

Preserving State Insurance Regulation...

- By interacting with Congress on issues of critical importance to insurance public policy
- By educating state lawmakers on the solutions to their insurance-market crises
- By fostering relationships between state legislators
- By asserting the primacy of state insurance regulation under the McCarran-Ferguson Act of 1945

SPECIAL ISSUE ON U.S. FINANCIAL SERVICES REFORM

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ANGRY U.S. HOUSE MEMBERS TAKE AIG BONUSES, BAILOUT TO TASK

Members of a U.S. House Capital Markets Subcommittee—enraged by breaking news of \$165 million in post-bailout AIG retention bonuses—pushed on March 18 for stronger oversight of the Fed’s rescue of the financial services titan. One member also compelled AIG Chairman and CEO Edward Liddy to admit that state insurance regulation wasn’t to blame.

While the hearing—which lasted more than seven hours (including two recesses and an audience interruption)—was scheduled several weeks ago to investigate AIG’s impact on the global economy before, during, and after federal intervention, much of the conversation revolved around bonuses.

Members talked about retracting and/or taxing the payments, a lack of effective oversight leading to AIG’s col-

lapse, AIG often-foreign counterparties that received bailout money, and the need for an exit strategy, among other things.

Insurance Commissioner Joel Ario (PA), testifying for the NAIC, stressed that AIG insurance companies are still performing well. He issued NAIC support for federal action on systemic risk and said that any solution should be collaborative between state and other functional regulators, ensure transparency, and hold all regulators accountable.

Scott Polakoff the Office of Thrift Supervision (OTS) said AIG’s rapid decline stemmed from credit default swap (CDS) products and securities lending operations operated by its state-regulated insurance subsidiaries. Rodney Clark of Standard & Poor’s said AIG insurance subsidiaries are somewhat protected by state regula-

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NCOIL TO DODD: OFC NO OPTION FOR REGULATORY REFORM

In a March 16 letter to Senate Banking Committee Chair Christopher Dodd (D-CT), NCOIL reinforced its deep-seated opposition to an OFC and asserted that there’s limited support for such a scheme. Disputing claims that insurance oversight is tied to the economic meltdown, NCOIL officers wrote, “If the ongoing financial crisis has taught us anything, it is that state-based insurance regulation continues to safeguard American consumers and the insurance industry.”

Distributed to all Members of the Banking Committee prior to its recent insurance regulation hearing, the letter questioned, “Who is actually asking for an insurance OFC?” The letter identifies those who either haven’t called for an OFC, actively oppose one, or haven’t endorsed one: American consumers,

state officials—among them lawmakers, regulators, governors, and attorneys general—and much of the insurance industry.

NCOIL leaders added that “Those who support an OFC—big banks with insurance businesses and many life insurance companies—think they would benefit from looser federal regulation, regulation that in no small part contributed to the mortgage and AIG crises.” NCOIL noted that an OFC would cripple state progress on a variety of modernization efforts, such as the Interstate Insurance Product Regulation Compact, agent and company licensing, and market conduct and suitability oversight.

Finally, the letter expressed NCOIL interest in dialoguing with Congress on appropriate ways to enhance coordination between financial services sectors.

What does the Administration think of state insurance oversight? If this is any indication, Geithner...backed efforts to create an Office of Insurance Information (OII) at Treasury and said Congress should consider OFC legislation...

VIEW FROM THE HILL: SYSTEMIC “REFORM” RHETORIC HEATS UP

March was no month for the regulatory-reform light-of-heart. In a series of media-grabbing hearings, Treasury Secretary Geithner, Fed Chairman Bernanke, and, of course, AIG Chairman Liddy were grilled over AIG retention bonuses; the Senate Banking Committee argued over an OFC; and disgruntled lawmakers reintroduced a bill to roll back the *McCarran-Ferguson* antitrust exemption. The culmination, though, was Geithner’s long-awaited unveiling of an Administration plan to address systemic risk.

The plan—which is part of a four-pronged Administration proposal that would also address consumer and investor protection, gaps in our financial services regulatory structure, and international coordination—will take center stage when the G-20 meets in London on April 2. Geithner said he’ll give detailed frameworks of the three remaining areas in the coming weeks.

According to Geithner, the new systemic proposal would push broad oversight of the country’s largest and most complex institutions—regardless

of their status as banks or insurers, for instance—and subject them to tougher risk management and capital standards. The proposal supports oversight for previously unregulated markets like hedge funds and credit default swaps, and it seeks resolution authority—modeled after the FDIC—so the Feds could seize and liquidate private non-bank companies.

What does the Administration think of state insurance oversight? If this is any indication, Geithner, responding to House Financial Services Committee members at a March 26 hearing, backed efforts to create an Office of Insurance Information (OII) at Treasury and said Congress should consider OFC legislation—both ideas NCOIL has opposed on the grounds that they might jeopardize consumer protections and unravel successful state regulation, among other things.

As Americans look for big changes, the G-20 meeting looms large, and Congress uses the financial crisis to espouse a range of reform ideas, one thing is clear—this battle is not over.

ANGRY

tion but that there may be some “reputational” trouble.

Orice M. Williams of the General Accountability Office (GAO) overviewed allegations that federal assistance to AIG insurers has resulted in unfair advantages. She stated that the GAO has found no evidence of AIG activity that is either inadequate or inconsistent with its pre-bailout practices.

Rounding out the hearing was Mr. Liddy, who discussed the extent of federal assistance, predicted AIG profitability within two or three years, and said AIG plans to fully repay American taxpayers. Regarding the bonuses, Liddy said AIG was contractually obligated to pay them, though they went to employees of the tarnished Financial Services Division.

In an interchange with Representen-

tative Jackie Speier (D-CA), Liddy agreed that state regulation didn’t cause AIG troubles. When pressured by Speier to admit—as an extension of that exchange—that an OFC may be a flawed idea, he replied “oops” and then said that increasingly complicated insurance products and the speed of capital flow in a global market make it hard for state regulators to keep current.

The hearing didn’t satisfy Member concerns over the bonuses. Financial Services Committee Chair Barney Frank (D-MA) said he would seek a subpoena to find out who received the money. And Subcommittee Chair Paul Kanjorski (D-PA) threatened that the retention bonuses not only affect AIG but may jeopardize Congressional interest in a possible second assistance package to help troubled companies.

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HOUSE BILL WOULD ATTACK BEDROCK OF STATE AUTHORITY

Lawmakers took another stab at insurers' limited antitrust exemption on March 19, when Reps. Peter DeFazio (D-OR), Gene Taylor (D-MS), and four colleagues reintroduced legislation to amend the bedrock of state insurance authority, the *McCarran-Ferguson Act* of 1945.

H.R. 1583, the *Insurance Industry Competition Act*, would repeal the exemption granted for the business of insurance; give the Federal Trade Commission (FTC) and U.S. Department of Justice (DOJ) authority to apply U.S. antitrust laws to insurer "unfair methods of competition"; and authorize the DOJ and FTC to issue joint statements of their antitrust enforcement policies. The bill also would apply the *Federal Trade Commission Act* to the insurance business—in areas outside anticompetitive behavior—"to the extent that such business is

not regulated by state law."

Rep. Taylor has tried to spur his bill's success by hitching it to the AIG and financial crisis, saying that "...the current insurance exemption from antitrust laws gave AIG a free pass to become 'too big to fail,' and now the U.S. taxpayers are on the hook to bail them out or risk even further turmoil in an already fragile economy."

NCOIL has previously asserted that any run at *McCarran* may open the door to more federal interference. NCOIL and other groups have stressed that the exemption is not a loophole to evade antitrust rules and that its repeal would stifle competition; create a confusing, bifurcated, and likely litigious system; and endanger guaranty funds.

The bill is in the House Committees on the Judiciary, Financial Services, and Energy and Commerce. It was introduced in 2007 and never moved.

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FACT FINDINGS: SENATE DEBATES GOVERNMENT HEALTH PLAN

Witnesses at a March 25 U.S. Senate Health, Education, Labor & Pensions Committee hearing debated, among other things, whether a government-sponsored health plan should compete with private insurers. Here's what folks had to say:

"What I would propose is that you think about a public plan model more like what state employees use...I do think there's a model between Medicare and nothing that can get us where we need to be."—Len Nichols, New America Foundation

"We've had to develop public programs because private insurance won't take care of people who are vulnerable...I

think it's absolutely essential."—Karen Pollitz, Georgetown University

"Clearly, the market today doesn't work because we don't have everyone in... what we have done is propose an aggressive system of government regulation that would supervise private sector competition, and I think the competition that people want."—Karen Ignani, America's Health Insurance Plans (AHIP)

"I don't think that it is possible for public and private sector plans to compete on a level playing field... The private programs will be selected against even more than they are today and the cost shifting would

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ON **CREDIT DEFAULT SWAP REGULATION**
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NCOIL CDS Task Force activity.

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FACT

be exacerbated....I just think that is a recipe for disaster.”—Janet Trautwein, Nat.’l Assoc. of Health Underwriters

“We are on the slippery slope, and I would say it probably would have been greased to accelerate our momentum towards a towards a single-payer system ...I believe that the innovation that the private sector represents is extremely important.”
—Ronald Williams, Aetna

“I agree that in theory there could be great gains to having a public plan,

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but I worry that in practice one ends up doing more harm than good, so it very much depends on the implementation details.”—Katherine Baicker, Harvard School of Public Health

“...the public plan, if it’s competing on a level playing field with the private marketplace, I think there can be some benefits to it... So if you have equal rules and are treating the public plan the same as the private plan, it can help drive market changes because of the ability to perhaps bring some standards...”
—Commissioner Sandy Praeger (KS)

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