NATIONAL COUNCIL OF INSURANCE LEGISLATORS
JOINT STATE-FEDERAL RELATIONS & INTERNATIONAL INSURANCE ISSUES COMMITTEE
2024 NCOIL SUMMER MEETING – COSTA MESA, CALIFORNIA
JULY 18, 2024
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Joint State-Federal Relations & International Insurance Issues Committee met at The Westin South Coast Plaza Hotel in Costa Mesa, California on Thursday, July 18, 2024 at 10:00 a.m.

Representative Rachel Roberts (KY), Chair of the Committee, presided.

Other members of the Committee present were:

AR Rep. Deborah Ferguson, DDS
IN Rep. Matt Lehman
KY Rep. Michael "Sarge" Pollock
LA Rep. Kyle Green
LA Sen. Kirk Talbot
MO Rep. Bob Titus
MN Sen. Paul Utke
MI Rep. Brenda Carter
MI Sen. Lana Theis
MT Rep. Nelly Nicol
ND Sen. Jerry Klein
NY Asm. Jarett Gandolfo
OH Sen. Bob Hackett
OK Rep. Ellyn Hefner
RI Sen. Roger Picard

Other legislators present were:

CO Sen. Dafna Michaelson Jenet
FL Rep. David Silvers
GA Rep. Joseph Gullett
GA Rep. Martin Momtahan
LA Sen. J Adam Bass
GA Sen. Larry Walker
ID Rep. Rod Furniss
KY Rep. Cherlynn Stevenson
KY Rep. Michael Meredith
LA Rep. Gabe Firment
LA Rep. Jason Hughes
LA Rep. Edmond Jordon
LA Rep. Chance Henry
LA Sen. Bill Wheat
LA Rep. Brian Glorioso
LA Rep. Shaun Mena
LA Rep. Dennis Bamburg
LA Sen. Royce Duplessis
LA Sen. Franklin Foil
MD Sen. Arthur Ellis
MN Sen. Jeff Howe
MS Sen. Brian Rhodes
MS Sen. Joseph Thomas
MS Sen. Walter Michel
NY Asm. Alex Bores
NY Asw. Catalina Cruz
NY Asw. Pam Hunter
OK Rep. Mark Tedford
OK Rep. Forrest Bennett
RI Sen. Hanna Gallo
WI Sen. Mary Felzkowski

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel
Pat Gilbert, Director, Administration & Member Services, NCOIL Support Services, LLC

QUORUM

Upon a Motion made by Sen. Lana Theis (MI) and seconded by Rep. Ellyn Hefner (OK) the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a Motion made by Rep. Bob Titus (MO) and seconded by Rep. Brenda Carter (MI), the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's April 12, 2024 meeting.

UPDATE ON NCOIL MENTAL HEALTH PARITY MODEL ACT

Rep. Roberts stated this is a Model that I am very passionate about and the overall issue of mental health is something that I have been a champion for during my whole time in office. I appreciate everyone that has participated in the robust discussions around this issue. As many of you know, there are currently some very comprehensive and significant federal mental health care regulations that are in the process of being finalized. In fact, earlier this month, the rules were submitted to the Office of Management and Budget and the White House for final review. It's not certain as to when the rules will be released. We keep hearing that they are imminent. But based on what we've seen from the introduction of the rules until now, they will significantly affect mental health parity. Accordingly, I think it's best for us to put the Model on hold until we see the final rules and determine how they will impact the Model. Assuming the rules will be released in advance of our November meeting, I'll plan to have an updated version of the Model ready for discussion at that time. I will note that there is one change to the Model since the last time we discussed it and that is to the last section on page 47 governing coverage of mental health wellness examinations. After several conversations with stakeholders, I have removed the 45-minute timing requirement just to make that section more workable and easier to implement if states should enact it.

Sen. Dafna Michaelson Jenet (CO) stated I want to thank you so much for your continued efforts on this. I'm really excited to see how it's coming along and very excited to hear what the federal government comes up with. Thank you for your continued efforts. I look forward to watching it continue to succeed.

DISCUSSION ON RESOLUTION IN SUPPORT OF ESTABLISHING CATASTROPHE SAVINGS ACCOUNTS

Sen. Walter Michel (MS) stated I'm proud to sponsor this Resolution as I think the concept of catastrophe savings accounts is one that can really help people with planning and recovering from a natural disaster. My home state of Mississippi is one of several states that has enacted legislation setting up a statutory framework for this product and it's been very beneficial for our consumers. As set forth in the Resolution, a catastrophe savings account operates very similarly to a health savings account in that it's a tax advantaged regular savings account or money market account used to assist with post catastrophe losses, or to self-insure all or a portion of one's home.

Kirsten Trusko, Co-founder of Payments as a Lifeline thanked the Committee for the opportunity to speak as well as Kevin McKechnie and the American Bankers Association team for the invitation to join you all today. He asked me to share about what we're calling disaster savings accounts and the fintech, financial technology, that makes this type of account much easier to have, use, and manage for people than ever before for every American who may want one. This is a speed tour through a topic, but I am happy to go into greater detail later on the technology and the deployment in the field. Mr. McKechnie asked I introduce myself and Payments as a Lifeline. If you want to look it up it's PAALPAY.org. It shows a background in fintech and insurance and payments and passion for serving the underbanked. In the U.S. we have 50 to 80 million people without access to traditional bank accounts. It's a challenge and it's especially a challenge in disaster response. What is PAAL and who belongs to it? PAAL is a 501(c)(3) non-profit. It's a coalition of financial and insurance technology firms, or fintech. PAAL was conceived in Hurricane Katrina and born in COVID. In Katrina I was at KPMG leading the only practice of the big four consultants that focused on serving the underbanked. Red Cross called, KPMG did a pro bono project just under $1 million dollars to help convert Red Cross over to these prepaid cards to be able to get money more quickly to people. But flash forward, of the 1.8 million charities in the U.S., only Red Cross uses this and they use a really old form of the technology. By COVID, little had changed in the U.S. in disaster funds delivery. So, we stood up PAAL as a non-profit coalition to proactively reach across public and private sectors with a goal to educate and enable disaster and aide funds to be delivered fast, safe, with automatic accounting and fraud control. The American Bankers Association (ABA) Office of Insurance Advocacy is part of this leadership team of PAAL. PAAL also has a broad advisory counsel comprised of innovative leaders in this space to advise, inform and introduce PAAL to their networks. These advisors span across government, the largest non-government organizations, corporate foundations. And even some of the smallest, most agile non-profits.

What problem is PAAL trying to solve? PAAL's mission is to fill a huge gap in disaster resilience delivering money to the right person at the right time, for the right purpose. PAAL delivers funds, money, from non-profits or from government into the hands of survivors quickly while minimizing fraud. We explain to the funders that money is delivered fast, safe, and with dignity. How can PAAL do all of that? It's using fintech and payment technology that can credential the survivors, track the payments anonymously, anonymized aggregated data, and block unauthorized use. PAAL partners with Visa and other top fintech's in doing this. Has PAAL been deployed to disasters? Yes. PAAL has been on the ground since 2021. Across the U.S. and into Europe. We've spanned from delivering initial funds in minutes for people to get safe. All the way to the long haul 5-to-6-year plans for recovery and rebuild. We've helped in hurricanes, tornadoes, building collapses, fire, COVID, and medical disasters including Maui. Now, we're part of a proof of concept in a low-income county in North Carolina to build disaster financial resilience in advance. We're partnered with the county, with the government, with non-profits and with FEMA. And a key goal here is to build a template. So, this can be repeated again and again across counties and cities and states to build in advance disaster financial resilience. PAAL and its members are part of the FEMA and SBA disaster financial resilience collaborative. As is the ABA.

Let's talk a bit about preparing versus responding to disasters. Let's build the arc before the flood comes. The PAAL technology can do three things to build resilience before disaster. Help recipients to harden their homes to lessen the disaster impact and reduce insurance claim costs. It helps people to escape to safety faster. And number three it speeds survivors on their journey back to a normal life. Knowing PAAL is there and ready to deploy is one element of resilient strategy. A larger effort, the one that takes time to become effective would be to have every American who wants one to open and fund a disaster savings account. This enables Americans to save now for future disruptions instead of waiting for financial disaster and rescue later. Here's a bit about the disaster savings account. After government, the financial systems that know your customer regulatory process is the most powerful credentialing system that we know of. In the successful health savings account (HSA) model, accounts are opened in banks using social security numbers, address and the full universe of government issued IDs to establish that the beneficial owner of the account is who they or their employer say they are. Today tens of millions of Americans, more than a third of all employees have HSA funds in almost 40 million health savings accounts. Which, by definition, is money sitting there waiting to be used for expenses associated with medical care. Contrast this to every other health benefit or insurance scenario where people start the calendar year with zero dollars. But HSA owners have this money in savings set aside in advance.

This is the world we should all want for the property & casualty market. Via disaster savings accounts, Americans would be able to save for future disaster expenses on the same tax advantage basis that HSA owners now have for health care expenses. So, disaster savings accounts as resiliency, a conclusion. Just like preventive care is a qualified HSA expense, making your home more resilient to disasters should be a DSA expense. The proposal ABA has drafted based upon a prior 2014 federal bill specifically embraces pre-event remediation as qualified expenses. The remediation via disaster savings accounts could deliver three key benefits. It could lower claims costs in disasters. It could potentially lower premium costs over time and maybe even attract more insurers into specific states. The sponsor of the bill had said, "I'd never seen a disaster made worse by affected individuals having more money." Adoption of the disaster savings accounts over time means that Americans will be empowered to meet the costs of being prepared before. And to recover from a disaster before it strikes. I urge you to support the Resolution and to support the disaster savings account coalition that the ABA is assembling.

Jason Lane, Senior Vice President and Director of Government Relations for the California Bankers Association thanked the Committee for their time and stated the Association represents the majority of banks doing business in California. We are all aware of the acute regulatory and environmental challenges that issuers have identified as stressors especially in the California market. Before advent of health savings accounts, health insurance struggled in a similar way. There wasn't an insurance product available to people that incentivized savings through tax advantages. Property & casualty markets face the same problem today. If Americans could save tax free for disaster preparation, we might expect to see a number of beneficial market adjustments. For example, to address rising premiums, homeowners could take advantage of the savings offered by higher deductibles. Higher deductibles likely benefit insurers as well. Attracting capital is already hard to find but could be easier if exposures were reduced across personal lines. We would expect savings in reinsurance for that market as well over time. We would also expect to see Americans saving sufficiently to at least pay their deductible through their disaster savings account. Consumers with increasing funds specifically set aside for disaster mitigation pose a very different risk than consumers without such a savings vehicle. Americans should be able to save for their future disaster expenses on the same tax advantage basis that HSA owners have for future medical expenses. Owning and protecting where you live, even if you rent, is as vital as food security. Since disaster savings accounts would be serviced and maintained by banks, those accounts will enjoy all the fraud mitigation and safety and soundness regulation governing existing depository accounts. Just as HSA's are frequently restricted to qualified expenses through merchant and product codes, DSA funds would be subject to similar restrictions in the law and similar technology in the marketplace. The proposal that the ABA has drafted really embraces the concept of pre-event remediation. Adoption of DSA's over time means that Americans will be better prepared to meet the cost of recovering from disaster before it strikes. I urge you to support the resolution and to support the DSA coalition ABA is assembling.

Mr. McKechnie thanked the Committee for introducing and considering the resolution. To wrap up from our side, you heard about pre-funding and becoming more resilient before the storm. You've heard about the good things that happen in the health savings account example where people prepare by definition for medical emergencies they don't know about yet. I was unaware until Ms. Trusko invited me to her group that our predominant methodology for managing disasters in this country is to identify the survivors and wait for non-profit companies to give them money. And that's well and good and stands I suppose in those organizations good favor. But that's not a strategy. This is a strategy. This is something everyone can have access to. This is something the government can put money into if they choose to. It's something people can put money into so that they can help themselves and it's something that your employer could put money into. And that's how health savings accounts work. And that's why we think that harnessing the engine financial services offers Americans to make them more resilient before the disaster will ultimately benefit of all of the states, I think is everybody at this point that's experiencing some kind of deflection in the natural course of convective storms, terrible hurricanes, earthquakes. If you're shaking, on fire, or drowning you're going to need help. And you're going to need help quickly. But if you wanted to get out of the way or make your home or apartment more resilient before any of those things happen, you're going to need a disaster savings account which is why we're very grateful that you support them and we would encourage the states to adopt them as our friends in Alabama, Mississippi, and South Carolina have done.

Rep. Roberts stated as a legislator from Kentucky, and I know this true of all of the legislators here, we've all had our states face natural disasters. And as these continue to happen, I'm very excited about this prospect to help our constituents and the people of our states. Several of us were just in D.C. for the NCOIL Fly-in and we had some really great robust forward conversations around this on the hill as well.

Sen. Larry Walker (GA) stated you compare this to Health Saving Accounts. Health Saving Accounts require that you have a qualified high deductible health insurance plan. Does your legislation propose requiring property insurance with a certain mean level of deductible? Mr. McKechnie said it doesn't require an insurance mandate at all and within the ranks of the HSA industry, I'm Executive Director of the ABA's Health Savings Account Council, there is an industry wide request of Congress to retreat from that mandate because we don't think requiring insurers to alter how they do business is the right way to move forward here. What we think is that people should be saving money for themselves. The insurance industry may start offering products that are more advantageous for both them and for their policyholders. I'll give you an example, if you have the tolerance for it, should you be able to buy a policy that has a $5,000, $10,000, $20,000 deductible. Sure. But I think the market can sort that out. It shouldn't be part of the legislation.

Sen. Walker said I don't want to incentivize people going uninsured and then we have the public having to bail them out just if they have $10,000 in an account. So, the way health savings accounts work is you don't really have to pre-fund it. You can run your money through after you incur the medical expenses. Would this work the same way? And if that's so that seems to kind of defeat the point to me. Mr. McKechnie said there could be flexibility. It could work the way you describe. It could also be because it's contemplated as an employee benefit, your employer could fund it and 14% of all of the contributions to HSAs in 2023 were employer contributions. Would you fund it ahead of time? That wouldn't be prohibited. And so, one idea that emerged is during the underwriting process for a new mortgage, would you want to include full funding for your catastrophe savings account? That would be an option that's open to you. But if you don't have any money to do that, or if you have yet to accumulate the dollars to do that, would you fund recovery or preparation without putting that money first in your DSA? We have the technology in place already so that any contributions can be made HSA qualified. We would contemplate having that technology copy and pasted to the DSA side.

Rep. Michael Meredith (KY) said it would take statutory change at both the federal and state level for the tax advantages of an account like this to work. There's no way under federal mechanisms now to allow for this. It would both have to change at the federal and state level. Mr. McKechnie stated yes, it would have to be a bill in everyone's Legislature and Congress to create the vehicle in the first place.

Sen. Hackett stated I totally support the bill. The only problem that I see with the bill is it has to be a catastrophe. And one of the problems that a lot of insureds are facing is a huge increase in premium rates. And so, if you're in an area where you don't have a catastrophe, you can't really use this type of savings account to help you pay the premium on that. And I realize that we don't want to create a product that high income people can use as a tax break. But on the same token, was there any thought about if you face such an increase in premium over a period of time, and I know there is a way if the companies are pulling out of a state because of catastrophe, there's ways that you can do that. But what about premium, helping consumers, because insurance companies a lot of the times will increase even though they'll have a problem in Florida you'll see problems increased premiums increase across the county, some of the national companies. So, was there ever any thought that maybe these accounts can be used to pay premiums or not without a catastrophe?

Mr. McKechnie stated yes, there is. In the proposal there's things you can use the money on before any kind of disaster strikes and those things do include certain features of being able to manage your insurance costs. So, the cost of the product you're purchasing. And the other way they manage insurance costs is were you to experience or be in a flood, you could purchase something like a new base flood elevation certificate with those dollars and that's specifically written in the proposal. And the way that the IRS code works for HSA's is there is a list of how an HSA works and there's an entirely separate list of what you can spend your money on. And in this proposal that model would be the same with one exception. There would be a list of things pre-event that you could spend your dollars on. Resilient roofs, hardening of more storm-resistant windows and limited insurance products. In HSA's you can for example use those funds to pay for COBRA expenses. And so, we would contemplate if you're like oh wait there's going to be huge spike in Ohio, but there's nothing happening in Ohio. Well, maybe that's something that ought to be qualified. And in your Legislature, you might contemplate that, and we would respect that of the federal level as well.

Rep. Forrest Bennett (OK) said you mentioned about federal and state changes being needed. The way that I think about this is sort of like the 529 education savings plans that we have in Oklahoma that don't necessarily as far as I'm concerned require any federal approval. What's the issue of the federal piece there? Is it portability of the savings account? I see a future where we're able to kind of establish this at the state level without necessarily the federal government. Mr. McKechnie stated you're absolutely right. As a matter of fact, the Resolution starts in that spot which is it would be appropriate and encouraged for all of your states to do what South Carolina, Mississippi, and Alabama have already done. There are however a couple of states that do not have income tax. And so, one of the pressures not to establish one of these things if you're a consumer is what really is the benefit to you? The emphasis on having Congress do it just like in HSA's is federal income taxes are a much larger bite of everybody's income and without a tax discussion and going into that space, all we're suggesting is that governments start incentivizing people to take care of themselves before there's an event. And the best tool you have to do that is to forgive collecting taxes on whatever you can put into the account. And that number just to head off that question, you have to pick a place to start, or they can't score the bill. And I'm sure you're familiar with this in all your legislatures. So, that number is $5,000. You can put $5,000 into your account and that would come off your adjusted gross income. Just like it would in a health savings account environment. And that number is arbitrary. You can engineer it to your hearts content. Whatever the system can bare is whatever the system can bare.

Rep. Roberts stated I think given some of the questions we had today we will bring this back up for further conversation at our Annual Meeting in November.

DISCUSSION ON RECENT FEDERAL RULES ENCROACHING ON THE STATE-BASED SYSTEM OF INSURANCE

Rep. Roberts stated next up on our agenda is a discussion on the recent federal rules encroaching on the state-based system of insurance. We'll start with the tri agency rule which deals with several items including short term limited duration insurance and fixed indemnity insurance. I note that NCOIL did submit a comment letter opposing the rule which you can view on the website and the app. The nature of the opposition from NCOIL is jurisdictional in nature focusing on the fact that regardless of one's views on these types of products they are best regulated at the state level under the state-based system of insurance. With us here today is JP Wieske of the Health Benefits Institute. Mr. Wieske was scheduled to deliver a joint presentation with Lucy Culp of the Leukemia and Lymphoma Society that would serve as somewhat of point, counterpoint but unfortunately, she came down with an illness and could not join us today.

Mr. Wieske stated to start with some background, short term limited duration insurance is something that's existed for quite some time. It was used to fill gaps obviously. For the longest time it was set to be 12 months. States allowed extensions; individual state laws had rules. The short-term limited duration market really functions very similar to what was the individual market pre-Affordable Care Act and pre-HIPAA. There was broad underwriting. In fact, usually a 5 year or a 2 year look back as a piece of that and pre-acts that was applied pretty broadly. There were always some concerns around the way some of the policies were underwritten as a piece of it. But it was really functioning to provide coverage for consumers who were facing a gap, right? I had short-term insurance decades ago when I left college in between looking for a job. Others had it during that time as well when they're looking for those or in between jobs when you had waiting periods, those sorts of things. And so that continued to be sort of the product. We move forward and short term became a little bit different of a market. We're going to talk about fixed indemnity and there's a number of policies that are considered what are called accepted benefits. These are policies that are accepted from federal regulation. Short-term is not that. It's a separate sort of carve out through the ACA as a piece of it and increasingly as the market deteriorated during the later Obama years, there was concern that there was a cannibalization of the individual market into the short-term market. The Obama administration at the very end took action and moved that down to, and just an FYI this is Ms. Culp's slide, they moved that down to a 3-month timeframe. Now, it was never functionally implemented. It came through, it didn't end up being implemented. The Trump administration rescinded the rules and then as you know, moved to the interesting definition of short-term being one year and limited duration being defined as 3 years. So, you essential had a three-year policy. Which again, made these short-term policies very similar to what the individual market looked like pre-ACA with the underwriting, typically no pregnancy coverage, typically no mental health coverage attached to it.

Now, moving onto hospital and fixed indemnity, just to explain what it is. These offer fixed payments based on various benefit triggers. $100, if you go into the hospital. These are not intended to provide full coverage for your medical and will not in fact. I probably shouldn't do this, my Aflac folks will probably come after me later, but it's the Aflac style policies, right? Where you get paid if you have something that happens. Under HIPAA it is an accepted benefit, it's exclusively regulated by the states. It is required to be non-coordinated as a benefit. Initially, the Obama administration during its time had created rules that required you to in fact prove that you had major medical coverage to be allowed to purchase fixed indemnity coverage. The subject of the lawsuit Central United v. Burwell. They lost that case. The case was interesting from the standpoint that it means there was pretty significant limits placed on that and the Biden administration sort of jumped through and just ignored it. States again, are the primary regulator. We are continuing to have calls. NAIC model 170 was adopted when I was still a regulator. So, that gives you an idea of how long ago it was, how long we've been working on Model 171, which is the regulation version of that. So, we've been working on that since then. That's a long time. It's important to note that states have rate informed filing on this. They have licensure of the underlying insurer. They have requirements on the agents. And they actually deal with consumer complaints. So, they have the entire nexus of hospital indemnity from a regulatory standpoint. And again, the concern from the consumer groups is that there have been policies that have moved towards looking a lot like replacing major medical. There was a company offering what you would call RBRVS rates, Medicare rates, a percentage of Medicare rates as reimbursement. That was their quote unquote "fee schedule" and offered policies up to I believe $1 million in coverage. That looks awfully like a major medical policy. So, there were some concerns. In fact, that company has now shifted away from that market and is trying to sell major medical and actually tried to do ACA polices under that restriction. And again, to voice the consumer concern, not all states have taken action. There's a feeling that there are certain states that have not aggressively pursued problematic areas and have not aggressively pursued companies that are in fact marketing and developing these products as ACA replacements. And in a number of cases, there are file and use policies so they're never actually looked at.

I would note the idea of the number of people, will get an idea of the number people subscribed. The NAIC has what's called a market conduct annual statement and they are now doing their first iteration of the other health. And we really have no idea how many people are actually enrolled in these policies on a state-by-state basis. All the accepted benefits. So, for the final rule on short-term limited duration. Now, we're going to the present and we were in the past. Now, we're here. The federal government, this is where the primary regulatory efforts have been inside this rule. They have now again limited the short-term limited duration to 3 months. They've redefined what limited means to allow a 1-month extension, so a 4-month maximum. There are new requirements on the issuer. The issuer in fact is not allowed to issue multiple policies. But that also applies to the quote unquote group and this is where we expect a lawsuit to come eventually. So, if you are XYZ insurance company, XYZ holding company, and you have 12 insurers under your arm, in normal insurance parlance each one of those 12 can issue policies, right? So, they're all separately regulated. Under this rule it says if any one of those 12 sells a short-term limited duration policy to a consumer, in fact XYZ insurance company is barred from selling any more policies. It's important to note they also did not, and I found this interesting, that they did not create a new special enrollment into the individual market once your short-term ends. So, you have a 3-month policy, once that ends, you don't have a special enrollment period (SEP), I don't know what you do, you have to buy another short-term policy if you're in the middle of the year, if you don't have a Special Enrollment Period. Now, that does not apply to the group market. If an individual is in a short-term policy and they move into a group, the SEP applies. SEP, that means that they get access to the employer coverage. The other interesting piece here is the effective date. If the effective is 9/1 which functionally means for you as state legislators, pretty soon you may start hearing that short-term policies may not be available depending on the filing issues inside your state. It is virtually going to be very difficult for insurers to file new versions of these policies to be available 9/1 and given that this butts against the ACA filing deadlines for major medical, it's almost impossible for most states to actually go through this process. So, that's going to be concern from availability at least probably from 9/1 to 1/1 of 2025.

The fixed indemnity rule had a number of big changes proposed. They backed off on almost all of those and actually have merely a new consumer notice. There is a bit of a problem, and again, another filing issue that's effective January 1, 2025. The federal government has decided that you need to in fact send a new notice to every single consumer who has ever purchased a policy and has it in effect. So, if you purchased your policy in 1998, you'll get a new notice indicating that you have a fixed indemnity policy and what it is, and you're required in most cases to file those with the states. So, there is some concern again, from an availability standpoint and a filing standpoint that that's going to be a problem. There is also some concern, and there's actually a lawsuit. The company that was Central United v. Burwell is now Manhattan Life, they changed their name. They're suing over the notice arguing that this notice in fact did not meet the standards. And if you read the notice, it's in fact, at least from our perspective inaccurate. It says, it is not medical insurance. Fixed indemnity is medical insurance. It's just not major medical insurance. So, we agree with the sense it's not ACA qualifying. But it is medical. So, we have concerns with that. And they also proposed a number of changes, and they pontificated a lot inside the rule about what their going to potentially next year. They were looking at a stricter per period basis to basically require you instead of saying you can do $100 for a doctor visit, you can now only do $100 a day. That's it. And you could not have any other sort of variations in it. They also had a broad concern about the IRS tax treatment, they want to treat these as taxable policies. That is if you receive a benefit. So, if your car gets destroyed and you get money for a new car, you don't necessarily have to pay taxes because they're reimbursing you. Same thing here except their proposing that this in fact becomes taxable.

They've also talked about specified disease. Now, specified disease polices are policies like cancer that, you know, provide cash in the case you're diagnosed with some horrific disease.

They highlighted a concern that if they implement the fixed indemnity rules as they proposed that insurance companies will respond by creating more robust specified disease policies and so, that is their concern. They highlighted that. Last, they had a long discussion in and around level funded plans. Level funded plans are self-funded ERISA plans sold to small employers. Those plans typically have what you would call low attachment points. The risk to the employer is low. There's substantial reinsurance. But they're concerned that again, in the small group market especially that it is cannibalizing the small group market and making the ACA small group market much riskier. It's not something that HBI agrees with, but that is certainly what the administration and some of the consumers are concerned with.

We talked briefly about this on short-term limited duration, and I'd be looking to have some discussions with some folks. I'm not aware of lawsuits but of course I wouldn't not necessarily be. But I'm expecting that there will be some lawsuit related to both the timing, the 9/1, looking for a delay because it's impossible. And more importantly the control group. I talked to one lawyer for an insurance department who believed, he gave it an 80% shot that it would be knocked down. That's that a problematic sort of proposal. That there's really almost nothing that applies on a group basis rather than an individual insurer basis. So, that's something. And again, we talked about the fixed indemnity lawsuit potentially on the notice, Manhattan Life. We expect that is coming. I will also note we've heard the administration if you look at their administrative guides, they're expecting to reissue these rules early next year. And as a result, will likely they feel they can go straight to final, so they'll be no opportunity to provide comment. Our concerns, I think in general, we believe at HBI that states are the best place to regulate this. We do think that the way they sort of structured the short-term limited duration is anti-consumer. We would have preferred if you're going to limit the timeframe that you allow consumers to have a policy through the end of year. And we'll line that up with the ACA open enrollment periods. Because there are people who will miss the open enrollment deadlines and will not be able to buy coverage. We do support the idea that none of these products should be sold or marketed as ACA replacements. And we're also concerned on the fixed indemnity side that this is a product that has worked for years for consumers and provides support for the really high deductibles that we're seeing in the market.

Last, from the patient consumer standpoint. I think there is broad concern from the consumer groups that you see some problems in this market. Ms. Culp highlights the secret shopper studies. If you were looking at somebody who is going to a licensed agent, you see less problems. If they're going to a call center, they have seen some problems in enrollment, aggressive tactics, folks who are not in fact licensed. There are some legitimate concerns I would say that from my perspective states are trying to find that. It's harder to deal with. And there are concerns I think inside the market when you look at whether this going to have a negative impact on the ACA market. That's sort of the focus and the reason the Obama administration's taking action. And then, you know, short-term limited duration again, we've talked about this, that there's a feeling that states have a hard time regulating it. I would note and that's partly because they're sold through associations. So, you buy your coverage from associations, it's from another state and they may be licensed in say Missouri but the product actually is sold out of say Kentucky and so, there is a concern there. Last, on fixed indemnity I think there's some broad concerns about the policies getting a little bit more robust and not being replacements. The so-called mini meds which existed pre-ACA.

Rep. Roberts noted that NCOIL does have an existing short-term limited duration insurance Model Law that is scheduled to be considered for readoption next year. So, it will be interesting to see how these rules will impact the model being readopted. Next, we'll focus on the federal trade commission's noncompete rule. Again, I note that NCOIL did submit a comment letter opposing the rule which you can view on the website and the app. And again, the nature of the opposition from NCOIL is jurisdictional in nature focusing on the fact that the rule is an unlawful encroachment on the state-based system of insurance.

Jonathan Harris, Associate Professor of Law at Loyola Law School thanked the Committee for having him and stated my research and my teaching focus on contract law. And the intersections with the workplace and employment law. And I've written quite a bit about restrictions on worker mobility including non-compete agreements over the last years. I'm going to just cover three things here. The first is what does the Federal Trade Commission's banning non-compete say? The second is why did the FTC decide it was necessary to issue this rule? And third, what are the prospects for this rule going forward, as well as other possible bans on non-compete agreements and other restrictions on worker mobility. First what does the rule say? It's pretty simple. It bans all contracts or policies that prohibit a worker from or punish a worker for leaving a job to work for another employer or operate a business. It includes not only formal employees but also other types of workers including independent contractors. So, it's quite expansive in that way. And it has no exceptions except for what it calls senior executives who are employees who earn over $150,000. For those workers, existing non-compete agreements are okay, but they can't be bound by new ones. The rule also includes defacto non-compete agreements. Things like training repayment agreement provisions or TRAP's that employers impose to require workers to repay their training costs if they leave within a certain period of time. Also, non-solicitation agreements. And it says that contracts like that function as non-compete agreements by effectively keeping workers from leaving their jobs or punish workers for leaving their jobs or starting businesses.

Second, why did the FTC decide this rule was necessary? There's been some research over the past several years that's focused more on restrictions on worker mobility generally, especially non-compete agreements. The biggest number that stands out now, about 1 in 5 workers in the United States are bound by non-compete agreements. And while these kinds of agreements began with higher skilled, higher paid employees, they have trickled down over the years to more middle and even low wage workers. Many of you might have heard the story of Jimmy John's requiring its sandwich makers to sign non-compete agreements and that kind of thing has gotten a lot more attention by academics and policymakers. I think it also is based on President Biden's whole of government approach that he's been focusing on the last few years. Issuing executive orders to promote competition and protect US workers. Of course, the name non-compete agreement is based on not competing with another company. So, this rule was based on the FTC's unfair methods of competition authority. And it is using powers that it hasn't exercised since the 60s and early 70s. That brings me to my third point which is what are the prospects for this rule going forward and other efforts to end restrictions on work mobility. There was a preliminary injunction issued against the rule earlier this month in the Northern District of Texas. The Judge there determined that the FTC's rule making authority was only for housekeeping or procedural rules not sweeping substantive rules like this one. There's another case in the Eastern District of Pennsylvania that also challenges the rule. We might end up with a circuit split with the 5th circuit ruling one way and the 3rd circuit ruling another. It could arrive at the doorstep of the Supreme Court. And as we've seen lately the Supreme Court has more of general hostility towards administrative agencies and their expertise than we've seen in the past. As well as it's newly created major questions doctrine that it might use both of those to strike this rule down. One interesting thing though about it is there are some people who have advocated for the rule because it prompts a free market according to them. And for those in favor of getting rid of artificial restraints in markets including labor markets, they saw it as a good thing. There were 26,000 comments that the FTC received for this ruling. They said that 25,000 of those were in favor of it.

In the meantime, while this rule works its way through the courts, there are other agencies that are getting involved in non-competes and other restrictions on worker mobility. Remember the whole of government approach those agencies are doing this. The National Labor Relations Board (NLRB) is one of those. The NLRB general council last year issued a memorandum declaring that it believes most non-compete agreements are in violation of Section 7 of the National Labor Relations Act because they have a tendency to chill worker collective organizing. That is if you raise the consequence of being fired for organizing a union by not only the workers loses their income, but also not being able to get another job, that has a tendency to chill their right to organize and act concertedly. An Administrative Law Judge just a few weeks ago agreed with it and ruled that non-compete agreements and non-solicitation agreements that an employer had were unlawful under the NLRA. So, we'll see where that goes. As it relates to looking forward, it sounds like ALJ's with the NLRB might be more protected than other in-house agency judges. So, there's a more worker friendly board in NLRB right now in place. And that would probably last through any new Trump administration even if that comes to be for a little bit. So, that's one. Another is the Department of Labor has been suing employers for using restrictions on worker mobility including those training repayment agreement provisions, the TRAPS, considering them kickbacks of wages that employees are required to pay their employers.

And then last but not least, of course, states and municipalities are getting into this as well. We've seen a huge focus on non-compete agreements from states in the last few years. Of course, here in California for a long time we've had a ban on enforcement of non-compete agreements. That law was strengthened recently to not only refuse enforcement of non-competes but actually ban them outright. There are 3 other states where there fully banned, those are Oklahoma, North Dakota, and Minnesota. And then another 33 states have restrictions on non-compete agreements. Many of those restrictions include income restrictions. Colorado and D.C. are two examples that prohibit non-competes for workers earning below a certain amount. And then there is also focus on other what they call stay or pay contracts that are contracts that make workers pay to leave whether it's for training costs or any other reason. And the potential of those being used more and more as work arounds to non-compete agreements as those non-competes get more scrutiny, employers have already been talking about other ways that they can keep workers from leaving without using non-competes that they think are more enforceable. So, state attorneys general are looking at that as well. And enforcing their own competition and unfair and deceptive acts and practices laws in this arena.

Wes Bissett, Senior Counsel, Government Affairs for the Independent Insurance Agents and Brokers of America "the Big I" stated I'm going talk a little bit about the FTC non-compete rule, the lens through which we looked at it, and then some related issues. I'd say it's not a classic insurance regulatory issue. I think it's a fascinating case study though on policymaking in 2024. And I imagine there are folks in this room who really like the outcome of the rule. There are probably some who disagree with it. And there are probably some who like the outcome but maybe question the means by which it was implemented. So, we'll talk all about that. To understand where and how independent agents looked at this, I think it's important to understand what an independent insurance agent is. So, unlike other distribution channels in the marketplace, independent agents own their own books of business. They own their own business. That's not always the case obviously with other types of distribution channels. Our members are able to place business with multiple insurance companies. They're not bound to one. And just as background, the independent agent channel based on data last year has placed over 62% of all property & casualty insurance market volume in the US. Significantly high in the commercial lines marketplace, over 87% and our market share is growing in the personal lines market and is over 50% now in the homeowners market. But for an agent, the core asset of their agency, their business, is intangible. So, employment agreements in some cases, non-competes and other cases, other forms of employment agreements are used to oftentimes protect that intangible value. So, the employment agreements are used between the agency itself and the individual agents that work and operate within that agency and they're used to protect the investments, the customer relationships that that agency has, it's goodwill in the community, the confidential knowledge. Just the generally the overall business, or their overall value of that business. One thing I think it's also important to understand too and there's often confusion on this point is people don't always view or define the term non-compete agreement in the way that it's used. Sometimes they think of non-competes as all forms of employment agreements out there. They'll confuse a non-solicitation agreement or non-disclosure agreement with a non-compete. But what we're talking about here is the very narrow non-compete agreement which bars a person from working for a competitor or starting their own business when they leave a job. So, essentially telling someone that they can't work in the profession that they've chosen, in the area that they wish to operate. There are other narrower forms in less obtrusive forms of employment agreements out there including things like non-solicitation agreements and NDA's. So, what we're talking about in this context, or what I sometimes refer to as true non-compete agreements and not these other form of employment agreements that are often more important to insurance agents.

The recent history here, I guess we even go back a little bit further, historically non-compete agreements were regulated exclusively at the state level. But increasingly over time, they've been subject to scrutiny both at the federal and state level. And this is not a particularly partisan issue. Both Democrats and Republicans look at this with scrutiny. Professor Harris talked about how there's been this focus on low wage workers in particular. The Jimmy John's case study. People wondering, have we lost control over non-compete agreements if we're having minimum wage employees who are making sandwiches be compelled and coerced into signing non-compete agreements and not having them be used between people who really have leverage in negotiating power. He talked about the 3 states that since the 1800's had largely banned their use and Minnesota joined those ranks last year. We've seen a flurry though of activity over the last 10 to 12 years as it relates to restrictions on the use of non-competes. There has been sort of salary thresholds that have been established. And anyone working below that salary level a non-compete cannot be used in connection with person. Those levels are sometimes based on annual income, they're sometimes based on hourly income. But we've seen a flurry of activity. There's a ton of bills that were introduced but you can see there's at least 12 states in recent years that have passed something along those lines. And that will no doubt continue. Then in January of last year we saw the FTC propose it's non-compete ban.

When we looked at this, we testified before the FTC on this and then submitted written comments. Our initial reaction, although we didn't belabor the point with the FTC is that they lack the authority to issue this rule. We sort of figured it was a waste of time to argue to the FTC who had just spent a ton of time issuing and developing this rule that they didn't have the authority to do so. So, assuming they were likely to move forward, we focused on 3 primary issues. We focused on what the rules would be. Could non-competes be used in connection with the sale of a business? All four of the states that banned the use of non-competes generally do allow non-competes to be used in connection with the sale of business. That's incredibly important. We also wanted to ensure that other forms of employment agreements would not be affected by the rule. And then lastly, we recommended the addition of an exception for highly paid workers.

And then when the final rule was adopted in April, and this is where the policy making part of this does get interesting, there were 3 commissioners on a 3 to 2 vote who decided to implement this fairly broad and significant rule and ban the use of most non-competes. Professor Harris talked about the nature of the rule itself. It does have vast and significant impacts. We're talking about 30 million workers, 20% of the workforce who have non-competes today. It applies to all types of workers. It's scheduled to take effect less than 2 months from now, September 4th. And after that date most non-competes that are in place will be invalidated. And a business would be violating a law after that if it attempted to enforce that non-compete. For reasons I'll point out here on the next slide, the likely impact though on agents will be lesser due to the revisions that were made by the FTC between the initial rule and the final one. The biggest change they made, this had been part of the initial proposal, but the inclusion of an exemption for the sale of a business. This is critically important for independent agents and for a lot of businesses and it really benefits sellers and buyers. This is different that the Jimmy John's hypothetical, right? If you're selling a business, this is an arm's length negotiated transaction between sophisticated parties. This isn't someone being coerced to sign a non-compete if they want to work for a job. It benefits sellers because the value of the asset that sellers are transferring has greater value if they can enter into a non-compete. It's good for buyers because buyers have a knowledge that if they buy an insurance agency or another business, the person they just bought it from isn't in a couple weeks going to set up shop like right down the street. So, it really benefits both parties. And thankfully, the FTC has created an exemption that in this limited context they don't apply. The original proposal sort of arbitrarily said that if they had a 25% ownership stake that non-competes could still not be used with anyone that had less than that. I think there was some compelling arguments that were made and the FTC decided to eliminate that arbitrary limitation.

Two other key issues that I mentioned, the sort of the three earlier, the FTC makes clear that in general terms other forms of employment agreements are not affected or prohibited by this regulation. The one sort of limitation to that is if you have a form of an employment agreement that's so restrictive that really looks like a duck, quacks like a non-compete agreement, you can't use that. And as the Professor said, it doesn't just exclusively ban non-compete agreements, but things where there would be financial consequences for a person after the fact, right? If there were liquidated damages that you would have to pay to take another job, those are prohibited as well. And he talked about the senior executive exemption that was added. There's an earning test and duties test that's associated with that. It has to be someone in a policymaking position as that term is defined in the rule.

So, what's the fate of the rule? I mean this is the big question, right? We spent about 15 minutes talking about this. It may very well be overturned by the courts. The Professor talked about two cases. I think there's a third now that's been filed. You see there in those bullet points that follow. I think these are just things that courts will be thinking about and that just observers will be thinking about. There's no federal law anywhere that expressly bans the use of non-competes. You know, the FTC asserts it has the authority under the 1914 FTC Act to do this. The impact of this rule is vast. We're talking about 20-25% of the American workforce. The FTC's authority to issue legislative substantive rules whatever you think of this particular one has been questioned. There are many that argue that this type of policymaking should be left to federal and or state policymakers. In this case, there was a great argument to be made given the historical background that it should be state legislators. And the recent Supreme Court activity doesn't favor the FTC. The Chevron doctrine has come and gone since the last significant court case looking at the FTC's authority and we now have the major questions doctrine. It doesn't bode well for the FTC. I think interesting questions for policymakers even at the federal level are what's the precedential impact of this rule making if it stands? If three commissioners of the FTC can get together and decide to do something that's this impactful on the American economy, how can it use that, they might use it in some good ways, they might use it in some bad ways. But what are the limits on that power? How else could it be employed if it's allowed to stand? Just for like government nerds like me, it's kind of an interesting question to think about. What I suspect will happen if I had to look in my crystal ball is this will likely be overturned. And so, what we'll probably see is the states taking on their historic role of regulating and overseeing non-compete agreements. We've seen that flurry of activity. I think if the FTC's role goes away that's certainly likely to pick up. And the two things I would leave you with at the end are employment agreements including non-competes and that especially in that limited case where a business is sold are important business management tools for independent agents. Any legislation that you might work in your states where this issue would come up, we would hope it would allow the use of non-competes at least when a business is being sold and not restrict the reasonable use of other forms of employment agreements like non-solicitation agreements.

Rep. Matt Lehman (IN) stated my question goes to Professor Harris, you said they're looking beyond just these contracts and saying things like incentives that you had to pay back if you leave, etc. I'll use an example of a family member who is a physician, got out of college, was offered a job, urology and surgical, and they paid off $250,000 of his school debt in exchange for a time period that he had to stay at that facility. If he chose to leave, he had to pay that back. He fully agreed to that because they were paying off a quarter million dollars of his school debt. If these get tossed out, now you have the situation if you got people coming out of school, they want that incentive of let me get a job and have somebody else pay off my debt. How is this from an impact of just maybe the economy even in looking at those types of individuals. How would this rule impact that? And would that not create a whole other issue on the fact that many, many, in the medical field are using this as a tool to get out of debt?

Professor Harris stated my first answer would be that this rule from the FTC would not impact the scenario you're describing. That wouldn't be a non-compete agreement. And from what you're describing it doesn't necessarily sound like it would function as one either. Rep. Lehman stated to be clear, he does have a non-compete agreement and that's part of the agreement. Professor Harris said then part of the agreement would not be enforceable unless he's earning more than a $150,000 a year in which case he would be considered a senior executive and the current non-compete would be enforceable. But any new one would not. On the training piece that you mentioned though, there are examples of that from my research more often than not what I've been seeing is that training costs are used to justify contracts to make workers pay in order to leave at amounts that are often unaffordable for them. One example is a PetSmart pet groomer who was earning minimum wage salary and was under a $5,000 training repayment agreement provision that she ended up violating and they sued her for that plus, attorneys fees and court costs. And it ruined her credit score. Research that has been done has shown that most of time employers don't use these training contracts to actually provide useful training skills to the worker. Moreso, they use them as work arounds to traditional non-compete agreements. And I think that's why there is concern about this kind of game of whack-a-mole starting if this rule gets struck down.

Rep. Lehman stated as a law professor do you feel like, to a point Mr. Bissett made, three bureaucratic positions in a regulatory body, can make this decision versus a legislative body. This has a huge impact, should it not be done legislatively? Professor Harris stated that's going to be a decision for the courts to make, I think. I'm not an Administrative Law expert so I'm not going to try to opine on that. What I will say is that it did go through the traditional notice and comment period. They look at the comments for over a year, there were 26,000 comments submitted. So, to the extent that any agency can do things like this, I don't think it's limited to just the FTC in this rule. I think it's a larger question of the role of administrative agency generally.

Sen. Hackett stated I'm a layman, I'm not an attorney. I dealt with this issue many, many times. I was on the board of a hospital. Many times, they had attorneys on retainer. So many times, the big corporations said, in Ohio we really narrowed the definition of what qualified on a non-compete, so, it was really hard. But the attorneys would say for the corporation, "we're on retainer, we know we're going to lose in court. We'll go ahead and lose in court on that." Because the other person, the individual, has to go out and hire an attorney and they basically say to the guy, "you either pay your attorney, or you pay us." You know, "pay us back and don't compete." And so, has that changed? Has the DOL come into the picture? Has that changed where the person who leaves on a non-compete can get their attorney fees paid by the corporation, etc? I know anything can be done in the courts. But that was the issue that we hold over their heads. You could leave us, but you got to go out and hire an attorney. You got to pay the attorney. So, you're going to pay either way. You're either going to not compete against us or you're going to pay your attorney because you'll probably win in court?

Professor Harris stated I think in some ways that was part of the thinking behind this very sweeping blanket ban of non-competes that the FTC ended up enacting because they know that while if many non-competes ended up in court, they might not be enforceable. Most workers aren't going to have the ability or the money, the wherewithal, to hire an attorney and fight it after the fact. And so, they made the decision to do it ahead of time instead to try to get rid of any possible confusion and that kind of deterrent. But I do think that notwithstanding what happens with the FTC rule, there will be continued litigation about this, these kinds of contracts for sure and in state courts more than anywhere. And you're right, many, many state courts end up striking down non-compete agreements in the end. But then again, the question always comes down to that's only if they're challenged in the first place. And even if they are struck down, the rest of that contract might still be enforceable.

Sen. Hackett stated and that's why 25,000 of the 26,000 said that they were for it because they were told ahead of time that you have a non-compete clause, if you try to break it, you'll probably win but it'll cost you money, you're going to lose either way under that scenario. Professor Harris stated I do know the DOL is suing some employers for using what I was talking about before, these training repayment agreement provisions. And, in that case they're obviously suing on behalf of the government. But the workers, they're doing in their interest as well.

Rep. Bennett stated Rep. Lehman said something that I'd love to disagree with about decisions being made by legislators as opposed to bureaucrats and my view is that corporate lobbyists are a lot more effective than those who are advocating for removing non-compete clauses. But if it does fall to legislators to make this decision, I'm fascinated and sad about this Jimmy John's example - in that scenario, if say, you live in the Kansas City Metro area and you leave a Jimmy John's on the Missouri side and go get hired at Subway on the Kansas side, and Jimmy John's tries to sue for non-compete but one of those states doesn't have, non-compete rules and one does. Don't you think then that the legislative solutions needs to come at the federal level as opposed to a state level. Because this patchwork then wouldn't work. I'm just interested in in a little bit more background about this Jimmy John's non-compete. Professor Harris stated first of all my understanding is Jimmy John's no longer uses these. So, after the public scrutiny they got, they quickly got rid of them. But in terms of your question around the state border issue. That was actually something that our Legislature here in California dealt with it in recent legislation because they were concerned about the effectiveness of the state's ban on non-compete agreements given so much happening now with remote work. And companies being located all over the place.

In addition to making non-compete agreements unlawful and banned per se also included more restrictions that make that ban more applicable to both employers and workers that have a nexus with the State of California. But as it relates to your larger point, I think that's a real argument and a real reason for why a federal approach to this in my opinion makes sense. I don't know if we'll get that, but it does seem like having a unified approach is better for workers and frankly for business too. So, they understand the landscape that they're operating. And then one other thing I'll say, I tease my students about this in my employment law class. You know, non-compete agreements are unenforceable for us attorneys and we made it that way. Because we know they're bad for us in many ways. So, I mean they're bad for our clients too. And so, so I think there's some real logic to that.

Mr. Bissett said if I recall correctly, just going back to the Jimmy John's, I don't want to go too deep in the well. But I think that there were maybe in Illinois and some other states, it was deemed unenforceable by courts. I even think in some cases that there was administrative action was taken up against that, so I think there was the right result there. I said that my expectation is that where you'll see most actively will be at the state level. But I do think there's another scenario that can play out. Let's assume for a second this rule is tossed out by the courts. That could create a greater incentive for Congress to act. There has been bipartisan bills that have been introduced but not moved very far in the past. I'm just very sinical about the ability of Congress to pass legislation which is why I thought that most of the activity going forward would be at the state level. But I think for the substantive reasons you outlined, if the FTC rule is thrown out there would perhaps be some momentum on the federal level in a way that we just haven't seen in the past. Remains to be seen.

Rep. Mark Tedford (OK) stated I'm an insurance agency owner as well. Oklahoma is one of the states where non-competes are banned. What we see a lot of agencies use are like these non-solicitation and non-piracy agreements. If you can maybe respond to how the FTC rules would affect either one of those types of agreements. Mr. Bissett responded it would not. Except that there would be an agreement that called itself non-solicitation, but the words were so over the top the text that it actually got to the point where it started to look like a non-compete. But in general terms with a broad brush, the FTC rule only applies to true non-compete agreements and not to other forms of employment agreements. Which was significant in a good way.

Rep. Meredith stated this may be an issue that is more of an issue in the jurisdiction of Kentucky where we're at. But with relation to the TRAP agreement issue that you've talked about extensively, one of the places that I have seen those used tremendously in our state is with law enforcement. Because in Kentucky you have to go through 20 week, 22 week training process and a lot of the larger municipalities and counties use that, because you obviously have to pass that to become a certified officer. And so, they use that for folks who might be on the margins, and they don't think maybe it'll pass those. They get hired by smaller local government unit. They go through that process. And then that larger city or county goes out and poaches those from them. Now, what we have seen effectively most of the time is that larger agency is who is end up reimbursing the smaller agency. But they do usually have a requirement for a 2 to 3 year or payback. Would those be affected in those situations in the same way?

Professor Harris stated I've seen many of these both for law enforcement, fire departments, EMTs, with like you said, oftentimes they can kind of pit municipalities against each other. And I think in a way that's not good. So, in terms of the FTC rule and its effect, first of all these are public employers. But what you're describing I think would be probably not affected for a couple reasons. First of all, if, tell me if I'm wrong, but I've been seeing more states pass laws that require if a municipality is poaching a police officer or someone like that from another municipality, that municipality that poaching municipality has to reimburse or repay those training costs to that. Rep. Meredith stated most of ours that I have seen at the level in Kentucky are done as an agreement between the employee and the city or county that they work for. However, generally the poaching agency is who is doing the reimbursement to the other agency. But the agreement is generally between officer and their agency. Professor Harris stated yes, so I've seen those too. So, the answer would be if that training repayment agreement provision functions as a non-compete in the sense that it keeps the worker from leaving to seek other employment or operate a new business. Then under the rule it could be considered an unlawful non-compete as well.

ADJOURNMENT

Hearing no further business, upon a motion made by Rep. Carter and seconded by Rep. Lehman, the Committee adjourned at 11:30 a.m.