

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
LIFE INSURANCE AND FINANCIAL PLANNING COMMITTEE
SAN ANTONIO, TEXAS
NOVEMBER 13, 2015
DRAFT MINUTES

The National Conference of Insurance Legislators (NCOIL) Life Insurance and Financial Planning Committee met at the Hilton Palacio Del Rio in San Antonio, Texas, on Friday, November 13, 2015, at 9:15 a.m.

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

Other members of the Committee present were:

Sen. Jason Rapert, AR	Rep. Don Flanders, NH
Sen. Travis Holdman, IN	Sen. Neil Breslin, NY
Rep. Ron Crimm, KY	Assem. Kevin Cahill, NY
Rep. Joe Fischer, KY	Sen. James Seward, NY
Rep. Tommy Thompson, KY	Rep. Bob Hackett, OH
Rep. George Keiser, ND	Sen. Robert Hayes, SC
Sen. Jerry Klein, ND	Rep. Bill Botzow, VT
Sen. David O'Connell, ND	Rep. Warren Kitzmiller, VT

Other legislators present were:

Assem. Ken Cooley, CA	Rep. Don Gosen, MO
Rep. Janak Joshi, CO	Rep. Maureen Dakin, VT
Rep. Kevin Mahan, IN	Rep. Kathie Keenan, VT
Rep. Jim Gooch, KY	Sen. Jen Angel, WA
Rep. Michael Webber, MI	Rep. Dan Zwonitzer, WY

Also in attendance were:

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

MINUTES

Upon a motion made and seconded, the Committee unanimously approved the minutes of its July 16, 2015, meeting in Indianapolis, Indiana.

DOL FIDUCIARY DUTY RULE/IMPACTS

Kate Kiernan of the American Council of Life Insurers (ACLI) provided background on a proposed 2015 Department of Labor (DOL) "fiduciary" definition. She stated that on April 20, 2015, the DOL released a detailed new proposal to change the definition of fiduciary under the Employee Retirement Income Security Act of 1974 (ERISA). She noted that key aspects of the new proposal raised concerns as to whether savers, retirees, and small businesses would continue to have access to certain financial products and investment education.

Ms. Kiernan said the DOL's new definition covers advice to plan sponsors as well as covers welfare benefits, retirement plans, IRAs, and certain medical and educational savings accounts

and that ACLI believes the rule will have a negative effect on low and middle-income savers and likely result in fewer commission-based services in the marketplace.

Birny Birnbaum of the Center for Economic Justice (CEJ) said that the newly proposed DOL fiduciary rule extends protections to investors in tax-sheltered plans and under ERISA. He reported that ERISA protections currently apply to 401k assets and under the new rules they also would cover 401k rollovers, IRAs, and IRA rollovers.

Mr. Birnbaum stated that the DOL has said ERISA was created under different circumstances during the 1970s, when tax-sheltered retirement plans were nearly universal and advisors and other professionals managed pension plans. He noted that ERISA was drafted to impose trust law standards of care for such plans. He said since that time, IRAs and 401ks have come into being, which has changed the financial industry as well as the financial advice that falls outside of ERISA protection.

Mr. Birnbaum reported that this new fiduciary rule has been in development for a number of years. He emphasized the importance of the conflict-of-interest provision and said that the new DOL fiduciary rule simply states that an advisor must do what is in the best interest of the client. He said it does not eliminate commissions as some suggest, nor does it eliminate advice to small and medium-income consumers. He stated that the CEJ urges NCOIL to support the new DOL standard to help level the playing field.

Kevin McKechnie of the American Bankers Association (ABA) said that for the past five years the DOL has been working on a fiduciary rule with the goal of helping consumers understand the products being offered, the price of the products, and the long-term expectations of such products. He reported that during this time period, the DOL has worked with several stakeholders and has been unable to achieve a comprehensive, understandable rule.

Mr. McKechnie said the proposed rule would have a negative impact on small and middle-income consumers and would make it difficult to bring proper financial advice to Americans. He noted that the Securities and Exchange Commission also is opposed to this rule and suggested that the DOL create a less complex, shorter rule that will inform and protect consumers.

In response to a question from Rep. Hackett, Mr. Birnbaum said that according to the Insurance Retirement Institute (IRI), variable annuities make up the overwhelming majority (75 to 80 percent) of annuities sold. He reported that the percentages of low-cost lifetime income products are only a small fraction of total sales.

In response to a follow-up question from Rep. Hackett, Mr. Birnbaum said there have been recent lawsuits against large employers who were offering 401k plans in which the employer was receiving a fee. The lawsuits, he said, addressed whether the employers were encouraging employees because the plans benefited the employer.

Sen. Hall stated that in his experience as a financial advisor, variable annuities are among the most regulated products one can sell.

UNCLAIMED LIFE INSURANCE BENEFITS

Commissioner Ted Nickel (WI), Secretary-Treasurer of the National Association of Insurance Commissioners (NAIC), reported on developments regarding NAIC unclaimed benefits activity. He said a Life Insurance and Annuities Claims Settlement Practices (D) Task Force, which he said often is referred to as the “lead states,” continues to actively coordinate investigations of current and past use of the Social Security Death Master File (DMF) or a similar database used by annuity companies and life insurers.

Commissioner Nickel stated that regulators used these multistate examinations to identify any asymmetrical or inappropriate use of the DMF or similar databases and to offer reforms when needed. He reported that the “lead states” have concluded multistate examinations with 17 of the largest life insurance companies that represent 64.4 percent of the national marketplace. He said the “lead states” have found that all the insurers used the DMF appropriately.

Commissioner Nickel said that inquiries were not based on a duty to access the DMF, and he noted that the courts have consistently held that no such duty exists. He said that only when a company accessed the DMF and then used the information to stop annuity payments have regulators sought to require the insurer to use this knowledge regarding payment of life insurance benefits. He said the “lead states” have not sought to compel any company that has not already used the DMF to do so, nor have they criticized companies that chose not to use the DMF.

Commissioner Nickel stated that the NAIC had not taken a position or recommended corrective action regarding companies that have never used the DMF or similar databases. He reported that last year an NAIC Life Insurance and Annuities (A) Committee established an Unclaimed Life Insurance Benefits Working Group, which was charged with offering recommendations for the consistent handling of unclaimed death benefits. He reported that last fall this newly created Working Group recommended that NAIC developed a model law.

Commissioner Nickel said that the Working Group had begun the process of developing the new NAIC model law and recently decided to do so by using a section-by-section approach with a comparison chart of the provisions in the “lead states” model and in the NCOIL *Unclaimed Life Insurance Benefits Model Act*. He reported that the subgroup anticipates releasing an initial draft of the proposed NAIC model for a three-week comment period following the NAIC Fall Meeting. He noted that while states, industry, and consumer representatives have different views on how to most effectively approach this issue, the NAIC is committed to exploring different avenues in an open and transparent manner.

Ms. Kiernan of the ACLI reported that a total of 19 states have adopted legislation based on the NCOIL model. She noted that the Uniform Law Commission (ULC) was in the process of updating its unclaimed property model for the first time since 1995. She said that the ACLI will continue working with the ULC on this issue.

Rep. Keiser noted that while some states have decided to remove the retroactive clause of the model, the NCOIL model is retroactive. He said model bills provide a general framework but each state can make modifications.

PRINCIPLE-BASED RESERVING (PBR) ACTIVITY

Brenda Nation of the ACLI reported that 39 states representing 71.78 percent of the gross life and health insurance premium had passed PBR. She said there are approximately nine states considering PBR legislation. She noted that in order for PBR to become operational, it requires 42 states with 75 percent of the gross life and health premium. She stated that if the threshold is met prior to July 1, 2016, PBR will become operational on January 1, 2017.

In response to a question from Rep. Keiser, Ms. Nation said ACLI and other interested parties worked with the NAIC to develop a small-company exemption. She stated that if PBR does meet the required threshold, the small-company exemption would be available.

In response to a question from Rep. Keiser, Commissioner Nickel said that the captive issue is still being addressed but that the goal of PBR is to encourage companies to move away from captives.

Commissioner Nickel said PBR will replace the current formulaic approach to determining policy reserves. He reported that the NAIC is working to assist states in the transition to PBR and acknowledged that it is a new type of financial analysis. He said the NAIC is developing a regulatory review system to foster the consistent implementation of PBR. He reported that the NAIC has hired additional staff to help establish the review process for the states and also plans to provide training for companies.

In response to a question from Sen. O'Connell, Commissioner Nickel said it will change the current evaluation of reserves, which often is too high and does not reflect the actual risk involved. He said PBR will more accurately reflect the amount of reserves needed.

Mr. Birnbaum of CEJ said that historically life insurance company reserves have been set through a formula and that a regulator could monitor such companies by hiring an auditor. He reported that if PBR is implemented, actuaries would establish the reserves through a variety of actuarial formulas. He commented that PBR will not necessarily reduce the use of captives.

LIFE INSURANCE ILLUSTRATIONS

Mr. Birnbaum of CEJ said illustrations that life insurers use may depict overly high returns. He said an NAIC Life Actuarial Task Force developed new actuarial guidelines to limit what illustrations can show.

Commissioner Nickel said the NAIC Life Actuarial Task Force is moving towards re-opening the model on life illustration products. He said that the purpose is to enable consumers to better understand these products. He said the new working group will address a number of life illustration issues including whether illustrations are too complicated, benefit consumers as they should, provide proper disclosure information, and allow for comparisons to similar products.

NAIC ANNUITY DEVELOPMENTS

Paul Richmond of the Insurance Retirement Institute (IRI) said that the IRI is supportive of the work the NAIC is doing on contingent deferred annuities. He said the NAIC working group that Commissioner Nickel chairs is consulting with all interested stakeholders to develop guidance that will enable states to apply or amend existing annuity laws and rules on contingent deferred annuities.

Mr. Birnbaum reported that a contingent deferred annuity is an acquisition product. He said that these types of products traditionally have a non-forfeiture benefit. He said that the current changes no longer protect the consumer who purchases a contingent deferred annuity.

Commissioner Nickel reported that in October of 2015, the NAIC issued a draft guide to financial solvency and market conduct. He said the draft was titled *Guidance for the Financial Solvency and Market Conduct Regulation of Insurers Who Offer Contingent Deferred Annuities*. He stated that this document is to be used as a guide to any state interested in modifying its annuity laws.

PROPOSED 2016 COMMITTEE CHARGES

At the request of the Chair, Mr. Williamson read the proposed Committee charges for 2016 as follows:

- Further analyze impacts of proposed Department of Labor (DOL) fiduciary duty rule and weigh in as needed to help preserve state regulatory consumer protections
- Extend efforts towards enactment of the NCOIL unclaimed life insurance model law and work with interested parties to achieve reform
- Continue to evaluate impacts and progress of principle-based reserving (PBR)
- Monitor and report on efforts to revise life insurance illustrations requirements and consider potential consumer affects
- Explore role of captive insurance transactions, including solvency impacts, and consider opportunities to offer guidance
- Continue to explore activity regarding annuities (i.e., nonforfeiture of benefits)

Upon a motion made and seconded, the Committee unanimously adopted the proposed charges.

ADJOURNMENT

There being no further business, the Committee adjourned at 10:15 a.m.