



NAIC Report – 2019 Fall National Meeting

December 26, 2019

The National Association of Insurance Commissioners (NAIC) held its 2019 Fall National Meeting from December 7 through 10 in Austin, Texas. Notable developments from the Fall National Meeting include:

- Bermuda, Japan and Switzerland were approved as Reciprocal Jurisdictions for purposes of the revised *Credit for Reinsurance Model Law and Regulation*, and the NAIC took additional steps to implement the reinsurance collateral provisions of the US-EU/UK Covered Agreements.
- Innovation and technology in the insurance industry continues to garner significant attention from regulators, including the use of data, predictive analytics and artificial intelligence, as well as the need to modernize existing regulations.
- The Privacy Protections (D) Working Group held its first meeting and began its work to review and consider updates to state privacy laws and regulations.
- State insurance regulators and industry representatives discussed international regulatory developments, including IAIS adoption of ComFrame and the insurance capital standard (ICS), as well as field testing of the US Global Capital Calculation.

The following are some highlights from the Fall National Meeting. We do not cover every meeting in this report; rather, we comment on select noteworthy developments and matters of interest to our clients.

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A. NAIC Continues Focus on Innovation and Technology

1. Regulators Continue Work to Facilitate Review of Predictive Models

The **Big Data (EX) Working Group** continued its work on the use of data and predictive analytics in fraud detection and claims settlements, discussing whether regulators have sufficient tools under existing law to appropriately regulate the use of big data for these purposes. Commissioner Ommen (IA), Chair of the Working Group, indicated that he thought Iowa had the necessary authority through its unfair trade practices and unfair claims settlement laws and regulations. Other states, however, voiced concern over the adequacy of existing tools. Angie Nelson (MO) expressed concern about the use of third-party service providers for providing data and predictive models, the ability of regulators to gain access to the data underlying the models, and the ability of consumers to know about and correct errors in data concerning them. Other regulators expressed concern that a lot of this activity is already occurring but without regulators knowing about it or having oversight. Commissioner Ommen noted that some states may be able to regulate service providers selling predictive models for use in fraud and claims as part of their oversight of third-party administrators. Commissioner Ommen further noted that he believes insurers need to "own" any services performed by a third party on their behalf, and that regulators would have access to the underlying data through the insurer.

Birny Birnbaum (Center for Economic Justice) commented that there is a lack of transparency regarding how models are developed and whether use of these models has the same effect as if the insurer were using prohibited factors. He also noted that there is very little disclosure to consumers on the use of algorithms and predictive models for these purposes and that consumers should have rights with respect to this data similar to the rights afforded to consumers under the Federal Fair Credit Reporting Act. Regulators from both Rhode Island and Connecticut echoed concerns about insufficient transparency and tools around the use of algorithms and predictive models by insurers. Closing out the discussion, Commissioner Ommen urged regulators to share any actual challenges they have come across when trying to assess the use of predictive models as part of their examinations. He further noted that the Working Group will work to identify next steps, including potentially the development of consumer protections regarding the use of algorithms and predictive models in insurance that are similar to the Fair Credit Reporting Act.

The Working Group also heard a report from the **Casualty Actuarial and Statistical (C) Task Force**, which is in the process of developing a white paper on best practices for the review of predictive analytics models in private passenger automobile and homeowner's insurance rating plans. The purpose of the white paper is to set out best practices for the review of predictive models, which it does by listing approximately 80 separate "information elements" that "a regulator may need to review," ranked according to importance to the review. A draft of the white paper was previously exposed and comments received, and the Working Group is now in the process of reviewing those comments and making changes to the draft white paper. The Task Force has indicated that its next draft will be close to final, but is considering field testing the guidelines. The Task Force has also urged that filers begin adopting some of the best practices identified in the white paper.

Finally, the **Big Data (EX) Working Group** heard a presentation from Birny Birnbaum on Insurance Advisory Organization licensing in the context of predictive algorithms and models. Mr. Birnbaum provided an overview of the history of insurance advisory organizations, describing licensing requirements as a regulatory mechanism designed to allow collective action amongst insurers, but only under regulatory supervision that can protect against potential anti-trust concerns. He noted that today there are a number of entities that engage in advisory activities around the development of algorithms and models used for pricing, but that these are not licensed despite engaging in the exact same activity as licensed advisory organizations. In response to the presentation, Commissioner Ommen noted that the Working Group would consider this issue, and thanked Mr. Birnbaum for bringing it to their attention.

2. NAIC to Revise Model Anti-Rebating Law

During the **Innovation and Technology (EX) Task Force** meeting, the Task Force continued its work to review anti-rebating restrictions. The initiative was prompted by complaints from insurers, brokers and InsurTech firms regarding the inconsistent application of the anti-rebating provisions in the *NAIC Model Unfair Trade Practice Act* (UTPA) and that some state interpretations stifle uses of new technology for loss prevention or other activity beneficial to consumers. At the Summer National Meeting, the Task Force submitted a request to the NAIC **Executive (EX) Committee** for approval to amend and update the anti-rebating provisions of the UTPA. Simultaneously, Task Force Chair Jon Godfread (ND) circulated a proposed North Dakota bulletin on rebating that would authorize insurers and agents to offer value-added products, services or programs in connection with insurance at no additional charge or at a discounted price, subject to certain conditions. The goal of introducing the draft bulletin was to begin considering issues around revisiting the anti-rebating laws and be able to develop an interim solution while waiting to see if the Executive Committee would approve the Task Force's request to amend the UTPA.

The **Executive (EX) Committee** has since approved the Task Force's request. During the Fall National Meeting, the Task Force raised the question of whether to continue drafting a model bulletin based on the North Dakota draft that could be used or adopted by the states in parallel with amending the UTPA. A number of regulators expressed concern with this approach, noting that it could lead to continued variation in adoption and application amongst the states. In response to these comments, the Task Force decided to abandon development of a draft bulletin based on the North Dakota draft, and to instead focus its efforts on amending the UTPA. The Task Force will begin forming a drafting group to begin developing amendments to the UTPA. The drafting group will work through a public committee process.

3. Review of NAIC Privacy Model Laws Kicks Off

The NAIC new **Privacy Protections (D) Working Group**, chaired by Cynthia Amann (MO), held its first meeting in Austin before a standing-room-only crowd. The Working Group was formed on October 1, 2019, under the **Market Regulation and Consumer Affairs (D) Committee** on a referral from the **Innovation and Technology (EX) Task Force**. The Working Group is charged with reviewing state privacy laws and regulations—including review of the NAIC's *Insurance Information & Privacy Protection Model Act*, the *Privacy of Consumer Financial & Health Information Regulation*—and to make recommendations regarding any updates or modifications by the 2020 Summer National Meeting in Minneapolis. The Working Group currently only has six members, but more are expected to join. The Working Group will meet on a regular basis, via conference call, beginning in 2020.

The NAIC's Jennifer McAdam provided an overview of existing NAIC privacy model acts, as well as existing laws, regulations and legislation around privacy. Her presentation included discussion of the influential and stringent California Consumer Privacy Act (CCPA) (which goes into effect on January 1, 2020) and the European General Data Protection Regulation (GDPR). Ms. McAdam noted that 17 states have adopted the *NAIC Insurance Information and Privacy Protection Model Act* and that every state has adopted some version of the *NAIC Privacy of Consumer Financial and Health Information Regulation*. The *Privacy of Consumer Financial and Health Information Regulation* provided the model for state adoptions of insurance sector laws necessary to comply with the federal Gramm-Leach-Bliley Act, which has to now been the primary privacy regime for the financial sector. Any changes made to the *Privacy of Consumer Financial and Health Information Regulation*, to the extent adopted by states, could have significant ripple effects across the privacy compliance landscape.

4. Principles for the Use of Artificial Intelligence in Insurance Coming Together Quickly

At only its second meeting, the **Artificial Intelligence (EX) Working Group** is already making strides on developing principles for the use of Artificial Intelligence (AI) in insurance. The Working Group was formed under the **Innovation and Technology (EX) Task Force** during the Summer National Meeting in New York, and is also chaired by Commissioner Godfread (ND). The Working Group is charged with studying the development of AI and its use in the insurance sector, including its impact on consumer protection, privacy and market dynamics. It is tasked with developing regulatory guidance around the use of AI and making other recommendations by the 2020 Summer National Meeting.

As its first task, the Working Group is adapting for the insurance market existing principles developed by the [Organization for Economic Cooperation and Development \(OECD\) for the development and adoption of AI](#). Prior to the meeting, the Working Group solicited comments from regulators and interested parties on the OECD principles and how they might best be adopted for insurance. North Dakota took on the task of reviewing comments received and proposing [a draft of adapted principles](#) for consideration by the Working Group. At the Fall National Meeting, the Working Group discussed comments to North Dakota's draft, with regulators expressing broad approval for the draft principles. The importance of transparency was an emphasis of the discussion, including the idea that data used by AI systems would be required to be retained and produced on demand for each jurisdiction, and that regulators would expect companies building and using AI tools to be able to articulate the purpose of the AI tool, what the outcome of using the tool is supposed to be and how they will address any concerns that may develop around the use of the tool. The importance of transparency to consumers was also discussed, with regulators agreeing that the draft principles were intended to promote transparency to consumers as well as transparency to regulators.

The Working Group adopted North Dakota's draft as its own and exposed the draft for comments, with comments due by January 17, 2020. The Working Group plans to hold an additional conference call to discuss comments received on the draft ahead of the 2020 Spring National Meeting in Phoenix, where it hopes to pass the draft up to the **Innovation and Technology (EX) Task Force** for consideration and adoption.

B. Regulation of Financial Condition

1. NAIC Approves Bermuda, Japan and Switzerland as Reciprocal Jurisdictions

The **Reinsurance (E) Task Force** has approved Bermuda, Japan and Switzerland as Reciprocal Jurisdictions under the recently adopted revisions to the *Credit for Reinsurance Model Law and Regulation*. This means that, once the revised Credit for Reinsurance Models are adopted by a state and the state adopts the NAIC list of Reciprocal Jurisdictions, insurers domiciled in that state may receive full financial statement credit for reinsurance ceded to qualified reinsurers that are licensed to write reinsurance by, and have their head office in or are domiciled in, Bermuda, Japan or Switzerland without the reinsurer posting any collateral. Under the revised *Credit for Reinsurance Model Regulation*, a commissioner is required to consider the NAIC list of Reciprocal Jurisdictions, but is not required to accept as a Reciprocal Jurisdiction any non-US jurisdiction that has not entered into a covered agreement with the US. Effectively, this approval places reinsurers domiciled in Bermuda, Japan and Switzerland on equal footing with reinsurers domiciled in the European Union (including the United Kingdom if it ultimately leaves the EU), which receive the benefits of the covered agreements between the United States and the EU and UK. *For background on the EU/UK covered agreements, their reinsurance collateral provisions, and their genesis, see this [Eversheds Sutherland Legal Alert](#).*

The NAIC also approved the revised *Credit for Reinsurance Model Law and Regulation* as state accreditation standards, effective September 1, 2022, with enforcement beginning January 1, 2023. Following extensive discussion, the revised Credit for Reinsurance Models were adopted as state accreditation standards on an expedited basis in an attempt to avoid federal preemption of any state reinsurance collateral requirements that are inconsistent with the EU/UK covered agreements. Under the EU/UK covered agreements, the Federal Insurance Office Director is to begin evaluating US state insurance laws and regulations for possible preemption by March 1, 2021, prioritizing those states with the highest volume of gross ceded reinsurance, and complete any necessary preemption determinations by September 1, 2022. Now, it will fall to the states to adopt the revised *Credit for Reinsurance Model Law and Regulation* on the required time line.

In Austin, the Task Force also made other strides in implementing the revised *Credit for Reinsurance Model Law and Regulation*. The Task Force exposed a [Blanks Proposal](#) that incorporates the revised *Credit for Reinsurance Model Law and Regulation* into the Annual Reporting Blanks and Instructions and adopted revisions to the Process for Evaluating Qualified and Reciprocal Jurisdictions.

2. Restructuring Mechanisms Working Group to Develop White Paper on Insurance Business Transfer and Division Laws

The **Restructuring Mechanisms (E) Working Group** was formed with a charge to evaluate and prepare a white paper that summarizes the existing state restructuring statutes and addresses the perceived need for these statutes, the issues the

statutes are designed to remedy, alternatives that insurers are currently employing to achieve similar results and the legal issues posed by one state's approval order affecting the policyholders of other states. Consideration of the impact that a restructuring might have on guaranty association protection for policyholders was added to the 2020 charges, and that the white paper will be completed by the 2020 Summer National Meeting. The Working Group has been gathering information in advance of drafting the white paper.

The other 2020 charges of the Working Group are to (1) identify and address legal issues associated with restructuring using a protected cell (to complete by the 2020 Summer National Meeting), and (2) consider requesting approval from the **Executive (EX) Committee** on developing changes to specific NAIC models based on the development of the white paper (to complete by the Fall 2020 National Meeting).

The Working Group was formed in response to the enactment of state laws establishing procedures for insurance business transfers (IBTs) or corporate divisions of insurance companies into two or more successor companies (Divisions). At last count, IBT laws have been enacted in Arizona, Oklahoma, Rhode Island and Vermont. Division laws have been enacted in Arizona, Connecticut, Georgia, Illinois, Iowa and Michigan (and are similar to an older Pennsylvania law applicable to business corporations generally). Although no US IBTs or Divisions have yet been completed, on November 26, 2019, Oklahoma Insurance Commissioner Glen Mulready became the first US insurance commissioner to approve an IBT to be submitted for final court approval.

At the meeting, the Working Group discussed using previous NAIC white papers (a 1997 Liability-Based Restructuring White Paper and a 2010 Alternative Mechanisms for Troubled Companies White Paper) as a starting point for the Working Group's white paper, but noted that the Working Group's white paper would focus on non-troubled companies.

In Austin, the Working Group heard from representatives from the American Council of Life Insurers (ACLI), the National Conference of Insurance Guaranty Funds (NCIGF), the Center for Economic Justice (CEJ) and the American Property Casualty Insurance Association (APCIA). The discussion touched on the differences between Life and P&C in the IBT and Division context, with the Working Group receiving final restructuring principles from the ACLI and the APCIA. The ACLI has continued to push for its principles for IBT and Division legislation, which set out the stakeholders that should receive notice, the findings that an insurance commissioner must make and factors it must consider when reviewing a proposed IBT or Division, the use of independent experts, and court review and approval. A major point of discussion at the meeting was the use of independent experts by insurance commissioners in their review of IBTs and Divisions, which is generally at the discretion of the insurance commissioner in existing legislation, but would be mandatory under the ACLI principles. Some regulators (notably Kathy Belfi of the Connecticut Insurance Department) took offense at the notion that a domestic insurance regulator could not be relied upon as a set of "outside eyes" to review a proposed transaction, and therefore must be compelled to hire an independent expert. The CEJ advocated for a policyholder representative during regulatory approval of restructuring transactions. The Working Group also heard a presentation from the NCIGF, and the NCIGF stated its position that IBTs and Divisions should neither result in loss of guaranty fund coverage by policyholders nor create guaranty fund coverage for individual policyholders when none already exists, and noted that nationwide amendments to guaranty fund laws may be required to ensure that guaranty fund coverage would remain unchanged as a result of IBTs and Divisions.

The Working Group also heard a report from the restructuring mechanisms subgroup of the Working Group, which previously distributed a survey to the various states to gather information on best practices that will be used to develop more formalized practices for restructuring transactions. The survey results have been compiled and will be released for discussion in January 2020.

3. Updates on International Regulatory Developments

The **International Insurance Relations (G) Committee** received updates from Committee Chair Gary Anderson (MA) about actions taken by the International Association of Insurance Supervisors (IAIS), including the adoption of the Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame), the insurance capital standard (ICS) version 2.0 and the Holistic Framework for Systemic Risk (Holistic Framework), as well as updates on other international activities.

a. Update on ComFrame and ICS

In November of this year, the IAIS adopted ComFrame, which is a set of international supervisory requirements focusing on the effective group-wide supervision of internationally active insurance groups (IAIGs). The IAIS is developing materials to help members understand expectations set by ComFrame. Due to the adoption of ComFrame, the NAIC **ComFrame Development and Analysis (G) Working Group** will be dissolved and the **Group Solvency Issues (E) Working Group** has been charged with "assessing ComFrame and making recommendations on its implementation in a manner appropriate for the U.S." This working group's first task will be to analyze gaps between the ComFrame requirements and existing US insurance regulatory requirements. During the Working Group's meeting in Austin, a number of industry representatives asked that regulators keep in mind the "overarching concept" in ComFrame that Insurance Core Principles (ICP) should be implemented and applied in a "proportionate manner," particularly in light of amendments to the *NAIC Model Insurance Holding Company System Regulatory Act* that the NAIC adopted in 2014 to address group-wide supervision of IAIGs. In

addition, the **Group Capital Calculation (E) Working Group** has been tasked with liaising, as necessary, with the International Insurance Relations (G) Committee on international group capital developments and considering input from US state insurance regulators participating at the IAIS throughout the ICS version 2.0 monitoring period.

ICS version 2.0, which is included in ComFrame and is a risk-based, group-wide global insurance capital standard for IAIGs, will be conducted in two phases: (1) a five-year “monitoring period” beginning in January 2020, during which ICS version 2.0 will be used only for confidential reporting to the group-wide supervisor and discussion in supervisory colleges, and not as a basis to trigger supervisory action; and (2) implementation of ICS version 2.0 as a group-wide prescribed capital requirement. The IAIS has released [guidance and documentation about the five-year monitoring period](#). Commissioner Anderson highlighted that the documentation includes a definition of “comparable outcomes” and an overarching approach and time line for the development of criteria to assess whether the Aggregation Method (AM), which is being developed by the US and other interested jurisdictions and utilizes existing regulatory capital calculations for all entities within the holding company structure, provides comparable outcomes to ICS version 2.0. Commissioner Anderson further clarified that, while US regulators will not be implementing ICS version 2.0, they remain committed to an approach to group capital analysis that can be viewed as comparable to the outcomes achieved by ICS version 2.0. Developing and performing the comparability assessment of the AM will be a priority for the NAIC in 2020.

In addition to comparability, the work plan for the ICS monitoring period also addresses how GAAP Plus and other methods of calculation of the ICS capital requirement, including internal models, will be assessed and whether they will ultimately be included as part of ICS version 2.0. The IAIS plans to issue a consultation paper in early July 2020 that addresses the high-level principles to be used for the comparability assessment.

b. Update on the Holistic Framework

The IAIS also adopted the Holistic Framework in November, with implementation set for January 2020. The Holistic Framework is intended to assess and mitigate systemic risk in the insurance sector through a sector-wide, activities-based approach, rather than through the entity-based approach that results in additional policy measures being imposed on only a relatively small group of insurers identified as global systemically important insurers (G-SII). Implementation of the Holistic Framework is expected to provide an enhanced basis for assessing and mitigating systemic risk in the insurance sector, and to eliminate the need for identification of insurers as G-SIIs.

The Holistic Framework consists of an enhanced set of supervisory policy measures and powers of intervention, an annual IAIS global monitoring exercise (GME), and a robust implementation assessment. For the GME, the IAIS will undertake an annual process to assess insurance market trends and developments and determine any potential buildup of systemic risk in the global insurance sector. This will include an assessment of potential systemic risk arising from sector-wide trends with regard to specific activities and disclosures, and the possible concentration of systemic risk at an individual insurer level arising from these activities and exposures using an updated version of the former G-SII assessment methodology. The GME will also include an assessment of potential systemic risk in the global insurance sector, at both the sector-wide and individual insurer levels, and appropriate supervisory responses to systemic risk, if it arises. The IAIS will share the outcomes of the GME with participating insurers, IAIS members, the Financial Stability Board (FSB) and the general public.

Another key element of the Holistic Framework is the IAIS’s implementation assessment of the latest supervisory material. The IAIS’s implementation assessment approach builds on existing methodologies for assessing implementation of ICPs and ComFrame, while taking into account the specific nature of the Holistic Framework as a subset of ICP and ComFrame material that is relevant to the assessment and mitigation of systemic risk. These assessments will proceed in phases, beginning with a baseline assessment in 2020 and moving toward jurisdictional assessments in 2021, and the IAIS is expected to share the outcomes of the Holistic Framework implementation assessments with the FSB and general public. The FSB is expected to make a determination as to whether, in light of the Holistic Framework, G-SII designations are no longer needed in November 2020.

Further, as part of its 2020–2024 Strategic Plan, the IAIS plans to develop supporting materials for its members more broadly, including application papers on a variety of topics. The IAIS is also continuing its implementation assessment activities through peer review of ICPs on a thematic basis.

c. Other International Updates

The International Insurance Relations (G) Committee also received a report on other international activities from Commissioner Andrew Mais (CT). Most notably, in October 2019, the NAIC and Japanese insurance regulators met to discuss regulatory issues of mutual concern, including Japan’s desire to become a reciprocal jurisdiction under the revisions to the *Credit for Reinsurance Model Law and Regulation* (discussed in Section 1 above). Additionally, the EU-US Insurance Dialogue Project is continuing its work on cyber insurance and big data, and the project is expecting to hold a public event in March 2020. The NAIC has also been working with the Association of Latin American Supervisors as part of their effort to share best practices with other insurance supervisors.

The Committee also received an update on the International Monetary Fund’s (IMF) third Financial Sector Assessment Program (FSAP) of the US financial regulatory system in 2019–20. With the US Treasury Department Office of International Finance Markets serving as overall coordinator of this FSAP, meetings took place in the fall of 2019, and additional meetings are scheduled for February/March 2020. The IMF is expected to publish a technical note on insurance by the summer of 2020.

Finally, the Committee intends to schedule a meeting in mid-January 2020 to approve the submission of comments to the IAIS draft Application Paper on [Liquidity Risk Management](#), which was issued for public consultation on November 19, 2019, with comments due by January 20, 2020.

4. Update on Macroprudential Surveillance Initiatives

The NAIC’s work on macroprudential surveillance is overseen by the **Financial Stability (EX) Task Fork**, which received updates on the activities of the Financial Stability Oversight Council (FSOC) and NAIC stress test initiatives.

a. Report on FSOC Developments

Superintendent Eric Cioppa (ME), the NAIC President, reported that on December 4, 2019, FSOC approved final interpretive guidance, which describes the approach FSOC intends to take to identify and address potential risks to US financial stability using an activities-based approach, and enhancing the analytical rigor and transparency in the processes FSOC intends to follow if it considers making a determination to subject a nonbank financial company to supervision by the Board of Governors of the Federal Reserve System.

In addition, Superintendent Cioppa noted that FSOC has adopted its annual report. This year, the report did not contain any specific recommendations related to the insurance sector. However, the following risks identified by FSOC should be noted:

- **Cyber threats.** FSOC has recommended that measures be taken to enhance regulatory supervision over third-party service providers and through coordination and information sharing among the private sector and financial regulators after a cyber-incident. FSOC also has noted the potential vulnerabilities at large, interconnected financial institutions and has recommended regulations for such institutions to have sufficient capital and liquidity.
- **Transition from LIBOR to other alternative reference rates.** The NAIC’s Life Actuarial Task Force is looking into addressing the use of LIBOR and some of the reserving factors. Other NAIC groups are also looking into this to make sure insurers are aware of, and making appropriate plans to address, the cessation of LIBOR as a reference rate in contracts.
- **Potential risks in the non-financial corporate credit markets, including CLOs.** NAIC staff is monitoring experience with Collateralized Loan Obligations (CLOs) and stressed portfolios to ascertain impacts in the event of a market downturn.

b. Update on CLO Stress Tests

Eric Kolchinsky, Director of Structured Securities and Capital Markets at the Securities Valuation Office (SVO), reported on the results of insurance company CLO investment stress testing that the SVO ran in 2019. The “stress thesis” for this stress testing was that consequences of less stringent underwriting on the underlying bank loan collateral will result in substantially lower recovery rates during the next recession. Stress testing results showed that (1) losses on “normal” CLO tranches (those with regular promises of principal and interest) only reached BBB-rated tranches, even under the worst-case scenario; and (2) for “atypical” CLO tranches (those that have unusual payment promises, such as equity tranches and Combo Notes), losses reached AA-rated securities. Based on these findings, the SVO does not believe that US insurer investments in CLOs present a significant risk to the insurance industry as a whole. Notwithstanding, insurers that have concentrated investments in “atypical” CLO tranches are at risk. The SVO has been, and intends to continue, educating domestic regulators about atypical tranches.

c. Liquidity Stress Test Framework

During the past year, the **Liquidity Assessment (EX) Subgroup** has been working on finalizing a liquidity risk assessment framework for select life insurers. Consequently, the Subgroup has been working with an informal Study Group (comprised of state insurance regulators, insurance groups and NAIC staff) to consider the specific data needs and technical aspects of the project, and has exposed for comment a draft [2019 Liquidity Stress Test Framework](#), for which comments are due by February 10, 2020.

5. Working Group Evaluating Results of GCC Field Testing

The **Group Capital Calculation (E) Working Group** heard a presentation that summarized data and initial observations from the NAIC’s Group Capital Calculation (GCC) field test of 32 volunteer companies. In the field test, the NAIC reviewed 31 volunteer company submissions and provided 28 review summaries to lead states. Fourteen submissions have been presented and discussed with the volunteer companies, and NAIC/lead state calls are expected to be scheduled with the remaining volunteers by January 15, 2020, to complete the field-testing exercise.

Florida Commissioner David Altmaier, Chair of the Working Group, invited interested party comments on the presentation to address open questions about the GCC. Concerns were expressed about on-top adjustments that have the effect of amending or even overturning state legal entity rules for reserves and capital. Suggestions for further work were consequently requested on four categories: (1) non XXX/AXXX captives; (2) the treatment of subsidiaries; (3) a proposal to include non-admitted entities, which are effectively zeroed out of the RBC calculation within the GCC; and (4) the use of the trend test level versus the company action level.

The Working Group also discussed the relationship between the GCC and the Aggregation Method (AM). Commissioner Altmaier stated that the GCC is what the NAIC plans to submit as its AM for consideration of comparability. He further explained that they have been thinking of the AM as an aggregation-based framework that is jurisdictionally agnostic and that other jurisdictions (e.g., Hong Kong) are developing their own aggregation methods. While the NAIC wants its GCC to be recognized as comparable to the ICS, it believes that ICS itself should have some jurisdictional flexibility so the AM should provide a pathway for other jurisdictions to submit their own. Commissioner Altmaier concluded that the NAIC's end goal is to deliver the GCC to the IAIS such that the GCC is an AM comparable to the ICS. Commissioner Altmaier said that the NAIC is not planning to have supervisory intervention points in the GCC.

6. Mortgage Guaranty Insurance Working Group Exposes Revised Model Act and Related Documents for Comment

The **Mortgage Guaranty Insurance (E) Working Group** met for the first time since summer 2018, and continues its seven years of work to update the regulation of mortgage guaranty insurance following the 2008 financial crisis. In Austin, the Working Group exposed the following documents for a 45-day public comment period ending January 22, 2020:

- Proposed [Mortgage Guaranty Insurance Capital Model](#) that measures a mortgage insurer's expected capital based on a portfolio of mortgage loans for which it provides guaranty insurance
- Proposed revised [Mortgage Guaranty Insurance Model Act](#)
- Proposed [Mortgage Guaranty Insurance Standards Manual](#) that documents standards and requirements referenced but not detailed in the Mortgage Guaranty Insurance Model Act due to potential frequency of changes in the standards
- A [2020 Annual Blanks Proposal](#) regarding the collection of mortgage guaranty insurance data

C. Issues of Particular Interest to Life Insurers

1. Suitability in Annuity Transactions Model Regulation Nearing Completion

The **NAIC's Annuity Suitability (A) Working Group and Life Insurance Annuities (A) Committee** both separately discussed proposed revisions to the [Suitability in Annuity Transactions Model Regulation](#). The **Annuity Suitability (A) Working Group's** meeting had a limited purpose, and was used simply to adopt minutes from prior meetings held in the fall of 2019 to discuss comments received on the proposed revisions to the September 2019 exposure draft of the Model.

The **Life Insurance Annuities (A) Committee** reviewed comments received in November 2019 to the exposure draft of the Model. Although the Life Insurance Annuities (A) Committee did not formally vote on each of the comments, it did come to a consensus as a group on each of the comments it reviewed and accepted several of the proposed revisions. The Committee referred comments on the disclosure Appendices (the "Producer Relationship Disclosure Form," or the "Consumer Refusal to Disclose All or Partial Consumer Profile Information Form") back to the **Annuity Suitability (A) Working Group** for continued review and consideration. The Working Group scheduled calls for December 19 and 30, 2019, to attempt to finalize its work on the Model.

2. Life Risk-Based Capital Working Group Makes Progress on Longevity Risk

The **Life Risk-Based Capital (E) Working Group** heard an update from the **NAIC Longevity Risk (A/E) Subgroup** chaired by Rhonda Ahrens (NE). Ms. Ahrens reported that after lengthy discussions about the possible correlation between longevity and mortality risk, the Subgroup concluded that the topic extends beyond the Subgroup's charge and is an issue for the Working Group to decide. The Subgroup endorsed the factors included in the [American Academy of Actuaries 2019 Summer National Meeting presentation](#) to the Working Group as a reasonable place to start to address this issue. Ms. Ahrens also reported that the Subgroup had evaluated longevity reinsurance transactions (LRT), a relatively new type of arrangement that involves the transfer of longevity risk associated with group annuities to a reinsurer, and that it raised issues that require further review. Consequently, the majority of the Subgroup supported scoping out LRT and was seeking support for forming a drafting group to continue evaluation and development of a recommendation. Finally, Ms. Ahrens presented, and the Working Group adopted, the Subgroup's recommendation for incorporating a risk charge for longevity risk in the life risk-based capital (RBC) formula. The RBC blank and instruction changes necessary to implement the proposal, which creates a new schedule in the life and fraternal RBC formula, was exposed for 60 days along with the American Academy of Actuaries alternative that includes covariance.

Philip Barlow (DC), Chair of the **Life Risk-Based Capital (E) Working Group**, asked the Subgroup to continue to work on reinsurance and agreed that the Working Group should take up the issue of covariance. The Working Group intends to schedule a call shortly after the 60-day comment period to incorporate the longevity risk charge into next year's RBC formula.

The Working Group also heard an update from the Academy's C-2 Mortality Work Group focused on individual life insurance. The Working Group discussed some of the risk components that have been questioned by regulators, such as excluding AIDS scenarios based on early 1990s estimates. The next call of the **Life Risk-Based Capital (E) Working Group** may focus on questions and considerations raised by the Academy such as the incorporation of scenarios beyond historical factors.

Chairman Barlow invited the New York Department of Financial Services and ACLI to share their comments on the life growth risk. ACLI explained that it does not think there is a need for a life growth risk because the life trend test captures any risk of excessive growth and regulators have the tools to deal with growth through acquisition. The Working Group did not object to the Chair's suggestion to table the issue until a viable method to implement it materializes.

Finally, Mike Boerner (TX) noted an issue with the new variable annuity framework, which impacts voluntary reserves. The issue relates to the phase-in and spreading of variable annuity reserves and capital. Instead of smoothing TAR, the new framework smooths the C3 RBC amount. The Working Group decided to review this issue and identify any needed guidance.

3. Accelerated Underwriting (A) Working Group Underway

The **Accelerated Underwriting (A) Working Group** was created during the Summer National Meeting in New York to work with the Life Actuarial (A) Task Force to study the use of external data and data analytics in accelerated life underwriting. The Working Group is charged with considering the use of external data and data analytics in life underwriting and, if appropriate, to draft guidance for the states. The Working Group has identified a three-phase work plan: (1) information gathering (2019 Fall National Meeting through 2020 Spring National Meeting), (2) identification of issues and potential work product (2020 Spring National Meeting to 2020 Summer National Meeting) and (3) work product development (2020 Summer National Meeting to 2020 Fall National Meeting).

During its meeting in Austin, as part of the information-gathering phase, Professor Patrick L. Brocket (The University of Texas at Austin) presented to the Working Group providing general background on accelerated underwriting and the life underwriting process generally. Regulator questions and comments to the presentation indicated continued uncertainty from regulators about how accelerated underwriting and nontraditional data sources are used today, and continued concern about the potential for bias and discriminatory impact in the use of new data sources as part of automated underwriting.

D. Issues of Particular Interest to Property/Casualty Insurers

1. Developments of the Surplus Lines Task Force

The **Surplus Lines (C) Task Force** continues to consider a proposal to modify annual and quarterly financial statement Schedule T (Exhibit of Premiums Written) to add a new section for reporting the allocation of surplus lines premiums to each state based on the definition of "home state" under the *Nonadmitted and Reinsurance Reform Act of 2010* (NRRRA). The proposal is intended to help regulators reconcile broker-reported surplus lines premium with company-provided information to ensure that states are receiving the proper amount of surplus lines premium taxes. In Austin, APCIA and other industry representatives spoke in opposition to the proposal, noting that imposing additional reporting requirements on surplus lines insurers is inconsistent with the spirit of the NRRRA. The Task Force is expected to take the proposal up again during the 2020 Spring National Meeting. In the meantime, regulators will be considering potential alternatives for obtaining the required information without imposing additional reporting requirements on insurers.

The Task Force also heard an update on adjustments to the minimum qualification requirements for exempt commercial purchasers under the NRRRA, which are exempt from state diligent search requirements. The NRRRA requires that the qualifications be adjusted every five years. Effective January 1, 2020, the CPI-U adjusted qualifications are (1) net worth of \$23,781,160, (2) annual revenues of \$59,452,900 and (3) annual budgeted expenditures of \$35,671,740.

2. Surplus Lines Broker Licensing Standards Will Not Be Updated for Accident and Health Risks

Following several months of discussion, the **Producer Licensing (D) Task Force** has decided that it will not amend the NAIC Uniform Licensing Standards and State Licensing Handbook to permit an accident and health insurance producer license to fulfill the underlying resident producer license requirement for a surplus lines producer license. In Austin, the Task Force announced that its work indicates that there are divergent views among states as to whether accident and health insurance may be written on a surplus lines basis, and so it would not be appropriate to make changes to the

uniform licensing standards. Instead, states will be allowed to adopt their own requirements, and the Task Force will revisit this issue as this segment of the surplus lines market develops further.

3. Terrorism Risk Insurance Program and National Flood Insurance Program Extended

In Austin, several working groups discussed the status of federal activities to extend the Terrorism Risk Insurance Program (TRIP) and the National Flood Insurance Program (NFIP). Following the National Meeting, extensions of both programs were adopted as part of a year-end fiscal spending deal.

TRIP, which was last reauthorized in 2015 and was set to expire on December 31, 2020, was extended for seven years through December 31, 2027. In addition to reauthorizing TRIP, the bill requires the Government Accountability Office to report on cyber terrorism risks, and requires biennial Treasury reporting that includes disaggregated data on places of worship. The bill did not make any other changes to TRIP, and program triggers and deductibles will remain at 2020 levels.

NFIP was extended through September 30, 2020, while Congress considers proposals that would extend the program for five years and introduce certain reforms. This extension follows 14 shorter-term extensions that Congress has approved over the past year.

E. Briefly Noted

1. Revisions Proposed to Property/Casualty RBC Charge for Reinsurance Recoverables

The **Property and Casualty Risk-Based Capital (E) Working Group** exposed for comment a proposal to modify the property/casualty RBC instructions so that a uniform credit risk charge is applied to reinsurance recoverables from unrated authorized and unauthorized reinsurers. Working Group members are expected to consider whether a separate classification should be provided for reinsurers that are in rehabilitation or in runoff. The proposal was exposed for a 45-day comment period ending January 21, 2020.

2. SSAP Disclosure Requirements for “Related Parties” Clarified

The **Statutory Accounting Principles (E) Working Group** exposed a number of revisions to statutory accounting guidance, including a revision to SSAP 25 (Affiliates and Other Related Parties) to clarify that a party with a non-controlling ownership interest greater than 10% is a “related party” for statutory accounting purposes. The revisions make clear that related party disclosure requirements apply to a non-controlling ownership interest greater than 10% even where a disclaimer of affiliation filing has been approved.

3. Workers’ Compensation White Paper Exposed for Comment

The **Workers’ Compensation (E) Task Force** exposed a draft white paper, [Workers’ Compensation Policy and the Changing Workforce](#), for a 30-day public comment period ending January 6, 2020. The white paper explores the evolving workers’ compensation insurance landscape and issues that may create gaps in coverage.

4. Work on Pet Insurance Model Law Continues

The **Pet Insurance (C) Working Group** is drafting a *Pet Insurance Model Law* that is expected to address licensing and disclosure requirements in connection with the sale of pet insurance, as well as minimum benefits provided under pet insurance policies. The Working Group’s work follows the NAIC’s publication of a white paper, [A Regulator’s Guide to Pet Insurance](#), earlier this year, which provides an overview of the US pet insurance industry and information on coverage options, product approval, marketing, ratemaking, claims practices and regulatory concerns. The issues that the Working Group has been considering include whether pet insurance may be offered on a group basis and the best way to for regulators to compile market data on pet insurance premium volume and consumer complaints.

5. Private Flood Insurance White Paper Adopted

The **Catastrophe Insurance (C) Working Group** adopted the white paper [Considerations for State Insurance Regulators in Building the Private Flood Insurance Market](#), which provides guidance for departments of insurance on approaches to promote private residential flood insurance. The white paper was later adopted by the **Property and Casualty Insurance (C) Committee**.

6. New NAIC Officers Elected

The NAIC elected its 2020 officers during the **Joint Meeting of Executive (EX) Committee and Plenary**. Raymond G. Farmer (SC) will serve as President, David Altmaier (FL) as President-Elect, Dean Cameron (ID) as Vice President and Chlora Lindly-Myers (MO) as Secretary-Treasurer.

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