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House Subcommittee Holds Hearing to Discuss Insurance Information Act of 2008

Regulators and Industry Representatives Weigh In on Legislation

The House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises held a hearing on June 10 to discuss Subcommittee Chairman Paul Kanjorski's (D – PA) recently-introduced legislation that would create an Office of Insurance Information (OII) within the Department of Treasury. The Insurance Information Act of 2008 (H.R. 5840), would not create a federal regulator but would create a Federal office with expertise in insurance to advise the Administration and Congress on both domestic and international insurance policy matters. In his opening statement Kanjorski said "Congress continues to vote regularly on insurance matters. In order to create the most effective and sensible legislation, we, as lawmakers, must educate ourselves on insurance policy and build a knowledge base in the federal government on these issues." Read more about the Insurance Information Act at www.naifa.org/govtalk

Chairman Kanjorski called the hearing to solicit feedback on a recently circulated new discussion draft that includes changes to the original bill introduced in April. Two separate panels of witness testified at the hearing; the first consisted of regulators and legislators from both the state and national levels. The second panel consisted of several insurance industry representatives testifying from a wide variety of different perspectives.

Most of the discussion at the hearing centered on controversial provisions to give the OII limited preemption power over state laws in international insurance matters. Specifically, the bill would allow for Federal regulation to preempt state regulation in situations where a non-U.S. insurer is being treated less fairly than a U.S. insurer.

NAIFA Position: The NAIFA Board has voted to support the creation of an OII, but has expressed reservations about the preemption provisions and is currently working with Chairman Kanjorski's staff to address our concerns.

Regulatory and Legislative Perspective

The first witness to testify was Treasury Deputy Assistant Secretary Jeremiah Norton. Earlier this year, the Treasury Department released its “Blueprint for a Modernized Financial Regulatory Structure” which calls for the creation of an Office of Insurance Oversight to serve in a capacity very similar to that outlined in the Insurance Information Act. Norton stated that, while the Treasury Department believes an optional federal charter (OFC) is the best means of creating comprehensive insurance regulation on the Federal level, the OFC debate could be a very long one in Congress, and in the meantime, an Office of Insurance Oversight could sooner address issues that require immediate attention, such as international insurance matters. According to Norton, “it is becoming increasingly difficult for the United States to speak consistently and effectively with one voice” on international insurance issues because of the more than fifty different state regulators with whom international insurers must interact. Therefore, the Treasury Department is advocating the creation of a Federal office of insurance to speak on behalf of the U.S. insurance industry internationally. Deputy Secretary Norton was explicit in stating that the Treasury Department did not envision any Federal office of insurance supplanting the NAIC and state insurance regulators, but rather working alongside them.

The next witness to testify was Illinois Director of Insurance Michael McRaith, representing the National Association of Insurance Commissioners (NAIC). McRaith testified that, as the result of continued dialogue between the Subcommittee and the NAIC on this legislation, the NAIC was willing to offer its conditional support for the Insurance Information Act. He stated that the NAIC supports the legislation’s goals of working with state regulators to gather information about the insurance industry, and of establishing a central point of contact for foreign governments regarding international insurance matters, but support stops at the point when Federal regulation could preempt state regulations that impact consumer protections and solvency standards. McRaith said that, “We believe that institutional knowledge of insurance issues at the Federal level is fitting in this age of global competition and global challenges.” With regards to information-gathering, the NAIC is more than willing to work with the Federal government to provide any and all information they may require from the NAIC’s “comprehensive collection of insurance information.”

The final witness to testify on the panel was Rhode Island State Representative Brian Kennedy, speaking on behalf of the National Conference of Insurance Legislators (NCOIL.) Kennedy, who serves as President of NCOIL, explained NCOIL’s strong objection to the Insurance Information Act. “NCOIL finds it hard to close its eyes and ignore the lack of any state legislative presence in [this bill.]” Kennedy criticized the fact that, while Kanjorski’s bill calls for the formation of an Advisory Group to weigh in on any Federal proposals, it only includes representatives of the NAIC and does not call for any state legislators to be members of this panel. Kennedy also echoed concerns about the preemption powers given to the Federal government. Later, when asked if NCOIL would support the bill if they were represented on the Advisory panel, Kennedy responded that it would be an improvement.

Industry Perspective

The first witness to testify was Neal Wolin, representing the American Insurance Association (AIA). Wolin, who is President and CEO of Property and Casualty Operations at The Hartford, testified in support of the Insurance Information Act, stating that, on both national and international levels, the Federal government needs to have a single source of expertise to advise on appropriate policy. With more than 90 bills pertaining to insurance being introduced in the 110th Congress, “a central source of expertise within the federal government is needed to help Congress make better decisions about national insurance policy.” Furthermore, on an

international level, Wolin said that, “state regulators . . . lack the Constitutional authority to make international commitments for the United States,” and that an Office of Insurance Information could serve as the central contact for foreign governments to solve this problem. Wolin did, however, express concern with the preemption provisions of the bill, saying that it should be worded such that it ensures that all insurers, both domestic and foreign, are treated on an equal basis.

Testifying for the American Council of Life Insurers (ACLI) was Lincoln Financial’s Vice President and Associate General Counsel, Stephen Rahn. Rahn testified that the ACLI supports the objectives of H.R. 5840, but named a number of concerns they have with the current draft. Among them, Rahn echoed previous comments that the bill’s preemption language should be crafted to ensure that U.S. and international insurers are treated equally. “We would certainly not want to see a circumstance arise where preemption results in the collateral consequence of treating a U.S. insurer less favorably than a foreign insurer.” Rahn also stated that the ACLI feared that, in its capacity of gathering and disseminating information, the Office of Insurance Information would gather information that is not publicly-available, thus compromising the confidentiality of this information.

Next to testify was Tracey Laws, Senior Vice President and General Counsel for the Reinsurance Association of America (RAA). Laws said that RAA supports the spirit and objectives of H.R. 5840 but has concerns that the discussion draft has limited preemption powers which are problematic for reinsurers that operate very heavily in the global marketplace. According to Laws, “Complying with fifty states’ often inconsistent and conflicting laws unnecessarily makes compliance burdensome and expensive for this global business,” and that the formation of an Office of Insurance Information would greatly alleviate these inconsistencies and make it easier for the United States to speak with one voice on international regulatory issues.

The final witness to testify before the Subcommittee was David Sampson, President and CEO of the Property Casualty Insurers Association of America (PCI). Sampson stated that PCI’s Board of Governors had not yet taken a position on the Insurance Information Act because they had several strong concerns with the bill as written. Sampson said that, rather than creating another federal bureaucracy to obtain insurance-related information, Congress could simply gather such information from state agencies in a cooperative manner. “Instead of creating duplicative work and expenditures at the federal level, opportunities to access existing resources and strengthen public-private partnerships for information gathering should be considered.” And, like many of the witnesses who testified before him, Sampson stated that PCI fears the OII’s preemption powers might be far overreaching and that any preemption powers should be well-defined within the legislation.

Next Steps

Throughout the hearing, Chairman Kanjorski expressed a desire to move the Insurance Information Act quickly through the legislative process in hopes of enacting it before the 110th Congress adjourns at the end of the year. NAIFA will continue to follow this legislation and keep you informed of its progress. To read more about NAIFA’s position on the OII bill, go to www.naifa.org/govtalk

NAIFA Staff Contact: Jill Edwards, Director of Federal Relations at 703-770-8158

South Carolina Becomes the 32nd State to Join Interstate Compact

South Carolina became the 32nd state to join the interstate compact on June 11, 2008. House Bill 3023 was signed into law by Governor Mark Sanford, continuing the steady march of states that have agreed to the creation of a single point-of-filing for insurance products in the past four years.

Background: The interstate compact aims to improve the speed-to-market conditions for life insurance, annuity, disability income and long-term care products through the use of one regulatory body to review new insurance products. The ability to obtain approval from a single source for the sale of insurance products in multiple states gives insurers a more efficient and uniform product approval process than the multistate product review system. Faster product review benefits consumers and NAIFA members by making new protection products available sooner.

“NAIFA members, consumers and insurers will all benefit from the interstate compact’s acceptance by more states because that means new insurance products satisfying uniform standards will be available to the public without delay,” said NAIFA President Jeffrey J. Taggart, CLU, ChFC, LUTCF. NAIFA CEO John J. Healy, CAE, added, “NAIFA encourages its members to support adoption of the compact in every state so that greater regulatory efficiency can bring the American public the insurance coverage it needs as soon as possible.”

NAIFA’s Position: NAIFA has been a strong supporter of the interstate compact since helping the National Association of Insurance Commissioners (NAIC) draft the model compact law in 2002. This support continues today as NAIFA, and its health insurance conference AHIA, are the only groups representing the agent community on the compact commission’s industry advisory committee. NAIFA state associations across the country have also been critical proponents of compact legislation as it’s introduced in state houses across the country. The compact became operational in 2006 and began accepting its first product filings in 2007. Several other states are also considering compact legislation this year.

For more information on this and other insurance regulatory reform proposals, please visit our new IRR website at www.naifa.org/advocacy/irr

NAIFA Staff Contact: Michael Gerber, Vice President & General Counsel, at 703-770-8190.

[PLACEHOLDER FOR FINRA RULE PIECE – MLK]

NAIC Holds Its Annual Summer National Meeting In San Francisco

NAIFA Staff Participates to Represent Members’ Interests

The 2008 Summer National Meeting of the National Association of Insurance Commissioners was held May 31 – June 2 in San Francisco, CA. Bill Anderson, Gary Sanders and Ron Panneton attended the meetings on behalf of NAIFA. The following is a comprehensive report of the meetings and activities that took place:

The meeting was opened by a keynote address from Kansas Governor Kathleen Sibelius, a former NAIC President and Kansas Insurance Commissioner. She is also thought to be on the short list for Barack Obama's Vice President. Governor Sibelius spoke in favor of federal legislation to create a national catastrophe fund, urged the commissioners to be at the table when the debate on a comprehensive federal approach to health care takes place, and stressed that there has never been a more important time to have the voices of insurance regulators before members of Congress.

Bill Anderson spent many days at the meeting circulating NAIFA's Themes and Conditions for Support of the Concept of An Optional Federal Charter for Insurance emphasizing that NAIFA remains fully committed to the continuation and improvement of state regulation of insurance. While the NAIC is publicly opposed to our Board's position, and has issued a press release calling on our National Council to vote against the proposal, many individual insurance commissioners indicated that they believe we are doing the right thing in pursuing our dual-track approach.

Producer Licensing

Bill also participates in the National Insurance Producer Registry (NIPR) Board with other industry representatives and six commissioners. Linda Hall, Alaska Commissioner is the Chair and other members are Bill Deal, ID; Susan Voss, IA; Roger Sevigny, NH; Joel Ario, PA; and Leslie Newman, TN. The Board directs NIPR which is the national data base for producer licensing and it voted to move forward on developing a warehouse for attachments that a producer may have to append to the application for a license. This will allow the producer to file the necessary documents once, electronically, rather than be required to submit them to multiple jurisdictions.

The NARAB Working Group, which was reconstituted at the prior NAIC meeting in March, has been very busy. First, as a result of its February 19, 2008 "Producer Licensing Assessment Report", the working group certified the District of Columbia, Indiana and Missouri as being reciprocal under Gramm-Leach-Bliley (GLBA). Second, the working group reiterated the reciprocity framework that it developed in 2002 which provides that a state must satisfy four conditions in order to be considered reciprocal for non-resident producer licensing:

1. Permit a producer with a resident license for selling and soliciting insurance in its home state to receive a license to sell or solicit the purchase of insurance as a non-resident to the same extent that the producer is permitted to sell or solicit insurance in its home state, if the home state also licenses reciprocally, without satisfying any additional requirements other than submitting (A) a request for licensure; (B) the application for licensure submitted to the home state; (C) proof of licensure and good standing in home state; and (D) payment of any requisite fee;
2. Acceptance of a producer's satisfaction of its home state's continuing education requirements as satisfying that state's continuing education requirements;
3. No requirements are imposed upon any producer to be licenses or otherwise qualified to do business as a non-resident that have the effect of limiting or conditioning that producer's activities because of its residence or place of operations; and
4. Each state meeting (1), (2) and (3) grants reciprocity to residents of all other states that satisfy (1), (2) and (3).

The working group then applied this framework to an analysis of additional issues that had not been considered in 2002 and found the following five situations that may violate GLBA reciprocity:

1. Requiring an underlying life license prior to the issuance of a non-resident variable life license;
2. Requiring the designated responsible producer to be licensed or appointed prior to the issuance of a non-resident business entity license;
3. Requiring a non-resident business entity to submit articles of incorporation;
4. Requiring individuals seeking a fraternal non-resident license to have an accident/health license and have a fraternal certificate from a company;
5. Requiring non-resident producers to renew annually, while resident producers renew biennially.

The working group will be undertaking additional research and analysis on other issues as identified in written comments provided to the working group. We will report on developments as they occur.

Suitability Working Group

The Suitability of Annuity Sales Working Group heard an update from the NAIC staff that 28 states have adopted the NAIC's Suitability in Annuity Transactions Model Regulation and another 10-11 states have adopted related legislation/regulations. The Working Group had a general discussion on annuity sales and supervision and potential gaps in the Suitability Model.

Florida's Deputy Commissioner discussed its recently passed suitability legislation which, among other requirements, mandates that before an annuity recommendation is made by a producer that information be solicited from the customer which exceeds that currently required by the NAIC Model. Such additional information would include age, gender, source of the funds to purchase the annuity, annual income, current assets and net worth. After the meeting concluded Ron Panneton expressed his hope that the Working Group would consider adding this particular requirement to the NAIC's Model. The Florida Deputy Commissioner indicated that she would be making such a recommendation to the Working Group at the appropriate time.

Alabama's Deputy Commissioner also reported that they are contemplating a position that when an annuity sale to a customer over a certain age takes place that there be a "presumption" of an unsuitable sale and the producer would then be given an opportunity to rebut that presumption. Ron indicated to the Deputy after the meeting concluded that such a presumption would be contrary to the principal of "innocent until proven guilty" and that there should never be a "presumption" of unsuitability but a careful review of the facts connected to a particular annuity purchase.

The Working Group will be having several conference calls this summer to focus on methods insurers are currently using to supervise and monitor producers for purposes of ensuring product suitability.

The NAIC officially adopted a new charge for the Suitability Working Group to improve the regulation of annuity sales and to provide insurers uniform guidance in developing agent training, supervision and monitoring standards in order to better protect annuity consumers from unsuitable sales and abusive sales and marketing practices. This project is anticipated to take close to a year to complete.

Consumer Guides Working Group

This Working Group is working on revisions to the fixed annuity, indexed annuity and variable annuity buyers guides contained in the NAIC's Annuity Disclosure Model. NAIFA will be assisting this Working Group as it considers its work on these buyer's guides. It is anticipated that the fixed annuity buyer's guide could be completed by the NAIC's September meeting.

Annuity Disclosure

During the Life and Annuities meeting Commissioner Voss of Iowa suggested that it may be time to review the NAIC Annuity Disclosure Model Regulation. The Committee seemed receptive to this suggestion but before any activity takes place on the Model the NAIC would need to agree to this additional charge for the Committee. This could take place as early as an Executive Committee conference call scheduled for mid-June.

Life Insurance Awareness Month

The Life Insurance Committee formally adopted a resolution in support of recognizing September 2008 as Life Insurance Awareness Month.

NAIC Product Expertise

Prior to the NAIC's meeting NAIFA-Mississippi member and former President of the MDRT George Pickett discussed with new MS Insurance Commissioner Mike Chaney the seeming lack of in-depth expertise by some of the staff in the various insurance departments on various annuity products, such as indexed annuities. George suggested that perhaps having such expertise developed at the NAIC headquarters would be more efficient than attempting to develop this expertise in each of the insurance departments. Commissioner Chaney indicated to George that he would investigate this at the upcoming meeting. Ron Panneton had an in depth discussion with Commissioner Chaney and his Chief Examiner on this issue at the meeting and Commissioner Chaney will be checking with leadership at the NAIC to discuss what options would be feasible to develop this product expertise. Commissioner Chaney indicated that he will report back to George and NAIFA suggestions and developments from the NAIC on this issue.

Senior Designations

NAIFA has been actively engaged on several fronts with the issue of how to regulate the use of senior designations. Through meetings between NAIFA's leaders and the NAIC leadership, written comment letters and testimony at NAIC meetings, NAIFA has urged the NAIC to become involved in this issue and to follow the approach outlined in a model rule recently adopted by the North American Securities Administrators Association (NASAA). The NAIC has responded favorably to our efforts and recently issued a draft of a model regulation governing the use of senior designations that is modeled after the NASAA final rule. The draft regulation was the subject of extensive discussion during the Life Insurance "A" Committee meeting at the NAIC Summer Meeting. Testifying on behalf of NAIFA and The American College, Gary Sanders noted that the importance of achieving uniformity and consistency—both from state to state and among different types of products—was a very strong, though not the only reason, for the NAIC regulation to parallel the NASAA model rule. NAIFA also emphasized the broad range of support for the NASAA model—not just among NAIFA, the ACLI and others in the industry, but also by state securities regulators, the AARP and The American College. The Committee also heard from a representative of The Center for Economic Justice, one of the NAIC's funded consumer representatives, who recommended several amendments to the draft regulation.

Sanders also spoke prior to the meeting with Iowa Deputy Commissioner Jim Mumford, one of the influential parties leading the discussions on this issue. During their discussion Sanders

detailed to Mumford where NAIFA stood on several of the amendments to the draft that were being circulated.

At the conclusion of the meeting the Committee announced it would issue a new revised draft regulation within one week, hold a conference call meeting in late June and that it planned on completing work on the new regulation by the end of June.

State Innovations In Health Care

The NAIC recently established the Health Innovations Working Group (under the Health Insurance "B" Committee) to examine methods for finding solutions to the problem of increasing health care costs. During the NAIC meeting, the Working Group held a public hearing designed to present the regulators with a variety of viewpoints on how to address the health care cost issue. Representatives of public health programs, employers, health care providers and health systems testified at the hearing about numerous initiatives that they felt would help reduce spending on health care. As the Working Group moves to discussions with representatives of insurers and producers, AHIA and NAIFA will present our own health care cost and coverage reform proposal, *Rx for Health Care Reform*, to the Working Group.

Stoli/Viatical Settlements

During the NAIC Plenary (the meeting of the full NAIC membership), the group heard a report on the implementation of the amended NAIC Viatical Settlements Model Act, which includes provisions designed to address stranger-originated life insurance (STOLI). The report noted that viatical/STOLI legislation had been introduced in approximately 26 states, and that the legislation in 13 of these states was based on the NAIC model, with an additional 5 states considering legislation that was a hybrid of the NAIC and NCOIL models. At the end of the report, Ohio Commissioner Mary Jo Hudson made an appeal for the NAIC to devote more resources towards getting the model adopted in the states, noting that she and the other commissioners had never seen opposition to legislation of the type and degree of opposition they have been seeing with the STOLI effort. NAIC President and Kansas Commissioner Praeger voiced her agreement with Commissioner Hudson's comments.

NAIFA Staff Contacts: Bill Anderson, Senior Vice President, Law & Government Relations, at 703-770-8193; or Gary Sanders, Senior Counsel for Law and Government Relations, at 703-770-8192, or Roland L. Panneton, Sr. Counsel, Law & Government Relations, at 703) 770-8187.

SHOP Act Introduced in U.S. House of Representatives

On June 9, Rep. Ron Kind (D-WI) introduced H.R. 6210, the Small Business Health Options Program (SHOP) Act with the goal of creating statewide or nationwide purchasing pools for small businesses.

The bill would provide small business owners with an annual tax credit of up to \$1,000 per employee (\$2,000 for family coverage) if they pay for more than 60 percent of the premiums. It would ban the practice of rating insurance based on health status and claims experience, and provide a Web site with comparative information about a variety of private health plans.

H.R. 6210 is companion legislation to S. 2795, which was introduced by Sen. Richard Durbin (D-IL) in April.

AHIA-NAIFA Position: AHIA-NAIFA Health & Employee Benefits believes the SHOP Act will play a significant role in the health insurance reform debate next year. The SHOP Act is an example of recent support for pooling or health insurance connectors.

The AHIA Board of Directors has adopted the following position to address the latest health care reform trend—the concept to develop an entity to serve as a clearinghouse through which insurance companies would offer health insurance policies to employees and individuals:

Connectors should not be created to the exclusion of the successful distribution that currently exists. AHIA and NAIFA believe that a marketplace delivers best value when consumers are presented with diverse options from many competitors. Consumers also need reliable information from which to make informed decisions.

AHIA and NAIFA believe that the health insurance agent plays a valuable role in the delivery of health insurance coverage and benefits and that it would be a significant mistake to assume that a health insurance exchange or connector arrangement could perform the many services currently done by the agent. The associations also believe that health insurance consumers should be able to select from a broad variety of options with respect to health insurance coverages and benefits. However, a given proposal will not be automatically opposed simply because such a proposal would establish an exchange or connector arrangement so long as it includes appropriate safeguards designed to protect the rights of consumers. Such safeguards would include but not necessarily be limited to the following:

- Participation in the exchange should be voluntary and should not be the sole means of access to health insurance.
- The exchange should be permitted and encouraged to contract for services with more than one insurance carrier or provider of health care services.
- More than one exchange must be permitted to operate in a given region or state.
- The current health insurance market should continue in existence as one of several options for the purchase of health insurance.
- Exchanges should be required to meet the same statutory and regulatory requirements with respect to benefit mandates, premium rates, underwriting and marketing as commercial carriers must comply with in order to provide a "level playing field" for all players. This would serve to establish a basis for an objective evaluation of the savings and quality of service provided by such programs.
- Insurance carriers which market their products through exchanges should be permitted to use health insurance agents to market and service their products. Commissions paid to agents for these services should be determined by normal contracting arrangements between the agent and insurance carrier.
- The exchange should be an information and eligibility resource portal for persons potentially eligible for publicly funded plans or public assistance in purchasing health insurance. Licensed professional health agents should be provided fair incentive and authorization to enroll and provide service to persons eligible for public support programs.

AHIA and NAIFA believe that choice, quality, competition and professional service must be a part of any health care reform effort. Furthermore, AHIA and NAIFA believe licensed, fairly compensated insurance agents offer a cost effective means of achieving personal and professional assistance in the selection of insurance coverage for individuals and employers of all sizes in all markets.

NAIFA/AHIA Staff Contact: Diane Boyle, Executive Vice President, Association of Health Insurance Advisors, 703-770-8252.

NAIFA Launches New Insurance Regulatory Reform Microsite

Members Encouraged to Join Email Forum to Debate the Issue

As part of its Education and Information Campaign on Insurance Regulatory Reform, NAIFA is excited to announce the launch of its new IRR web microsite. This new site, "Moving Insurance Into the 21st Century," is a user-friendly, interactive tool for NAIFA members who want to learn more about proposals such as the optional federal charter (OFC), the Interstate Insurance Compact, the National Association of Registered Agents and Brokers (NARAB II) and the National Insurance Producer Registry (NIPR).

Features of the new microsite:

- Frequently Asked Questions
- Issue White Papers
- Links to NAIFA Articles and Press Releases
- GovPods (audio)
- Quick Facts on the Various Proposals
- Reports and Studies

Share Your Opinion

NAIFA members may also sign up on the site to join the Insurance Regulatory Reform (IRR) Email Forum. As part of NAIFA's Education and Information Campaign on the IRR, NAIFA members are encouraged to join the forum and debate this important topic.

Please visit www.naifa.org/advocacy/irr today!

Meet Your NAIFA Government Relations Staff: Jill Edwards

In our continuing effort to introduce you to members of your Government Relations Staff so that you know who to contact with specific questions, this week, we are featuring Jill Edwards, Director of Federal Relations. Contact Jill on the following issues:

- Insurance Regulatory Reform (IRR)
 - Liaison to Policy Formation Subcommittee on IRR
 - Optional Federal Charter
 - National Association of Registered Agents and Brokers, "NARAB II"
 - McCarran-Ferguson Repeal
- Designations and Certifications (federal)
- Life Insurance Awareness Month
- Congressional Fundraisers

Jill Edwards may be reached at (703) 770-8158.

Did You Know?

Did you know that, among the federal agencies that have *some* role in the insurance industry, the list includes the Department of Treasury, Health and Human Services, the Department of Labor, the Securities and Exchange Commission, the Federal Communications Commission, Patents and Trademarks Office, the Federal Trade Commission, the Department of Homeland Security, the Department of Agriculture, the Department of Housing and Urban Development, the Department of Defense, the State Department, the United States Trade Representative, and the Department of Commerce?