

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

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U.S. HOUSE COMMITTEE GRILLS FEDERAL REGULATORS

In a long and sometimes heated hearing on *The Role of Federal Regulators in the Financial Crisis*, members of the U.S. House Committee on Oversight & Government Reform on October 23 grilled three key regulators tied to U.S. financial markets and delved deeper into causes of the nation's current crisis.

Rep. Henry Waxman (D-CA), Committee Chairman, said the hearing was the first of the Committee's oversight hearings to focus on the public sector, after sessions addressing Lehman Brothers, AIG, and rating agencies. He said that all sessions, however, shared common themes: that "corporate excess and greed enriched company executives at enormous cost to shareholders and our economy" and that "abuses could have been prevented if federal regulators had paid more attention and intervened with responsible regulations."

The one-panel October 23 hearing included Dr. Alan Greenspan, former Federal Reserve Chair; Christopher Cox, Chair of the Securities and Exchange Commission (SEC); and John Snow, former Treasury Secretary. Greenspan—whom Members assailed for his encouragement of deregulation and risky financial products—said that effects of any new regulatory reforms will pale in comparison to changes already evident in today's market. "Already evident" changes, he said, include greater investor caution and a likely end to subprime securities.

Members charged Chairman Cox,

**Don't Forget the Special
NCOIL Health Committee
Meeting on a Model
Rental Network Contract
Arrangements Law!**

Wednesday, November 19
Duck Key, FL 3 p.m. to 6 p.m.

who declared that all signs now point to the need for a stronger SEC, with failure to act on "numerous red flags" regarding Bear Stearns' financial condition and the dangers of credit default swaps (CDSs). Cox said Congress should repeal the credit default swap exemption in the *Commodity Futures Modernization Act of 2000* (CFMA) since, under its language, no regulatory body has statutory authority to oversee CDSs.

Mr. Snow—who was accused of "using a chain saw" to slash federal regulations—testified that he had commissioned the Treasury's OFC-friendly *Blueprint for a Modernized Regulatory Structure*. Snow said the Treasury has no direct regulatory authority, but does have a responsibility to identify systemic risks. He said that when he had seen clear risks, such as with government-sponsored enterprises like Fannie Mae and Freddie Mac, he had called for stronger regulation, greater disclosure, and the application of federal securities laws, but that Congress had not heeded his calls.

NCOIL has the honor of welcoming financial expert **Howard Shapiro** as keynote speaker at the NCOIL Annual Meeting in Duck Key, Florida. Mr.

Shapiro will discuss causes of the housing and broader financial markets crisis, the impact on consumers and the economy, and recent government efforts to solve the problem, including whether or not they have made the situation worse or better. The luncheon remarks are scheduled from 12:30 to 1:45 p.m. on Friday, November 21.



POINT-COUNTERPOINT: WHAT THE AIG CRISIS SAYS ABOUT

Those for and against state insurance regulation have used the AIG crisis to their advantage—either demonstrating the success of state oversight or claiming that overarching federal regulation would have made a difference. Below are some of the arguments.

Strong, Effective State Regulation Ensures Protection for Policyholders

By Sandy Praeger

The swift, coordinated response of state insurance regulators in moving to address the problems facing AIG is a clear illustration of how a modern, efficient and effective regulatory system should work.

State legislators and insurance regulators can be proud of what this says about the state of our regulatory system. Indeed, for more than 150 years, state-based insurance regulation has proven time and again it can meet the challenges of our vibrant, dynamic industry.

By working together, state legislators and regulators have enacted laws and regulations that protect insurance consumers by ensuring the strength and stability of our nation's insurance market. In fact, conservative state regulations ensured that while AIG's federally regulated holding company was failing, the insurance businesses were appropriately capitalized and the interests of

policyholders were placed ahead of shareholders.

It is this type of state-based cooperation and collaboration that has resulted in practical solutions to streamline regulation without compromising consumer protection. Those who might use the issues facing AIG's holding company to politick for a federal insurance regulatory presence are not only misguided, but also misinformed.

Insurance oversight has been rigorous, resulting in high regulatory compliance and avoiding the level of insolvencies and market meltdowns we have seen in other sectors of the U.S. financial community. Indeed, our national solvency system has ensured that insurance companies have the wherewithal to pay claims, while remaining competitive and profitable.

We strongly caution against federal intervention in a system that is working for consumers and industry alike. During the AIG crisis, state insurance regulators did what we do best. We ensured the AIG insurance companies, and the consumers they serve, were not harmed by

“Those who might use the issues facing AIG’s holding company to politick for a federal insurance regulatory presence are not only misguided, but also misinformed.”

VIEW FROM THE HILL: NO REST FOR THE WEARY

You would never know Congress has adjourned. House Committees on Agriculture, Financial Services, and Oversight, as well as Senate Banking and Agriculture Committees, have held hearings throughout October on the widespread causes and implications of our financial crisis—and kept many Members, even during this tough election season, in DC during the work week.

And it is not over. Members plan to return during the third week of November for a lame-duck session to consider a possible second economic stimulus package. The House Oversight Committee has scheduled two hearings for the November session—it has already held four—to investigate the role that hedge funds and Fannie Mae/Freddie Mac have played in the financial tragedy.

After getting past the election-year political bickering that has marked many Congressional sessions, the hearings have uncovered several concerns for 2009 action. Members have grilled witnesses on the size of credit default swap transactions—which have been estimated at nearly \$60 trillion—and on a lack of regulation. They have criticized federal agencies that failed to coordinate effectively and that were accused of being asleep at the wheel as the market turned.

Members have also debated the role of subprime mortgages and whether buyers, lenders, securities issues, Fannie Mae/Freddie Mac, and/or investors are to blame. Angry that they were forced to pass a massive \$750 billion-plus bailout package to save the American economy, lawmakers are poised to act.

STATE INSURANCE REGULATION

the financial troubles of the parent company.

As our nation's financial situation continues to evolve, we will remain vigilant and focused on job No. 1: protecting policyholders.

Ms. Praeger is Kansas Insurance Commissioner and President of the National Association of Insurance Commissioners (NAIC), based in Kansas City, MO.

The Limitations of State Regulation

By Marc Racicot

Americans deserve a financial regulatory structure that protects consumers and provides banks, insurance companies, and other financial institutions with a high degree of confidence in their business transactions.

The \$123 billion federal loan to AIG illustrates the inherent limitations of the current 56 state patchwork of insurance regulation. In this case, AIG had numerous insurance companies operating across the U.S., with principal oversight by 19 separate domiciliary state insurance departments. It also had numerous other financial services entities that were not regulated by state insurance departments. Even with the best of intentions, state regulators simply had no nationwide authority or ability to oversee the safety and soundness of AIG or other multi-jurisdictional financial institutions. Equally important, the states did not have the capacity to provide the capital injections required by AIG.

While safeguards are in place to protect insurance company assets, state regulators can only exercise individual authority over the insurers domiciled, licensed or operating in their respective individual states. Insurance regulators have no authority to regulate the solvency of companies that sell insurance outside their state's borders. They have no capacity to examine non-insurance operations or trends that may pose a threat to an insurer's overall financial stability.

Many in the industry believe they would be better served by having the option to choose a federal regulator. Congress will soon debate the scope of federal oversight and whether to apply that oversight to insurers. That debate is certain to focus on the need to monitor systemic risk and exercise group-wide supervision on a national basis to ensure safety and soundness.

This should not be a debate about assigning blame for what went wrong, but should be a thorough examination of what regulation must look like in the future to assure a healthy, vibrant, and competitive financial services marketplace. We must look for solutions that avoid potential market crises and consider more effective ways of regulating the insurance industry. Federal regulation of insurance would provide the type of effective regulatory option that protects consumers and ensures the safety and soundness of their insurance company.

Mr. Racicot is President of the American Insurance Association (AIA), based in Washington, DC.

“Insurance regulators have no authority to regulate the solvency of companies that sell insurance outside their state’s borders. They have no capacity to examine non-insurance operations or trends...”

NCOIL RESOLUTION WOULD ASSERT STATE ANNUITIES OVERSIGHT

On November 22, in response to a controversial SEC plan, the NCOIL Life Insurance & Financial Planning Committee will consider a draft *Resolution in Support of State Insurance Commissioner Authority over Fixed Indexed Annuities* that, among other things, backs state annuities regulation.

The resolution recognizes state product suitability efforts, as well as

steps toward enhanced disclosure, consumer protection, and increased communication between insurance and securities regulators.

Sponsored by NCOIL officers and certain past presidents, including Rep. Robert Damron (KY), Rep. George Keiser (ND), Sen. Carroll Leavell (NM), Sen. William J. Larkin, Jr. (NY), Sen. James Seward (NY),

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NCOIL ANNUAL MEETING

November 19—23
in Duck Key, FL

www.ncoil.org

NCOILetter

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NCOIL TO CONSIDER MEDICARE SETTLEMENT REFORM

On November 20, in a move toward consistency in the Medicare settlement system, the NCOIL Workers' Compensation Insurance Committee will consider a *Resolution in Support of H.R. 2549, Establishing Workers' Compensation Medicare Secondary Payer Reforms*, regarding federal legislation.

The resolution, which lawmakers will address at the NCOIL Annual Meeting, relates to funds called Medicare Set-Asides (MSAs) that parties in a workers' compensation settlement put aside in order to pay an injured worker's future Medicare benefits. Stakeholders

in the process say that dealing with Medicare can be a difficult—that the Center for Medicare & Medicaid Services (CMS) imposes arbitrary standards and overreaches its authority. They say this delays payment to injured workers, who, under federal law, could be penalized if Medicare pays for expenses that it should not.

H.R. 2549 would establish clear criteria for reviewing and approving MSAs, among other things. Despite bipartisan support, the Congressional Budget Office (CBO) last session could not estimate the bill's fiscal impact on Medicare because, some say, CMS did not provide data CBO needed.

NCOIL

and Rep. Brian Kennedy (RI), the resolution opposes a draft SEC Rule 151A that would designate most, if not all, fixed indexed annuities as securities and would put them under the purview of federal regulators.

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In light of several requests to allow more time for submission of interested-party comments, including a September 7 letter from NCOIL, the SEC last month reopened its comment period on the Rule, which was first closed on September 10.



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