

NATIONAL COUNCIL OF INSURANCE LEGISLATORS  
SPECIAL COMMITTEE ON NATURAL DISASTER RECOVERY  
INTERIM COMMITTEE CONFERENCE CALL  
MAY 1, 2020  
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Special Committee on Natural Disaster Recovery held an interim meeting via conference call on Friday, May 1, 2020 at 1:00 p.m.

Senator Vickie Sawyer of North Carolina, Chair of the Committee, presided.

Other members of the Committees present were:

Rep. Matt Lehman (IN)	Rep. George Keiser (ND)
Rep. Edmond Jordan (LA)	Del. Steve Westfall (WV)

Other legislators present were:

Sen. Bob Hackett (OH)	Rep. Robin Smith (TN)
Sen. Bob Peterson (OH)	

Also in attendance were:

Commissioner Tom Considine, NCOL CEO  
Will Melofchik, NCOIL General Counsel  
Cara Zimmermann, Assistant Director of Administration, NCOIL Support Services, LLC

#### QUORUM

Upon a motion made by Rep. George Keiser (ND), and seconded by Rep. Matt Lehman (IN), NCOIL President, the Committee waived the quorum requirement without objection by way of a voice vote.

#### DISCUSSION ON NCOIL PRIVATE FLOOD INSURANCE MODEL ACT AND PROPOSED STRIKE-ALL AMENDMENT NCOIL PRIVATE PRIMARY RESIDENTIAL FLOOD INSURANCE MODEL ACT

Sen. Vickie Sawyer (NC), Chair of the Committee, thanked everyone for joining particularly given how busy everyone is dealing with the global health crisis. Sen. Sawyer thanked everyone for their work thus far on the development of model legislation that would facilitate the expansion of the private flood insurance market. Sen. Sawyer also noted that since the Committee's last meeting in March in Charlotte she signed on to the NCOIL Private Flood Insurance Model Act (Model) as a primary sponsor.

Sen. Sawyer stated that at the Committee's last meeting in March in Charlotte, the Committee briefly discussed a document that was submitted by a group of interested parties as a proposed strike-all amendment to the Model – titled the Private Primary Residential Flood Insurance Model Act. Sen. Sawyer stated that in terms of process for this call, she would like to go through certain Sections of the strike-all amendment document and first ask for feedback from interested parties that submitted the strike-all document. Then the call will open up for discussion among both legislators and interested parties on the call.

Sen. Sawyer stated that the goal today is to make as much progress on the Model as possible so that when the Committee meets next it can vote on the Model. However, Sen. Sawyer noted that if the Committee does not get through all Sections today, that is fine as the Committee can hold an additional Interim Committee Meeting to do so. Sen. Sawyer also noted that the NCOIL Summer Meeting which was scheduled for the end of July in New Jersey has been postponed, and will not be in Jersey City. NCOIL Officers and staff are currently working through whether the Meeting will be held virtually or in-person at another location in August or September. Before beginning review of the Model, Sen. Sawyer offered Wes Bissett, Senior Counsel, Gov't Affairs at the Independent Insurance Agents & Brokers of America (IIABA/The Big I), and Erin Collins, VP of State Affairs at the National Association of Mutual Insurance Companies (NAMIC), the opportunity to make brief comments on behalf of the industry group that submitted the strike-all document.

Mr. Bissett thanked the Committee for their work thus far in its efforts to create additional consumer choice in the form of private flood insurance. The Big I and every industry constituency organization agrees on the importance of promoting private flood insurance alternatives and for some it has been a goal for a long time. From the Big I's perspective, its members are independent agents so the more markets and options they have the better. Much of the conversation about private flood insurance over the last decade has occurred at the federal level but the proposal submitted by Rep. David Santiago (FL) two years ago jumpstarted the conversation at NCOIL and it posed an important question: are there things that state legislators can do to facilitate the growth of the private flood insurance market?

Given the collective interest in these issues and strong support for private flood insurance among industry, various trade groups convened a few months back and over the course of hours of conversations they talked very seriously about these issues. The group focused on three main topics: if there is going to be a private flood insurance-specific Model, how might it foster and encourage the growth of the private flood insurance market?; are there barriers that exist in existing codes that can be addressed in such a Model?; and are there unique public policy issues that arise in the context of private flood insurance? Mr. Bissett stated that the group started with Rep. Santiago's proposal and ended up sticking pretty close to it. The group also looked at the statute that Rep. Santiago enacted as a legislator in Florida and the strike-all amendment, in some ways, is even closer to that statute. The group also looked at some other proposals including a South Carolina bill that was unanimously passed by the state Senate.

Mr. Bissett stated that the Big I was also having conversations with Rep. Santiago and some of the provisions in the strike-all amendment are the product of those conversations and reflect things that he supported. Mr. Bissett noted that the industry group that submitted the strike all document had a broad array of support and the proposal was developed and supported by the primary insurer community: the American Property Casualty Insurance Association (APCIA) and NAMIC; the reinsurance industry: the Reinsurance Association of America (RAA); the banking industry: the American Bankers Association (ABA); the surplus lines industry: the Wholesale and Specialty Insurance Association (WSIA); and the agent-broker community: the National Association of Professional Insurance Agents (PIA) and the Big I.

That is something of a rarity as the industry typically doesn't agree in such a broad manner. The group respectfully urges the Committee to consider the proposal and to perhaps use it as a starting point for further discussions. The group does not suggest that it is perfect and as evidence of that there are a couple of associations that intend to propose some amendments to the proposal. However, the group does believe it has come up with a document that advances

the objective of growing the private flood insurance market and the document does have broad support. Mr. Bissett thanked the Committee for its consideration.

Ms. Collins thanked the Committee and stated that the proposal represents a long and deliberative collaboration among industry with the objective of agreeing upon what could be a methodology to foster a private flood insurance market. The National Flood Insurance Program (NFIP) has some significant challenges and some of those are such that there are barriers within the Program to having actuarial data recognized and reflected within the rates of the NFIP. Ms. Collins stated that in order to foster a private flood insurance market, the insurance company industry believes strongly that in order to do that, companies starting from a competitive position behind the NFIP because of that actuarial data need some additional rate and form freedom and some additional consideration to make sure that a private flood insurance market can be fostered. Accordingly, the group believes that it has joined together to create a proposal that is measured and fair and has some sensible provisions on how rates have to be filed and must be based on actuarial data, how forms have to be filed and that the coverage of those forms has to at least meet that of the NFIP, and also some provisions regarding notice to consumers. Ms. Collins thanked the Committee and urged it to consider the proposal.

Sen. Sawyer then began a review of the strike-all document. Sen. Sawyer started with Section 4 which deals with rates and noted that the drafting note at the end of that Section states that “a ‘use and file’ rate filing is used in this section. A State may choose to apply a ‘file and use’ standard instead.” However, subsection (a) of Section 4 states that “rates for flood insurance coverage established pursuant to this paragraph are not subject to approval by the [State entity for regulation of insurance].” Sen. Sawyer stated that stating that rates are not subject to approval while also stating that a “use and file” or “file and use” standard may be used seems to conflict since both of those standards do involve some type of approval, just not prior approval, by the state entity for regulation of insurance. Under either a “file & use” or a “use & file” system the state can come back and direct the insurer to cease using those rates. Sen. Sawyer stated that the draft NCOIL Model states that rates are not subject to prior approval and is therefore curious as to why there is a need to alter that language. Sen. Sawyer asked if someone could speak to the reasoning for the proposed change and the apparent conflict.

Lisa Miller, President of Lisa Miller & Associates, thanked Sen. Sawyer for bringing that issue up and stated that in Florida, the companies file essentially an informational filing and they have an open dialogue with the regulator and there is no formal approval. Ms. Miller stated that the point raised by Sen. Sawyer is an important one and agreed that there does seem to be an apparent conflict and the drafting note is not needed.

Ms. Collins stated that the objective of that Section is to make a distinction between the different filing systems used in the states. The objective is to create a system in which the rates are not subject to prior approval. The Section states that rates are not subject to approval based on the drafting group’s interpretation of how the rate filing systems are articulated in state statutes. Ms. Collins stated that she believes nothing in the Section would preclude or override the existing authority of the Insurance Commissioner to ensure that they always have the ability to go back and declare that something is not meeting the standards that are outlined in the Section. The drafting note is simply meant to be educational in making sure that everyone understands the differences between the different rate filing regimes.

Sen. Sawyer then noted that Section 4(a) of the draft NCOIL Model requires an insurer to “attest that rates are based on actuarial data, methodologies, standards and guidelines relating to flood that are not excessive, inadequate, or unfairly discriminatory” but the strike-all document

removes the attestation requirement and simply states that an insurer's rates must meet those standards. Sen. Sawyer asked if someone could speak to the reasoning for the change.

Dennis Burke, VP of State Relations at RAA, stated that he believes the group removed the attestation language because the law already requires that the rates be based upon the actuarial data, methodologies, standards and guidelines. So, the attestation language was really just a form of belts and suspenders and it was thought to be unnecessary. The language didn't add anything because insurers are already required by the law to base their rates on such factors.

Ms. Miller stated that she is thrilled to see that the rate framework that is used in Florida has been working so well. This is all about helping consumers and consumers can always go back to the NFIP if the rates are too expensive. That is the beauty of allowing for no rate regulation other than a light oversight by regulators. It is hard for regulators to grasp that but once you tell them that the consumer can always go back to the NFIP if the rates are too expensive the regulator usually then understands. Ms. Miller stated that she believes the Section looks good as-drafted and the drafting note is not needed.

Rep. George Keiser (ND) stated that it is not surprising that there is broad industry support for Section 4. If all other lines of insurance were included in that Section, there would undoubtedly be broad industry support. With regard to the statement made about the consumer always having the option to go back to the NFIP, that is true but not the reason why there is concern about the rate being charged for any line of insurance. Rather, the concern relates to the solvency of the insurer. An insurer can have a very low premium, much lower than the NFIP, but it does have to be actuarially sound based on a specific business model so if that company goes insolvent there at least was due diligence.

Rep. Keiser stated that he has grave concerns with Section 4 as currently drafted. The McCarran-Ferguson Act set up the position that the states have authority to regulate insurance. Rep. Keiser stated that when we get to things like use and file, file and use, and prior approval, he does not know any area of policy related to insurance at the state level that has been discussed more than what strategy a state will use to regulate rates. If there are other areas where states have had more activity, Rep. Keiser stated that he would like to know what they are. Rep. Keiser stated that states are able to look to other states and agree and disagree on certain ways of doing things. Rep. Keiser stated that he respects Florida and its experience but he also respects the fact that states have made a decision on this issue and NCOIL as an organization that supports McCarran-Ferguson at its heart, should not be saying "however, there is an exception..." Rep. Keiser stated that is wrong and he would be happy to hear industry comment.

Frank O'Brien, VP of State Gov't Relations for APCIA stated that in many respects, he believes that many in the industry would believe that Rep. Keiser's are on-point. One of the things that the industry tried to do when developing the proposal was to apply the appropriate amount of regulatory oversight to the private flood insurance product as it is a relatively new product. One of the other things that the industry tried to do, as reflected in the drafting note, is to recognize that different states have made different policy decisions in terms of what rate filing processes they want to use. The group tried to be respectful of the state-based system of insurance regulation in that regard.

John Ashenfelter, Associate General Counsel at State Farm Insurance Company, stated that Rep. Keiser's comments are well noted particularly with regard to how NCOIL has spoken

favorably on behalf of the McCarran-Ferguson Act many times. One of the things that NCOIL has taken action on as well is the general area of protecting competitive rating which is illustrated by the adoption and re-adoption of the Property/Casualty Insurance Modernization Model Act. The Model was recently re-adopted in July of 2018. Many of the principles in that Model carry over into what is being discussed today with regard to Section 4.

Sen. Sawyer then moved onto Section 5 which deals with forms. Sen. Sawyer noted that in the drafting note of that Section, the second sentence states: "However, States may also wish to consider further streamlining the filing requirements for personal and commercial flood insurance to enhance insurers' ability to develop private flood policies and endorsements that would provide consumers with choices when compared to the protection provided by the National Flood Insurance Program." Sen. Sawyer stated that she understands the concept of that sentence but questions whether it is necessary for inclusion in the Model as it seems more like an editorial comment than statutory language. Sen. Sawyer asked if someone could speak to the reasoning for that language.

Ms. Collins stated that like most drafting notes, she believes the intent of the language was to offer further context and impress upon potential sponsors that while the Section does have a good framework, there are some states that may wish to further streamline the requirements, perhaps to even more so foster a private flood insurance market that would provide more choices. Ms. Collins stated that the language may be a bit editorial but believes that it is useful in that legislators can look at the Model in its entirety as a way to try to grow the ability of their consumers and constituents to have choices in the private flood insurance market. Accordingly, the language is meant to be contextual in nature.

Mr. Burke agreed with Ms. Collins but also noted that the way the group postured the proposal's definition of "primary residential flood insurance" was to ensure that the focus was on the consumer element and not inadvertently imposing on the commercial flood insurance market. As part of the drafting note, a consideration for legislators is whether or not the streamlining of filing for residential flood insurance is easier than that of commercial flood insurance and if it is, should they consider making commercial flood insurance as easy to apply due to the somewhat reduced issues of consumer impact.

Sen. Sawyer then moved the discussion on to Section 7. Sen. Sawyer stated that in the draft NCOIL Model this Section is titled "Duties of Producer" and it sets forth certain disclosures the producer must make to an applicant. The Section also states that it shall be a best practice for producers to maintain in their records, written or electronic evidence, to be signed by the applicant, acknowledging the disclosures were made. This Section has received significant pushback from the producer community despite efforts to scale back the requirements from what were in the original version of the Model. Sen. Sawyer stated that she understands the concerns and appreciates the effort made in submitting new language regarding the requirement to disclose to the applicant that if he or she leaves the NFIP and then returns, they may lose subsidies.

However, Sen. Sawyer stated that she is hopeful that some type of compromise can be arrived at with this Section such that some of the disclosures in the draft Model are included in the final version since the strike-all document deleted the Section in its entirety. Looking at the strike-all document, Sen. Sawyer offered for discussion that Section 7(a) be changed to: "If a consumer currently has NO coverage under the NFIP, before placing the consumer applicant with private flood insurance, the consumer must be informed of the existence of the NFIP."

Section 7(b) would then begin with: “All consumers covered by subsection 7(a) as well as consumers who currently have coverage under the NFIP must be informed” and then the language regarding the requirement to disclose the possible loss of subsidies would be included. Current Section 7(b) would then become Section 7(c). Sen. Sawyer stated that her proposal seems like a logical extension because if a producer is already explaining about the possible loss of NFIP subsidies to someone without NFIP coverage, a discussion surrounding the NFIP in general is likely to occur.

Whether or not the Model should also include the requirements to inform - and maintain written or electronic evidence of - an applicant that a homeowner’s property insurance policy, unless endorsed for flood insurance coverage, does not include coverage for the peril of flood, and that unless flood insurance is purchased, the applicant has declined flood coverage is also up for discussion. Sen. Sawyer asked if anyone, particularly Mr. Bissett, wanted to comment on these issues. Mr. Bissett asked Sen. Sawyer to repeat the proposed language. After Sen. Sawyer repeated it, Mr. Bissett stated that after seeing it in writing the Big I would be happy to review and return with comments.

Before taking further comments on Section 7, Sen. Sawyer raised two more issues. First, the last sentence of Section 7(a) states that “The insurance producer, surplus lines broker, or the insurer upon its election or if there is no producer or broker must provide such notice.” Sen. Sawyer stated that she wonders about the potential for this language to result in some policyholders slipping through the cracks, and there being resultant finger pointing. The insurer makes the notification whenever it elects to do so, but must do so in every instance where no producer is involved; only in instances where a producer is involved and the insurer does not elect does the duty pass to the producer – that seems cumbersome. Also, Section 7(b) states that “This Section only applies if the applicant lives in a Special Flood Hazard Area.” Sen. Sawyer questioned whether that should be changed to apply to all applicants. Sen. Sawyer asked if anyone had any comments on Section 7.

Mr. Bissett stated that with regard to the last point raised by Sen. Sawyer, for any disclosure regarding the potential loss of a subsidy it makes sense to limit that disclosure to anyone who lives in a Special Flood Hazard Area because they are the only people that fall into that universe. Also, in many cases, it might be helpful to draw the attention of the NFIP to someone who does not have flood insurance but at the same time there are a lot of homeowners where flood insurance just is not something that is a necessary consideration.

In response to Mr. Bissett’s last comment, Ms. Miller stated that she thought that part of the goal in addressing the coverage gap with flood insurance is that we want more consumers to have flood insurance whether it is necessary or not. The more chances you have to spread the risk the better. Ms. Miller stated that she has had conversations with individual agents in the industry who stated that they always have the conversation with the consumer applicant regarding flood insurance and the fact that homeowners property insurance, unless endorsed for flood insurance coverage, does not include coverage for flood. Ms. Miller stated that she hopes consumers will continue to be put first and that agents do their due diligence and carry out their responsibility to inform and disclose to their customers what the realities of what life can be without flood insurance.

Mr. Bissett stated that he agrees with a lot, but not all, of what Ms. Miller stated. If we were to talk about an all-perils policy or solutions that truly spread the risk, that can be done but disclosing the NFIP to people who really don’t need flood insurance as the system exists today is not necessarily meaningful. Mr. Bissett also stated that agents are having these

conversations all the time as they want to make sure their clients are taken care of and they have an incentive to sell insurance as that is how they are compensated. Accordingly, any suggestions that agents are trying to “hide the ball” in any manner are off the mark. There is also a difference between what is a good agent practice and whether it needs to be mandated into law. There are lots of things that agents do that occur every day that do not need to be requirements. There are lots of things that citizens as human beings do every day that do not need to be requirements. Just because the Big I is not supporting something to be in statutory law does not mean that it is not a good idea to do in practice.

The Hon. Tom Considine, NCOIL CEO, then provided clarification to Sen. Sawyer’s proposal in Section 7(a). The proposal is not meant to apply to any consumer that walks in looking for some kind of property coverage. Rather, it would only apply to a consumer who is in the market for private flood insurance coverage; although it is still somewhat unclear as to who would provide the notice as noted by Sen. Sawyer previously pointing to the language “the insurance producer, surplus lines broker, or the insurer upon its election or if there is no producer or broker must provide such notice.” Mr. Bissett stated that he appreciated that clarification.

Lauren Pachman, Counsel and Director of Regulatory Affairs at PIA, stated that she is not certain as to PIA’s position on Sen. Sawyer’s proposal in Section 7 as it was not previously circulated but as a general matter, PIA supports the idea of requiring agents to provide information about the NFIP to potential policyholders that are looking for flood coverage. Ms. Pachman stated that PIA believes that its members generally do that anyway so PIA does not believe that it would be burdensome for them to have in writing something that they are supposed to be doing and by and large are already doing.

The Hon. Ted Nickel, former Wisconsin Insurance Commissioner and National Association of Insurance Commissioners (NAIC) President, thanked Sen. Sawyer and the Committee for the work it has done thus far and stated that he agreed with Cmsr. Considine’s clarification of Sen. Sawyer’s proposed language. Cmsr. Nickel stated that he believes the clarification solves some of the issues raised by Mr. Bissett and goes to Ms. Miller’s points about increasing the market for flood insurance. Cmsr. Nickel stated that he looks forward to reviewing the language when released as it sounds like the Section is headed in the right direction. Cmsr. Nickel further stated that the strike-all document contains a recognition of the need of consumers to have flood insurance coverage and information about it. Cmsr. Nickel stated that he therefore thinks that the Committee is getting closer to a good compromise and that it is important to keep the consumer front and center in all discussions going forward.

Sen. Sawyer thanked Cmsr. Nickel and noted that the proposed language for Section 7 will be distributed and posted on the NCOIL website after the call.

Sen. Sawyer then moved onto Section 8 regarding cancellation and nonrenewal notices and stated that she does not have any problems with it. However, Sen. Sawyer stated that she is curious as to why the provisions in Section 8 of the draft NCOIL Model were deleted. Specifically, Section 8(a) states that “With respect to the regulation of flood coverage written in this state by authorized insurers, this section supersedes any other provision in the State Insurance Code in the event of a conflict.” Sen. Sawyer asked if someone could speak to that issue and also the other provisions of Section 8 that are proposed to be deleted.

Ms. Collins stated that, generally speaking, that language was removed to avoid confusion. There was federal activity in 2019 that recently became effective so during the group’s discussions it was felt that the language was unnecessary as the federal action provided

sufficient protection and also outlined how the protections would be perceived and handled in lending institutions. The deletion of the language was not meant to represent opposition but was rather meant to avoid any confusion and conflict. Sen. Sawyer stated that the language in Section 8(a) just seemed to be beneficial to insurers since it would prevent a regulator from taking requirements – likely more burdensome requirements - that are attributable to the property & casualty insurance industry generally and applying those requirements to private flood insurance. Sen. Sawyer asked Ms. Collins if she had any comments to that point. Ms. Collins stated that NAMIC favors things that would enable property & casualty carriers to effectively deliver products so NAMIC believes that the removal of that language is not detrimental to that sentiment and it really is meant to avoid any future confusion between federal and state standards and how they interact.

Sen. Sawyer then moved on to Section 9 of the strike-all document regarding surplus lines placements. Sen. Sawyer stated that she does not see any issue with waiving the diligent search requirement, but offered for discussion whether the requirement should only be waived unless and until the Insurance Commissioner certifies in a bulletin or order that the admitted private flood insurance market is adequate. Sen. Sawyer asked if anyone like to speak to that proposal.

John Meetz, State Relations Manager at WSIA, stated that he would have to see the proposal in writing but does not believe that WSIA would have a problem with it. The intent behind Section 9 is to give the state and the Commissioner the flexibility to determine when an admitted market is available so in principle the proposal sounds like something WSIA would be ok with. Ms. Miller stated that she has had long conversations with colleagues in the surplus lines industry and the “Chinese wall” between the industry and the admitted market should always be alive and well and respected. The surplus lines market always paves the way for new and innovative products and the admitted market always has a strong role in protecting consumers under regulatory control. Ms. Miller stated that it is good to hear that WSIA agrees with the Commissioner overseeing both markets and seeing which ones are going where.

Mr. Meetz then discussed an amendment to the strike all document submitted by WSIA. Mr. Meetz stated that WSIA is supportive of the strike-all document but upon review, it was discovered that some language in Sections 4 and 5 could potentially be confusing as potentially applying to surplus lines placements. Accordingly, WSIA has proposed an amendment to Section 9 that would make it clear that Sections 4 and 5 do not apply to surplus lines. That does not represent a change in public policy in the U.S. with regards to flood insurance or any other line of insurance for that matter. It is just a clarification that the forms and rates are not applicable to surplus lines and that is a longstanding principle that allows the surplus lines industry to do its job. It is WSIA’s understanding that the industry group that submitted the strike-all document has no issues with this proposed amendment.

Sen. Sawyer then moved on to Section 10 and raised two issues. First, Section 10(b) states that “All rates, supplementary rate information, and any supporting information filed under this Act shall be open to public inspection upon disposition, except information marked confidential, Trade Secret, or proprietary by the insurer or filer in accordance with (statutory reference for confidentiality requirements).” In order to guard against an insurer simply marking every page confidential, Sen. Sawyer offered for comment whether language should be included stating that the Commissioner must accept the information as confidential in order for it to be protected from public inspection.

Next, with regard to the NAMIC requested drafting note at the end of the Section, Sen. Sawyer stated that she understands the intent but does not see anything in the Model that would prevent an insurer from doing what is being asked for in the drafting note. Accordingly, Sen. Sawyer offered for discussion whether the drafting note is necessary. Also, Sen. Sawyer asked whether the fact that it is marked as specific to NAMIC means there is no consensus around the benefit of the note. Sen. Sawyer asked if someone could speak to those issues.

Ms. Collins stated that the drafting note is labeled as “NAMIC requested” because there was not consensus about the inclusion of it. Ms. Collins stated that she does not believe anyone in the industry group opposed the substance of the drafting note but rather some questioned whether it was necessary. NAMIC believes that the peril of flood is unique and it is therefore even more important for insurance companies to have underwriting freedom and to be able to examine claims history and loss experience particular to this peril. Ms. Collins stated that while she agrees with Sen. Sawyer’s statement that there is nothing in the Model to preclude that, there may be something in existing state law to preclude it. Therefore, the suggested drafting note is meant to be a declaratory statement that legislators may wish to take account for in encouraging a flood insurance market.

Mr. Burke confirmed Ms. Collins’ statement that there was not opposition to the idea of the drafting note. The intent was to try and draft a fair and impartial proposal and the group wanted to reduce the amount of conflict with the original Model as much as possible.

With regard to the issue of confidentiality raised by Sen. Sawyer, Mr. Ashenfelter stated that when insurers assert confidentiality, trade secret, or proprietary, they have to make sure that they meet the qualifications and prerequisites for those protections or else they will lose such protections. Insurers are therefore cautious about how they mark things in that regard.

Jeff Klein of McIntyre-Lemon stated that McIntyre-Lemon represents the ABA and its subsidiary the Office of Insurance Advocacy (OIA) and noted that they have submitted an amendment which could be inserted in either Section 5 or 10 of the strike-all document. The amendment deals with the fact that the federal banking agencies impose a good degree of due diligence on financial institutions to determine whether a policy meets or does not meet the federal flood requirements. The contours of what is an acceptable private flood program are outlined in the rules that have been implemented pursuant to Biggert-Waters. Banks do not have the underwriting expertise that insurance carriers do and it would substantially improve bank’s client’s exposure if a provision could be inserted in the Model that states “An insurer may certify that the insurance policy meets the definition of ‘private flood insurance,’ as specified in 42 U.S.C. § 4012a(b)(7) and applicable federal regulations.” To the extent that a lender would have to do whatever due diligence it did around this process by relying on the carrier’s own expertise, this language would substantially lessen the compliance burden on the banks. Mr. Klein thanked the Committee for its consideration. Mr. Burke stated that the industry drafting group does not have any objection to the amendment referenced by Mr. Klein.

Rep. Matt Lehman (IN), NCOIL President, thanked Sen. Sawyer for setting this meeting up and stated that he likes some of the changes to the Model that have been suggested. Rep. Lehman stated that he looks forward to the Committee’s next meeting during which the Model can be further discussed.

## ADJOURNMENT

There being no further business, the Committee adjourned at 2:00 p.m.