulatory guidelines governing those in the annuity industry.

Paul Richman of the Insured Retirement Institute (IRI) then spoke and stated that annuities are regulated under a very comprehensive framework. The framework includes safeguards to ensure that the products are sold not only by people who understand them but to know for whom they are suitable. With regard to fixed index annuities, most States have adopted advertising rules governing the marketing of annuity contracts which are designed to prevent misleading/deceptive/confusing advertisements – State insurance departments are charged with periodically reviewing them. States have also adopted unfair trade practice acts. The NAIC has adopted several models to provide annuity purchasers additional protections such as the Suitability and Annuity Transactions Model Regulation and the Annuity Disclosure Model Regulation. Additionally, FINRA in 2005 issued a notice that addressed the responsibility of firms to supervise the sale of fixed index annuities that are not registered under federal securities laws. The NAIC also issued a Buyer's Guide for different types of annuities, which includes narrative explanations and illustrations of certain features of annuities – ultimately the

Buyer's Guides educates consumers as much as possible about the product features. With regard to contingent deferred annuities, the NAIC offered a guidance document which included, among other things, how States can modify their existing annuity laws to apply to CDA's. The NAIC also amended several of their models to recognize CDA's. Mr. Richman stated that NCOIL can help by urging all States to adopt the NAIC models which will lead to more safeguards for consumers so they can secure a safe and enjoyable retirement.

Neil Finestone, CEO of Finestone Partners, then spoke and said that based on his experience the riders to annuities have been very beneficial to consumers but there is no doubt they can be very complicated. The disclosures are substantial, sometimes onerous, sometimes not enough. Mr. Finestone stated that it might be beneficial to have a uniform disclosure adoption across the board and a set of rules in place among all States so as to ensure a number of things such as insurance companies focusing on a set of training that can be applied everywhere. Mr. Finestone also stated that the nature of annuities is that they are completely subjective – a product that might be suitable for one consumer might be completely inappropriate for another.

Sen. Hall asked whether the panel agreed that what is driving the presentation of high-fee products to consumers is the level of compensation to the agent rather than what is suitable/proper for the consumer. Mr. Finestone said it really comes down to the disclosure to the consumers. By law, certain disclosures are required depending on what type of advisor you are. Mr. Gerni stated that the NAIC has gone through different versions of suitability models and the most recent model is significant because it spells out the necessary training the agent needs to have in order to sell annuities and shifts the burden back to the insurance company on the responsibility of the suitability standards. There are states that still need to update their suitability laws in place. Mr. Birnbaum stated that capitalism works – when a higher commission is offered, more of that product will sell. The outcomes existing today indicate that there is a problem in the selling process. If the process were good, why would we see such a high number of the high-fee products being sold. The process is rife with gaps and problems. For example, the illustrations NAIC has provided are extremely complicated – typically 20/25 pages.

Sen. Rapert stated that he actually agrees with Mr. Birnbaum in that it is frustrating where a client is sitting down before someone who is not licensed in a certain way and makes recommendations without the proper training. Mr. Finestone stated that ties into what he said before in that a uniform standard would provide for better training. Sen. Rapert asked Mr. Birnbaum whether he thinks we should be addressing the proper regulation of annuities as securities rather than endorsing a broad-sweeping fiduciary rule. Mr. Birnbaum believes the best way to ensure good consumer outcomes is to rely on market forces to align the interest of the sellers with the interests of consumers so that market forces discipline the sellers. When you have to rely on regulations to prevent someone from doing something that is in their financial interest, we run into problems. Therefore, the fiduciary rule is the best approach because it levels the playing field by putting advisors on the same regulatory requirements but it also aligns the interest of the sellers with the consumers so it promotes market forces that encourages product designers to design products that are simpler and overall better for consumers.

Sen. Hackett asked Mr. Gerni whether the ACLI sees a standardization of products coming if the DOL rule is implemented. Mr. Gerni stated that it is tough to predict but he hopes not. Mr. Richman also stated it is hard to predict because they are still figuring out how the Rule will work and there are also ongoing legal challenges to the Rule which could impact it.

Sen. Stanislawski stated that you cannot say high-fee risky products vs. low-fee safe products. You cannot mingle the words like that, it is disingenuous.

#### CONSIDERATION OF RESOLUTION URGING DEPARTMENT OF LABOR TO REPEAL ITS FIDUCIARY RULE

Sen. Rapert stated that in the opinion of many, including Congress, the DOL has intervened in an arena in which the SEC is the best entity to regulate. Sen. Rapert wanted to make clear that the Rule has no Congressional backing and has the potential to do to financial services in general and some of the insurance companies that share that space exactly what Dodd-Frank did to the banking industry in the States. The Rule is onerous and it should not be pursued. Sen. Rapert then read the Resolution. Sen. Rapert also clarified that the Resolution is not purporting to say there are no issues in the industry, but rather it is saying the DOL has no authority to regulate in the arena.

Sen. Haine stated that he has no issue with the substance of the Resolution but recommended deleting the 3<sup>rd</sup> paragraph – it seems turf-conscious and does not think the phrase “States’ rights” should be included. Sen. Rapert respected the comment but believes that said paragraph embodies what NCOIL’s mission is.

Mr. Birnbaum stated that CEJ is opposed to the Resolution and thinks it would be counter-productive for NCOIL to adopt it. Mr. Birnbaum stated that the DOL Rule does not limit States’ ability to regulate insurance – it carries out the authority delegated to the DOL under ERISA and the tax code to define what constitutes fiduciary investment advice with regards to retirement savings and what conditions must be met in order to rely on exemptions from the prohibited transaction rules. Also, Mr. Birnbaum stated there is no evidence to support the assertion in the Resolution about the current system serving the best interests of the consumers. Lastly, Mr. Birnbaum stated that it is unclear what the purpose of the Resolution is – he is concerned that it will present NCOIL as partisan and put it on the wrong side of history on this issue.

Rep. Botzow stated that he wished the Resolution was drafted differently and therefore will not support it but does support the provisions regarding States’ rights. Sen. Rapert stated that he appreciates Mr. Birnbaum’s comments but that IRA accounts are not covered by ERISA. Sen. Rapert also took exception to Mr. Birnbaum’s comment that NCOIL might be on the wrong side of history – legislators have been ignored far too often and have a duty to speak on any issue that concerns them as insurance legislators.

The Committee then voted to adopt the Resolution by a vote of 14-3.

#### UPDATE ON UNIFORM LAW COMMISSION DRAFTING EFFORTS ON REVISED UNIFORM UNCLAIMED PROPERTY ACT

John Gerni from ACLI updated the Committee on the Uniform Law Commission’s (ULC) drafting efforts on its Revised Uniform Unclaimed Property Act (RUUPA). Mr. Gerni stated that it was good news that the ULC mentioned NCOIL’s Unclaimed Property Act as the standard. Mr. Gerni also encouraged all States to adopt NCOIL’s Model Act. By passing NCOIL’s model, it addresses encroachment issues involving unclaimed property administrators. Mr. Gerni also stated that RUUPA would begin to be presented to the States sometime next year.

ADJOURNMENT

There being no further business, the Committee adjourned at 1:00 p.m.