

Summer 2023 State Regulatory Update — NAIC Initiatives and Upcoming Elections



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The National Association of Insurance Commissioners met in Portland, Oregon for its Summer National Meeting from August 8 through Aug. 12, 2022. As many regulators and industry representatives returned to in-person meetings, the NAIC continued to make the meeting accessible virtually, expanding access for many across the nation. We outline several key issues that the NAIC initiated or addressed during the meeting, including matters associated with privacy, investment analysis and RBC calculation. We summarize these issues below. Additionally, we also provide a brief analysis of the potential impact that the upcoming November elections may have on insurance regulators across the nation.

Privacy protection for insurance consumers:

Privacy protection was front-and-center as the Executive Committee approved the creation of a new model law aimed at strengthening consumer privacy rights, the first such effort in more than 40 years. The H Committee's Privacy Protections Working Group committed to consolidating two models into one as the "Insurance Consumer Privacy Protection Model Law" will replace the Insurance Information and Privacy Protection Model Act and the Privacy of Consumer Financial Health Information Regulation, which were first enacted in 1980.

The Committee was motivated by the explosion of home office work caused by the COVID-19 pandemic which resulted in a dramatic increase of internet-based consumer privacy scams. The rapid evolution of predictive analytics, artificial intelligence, and telematics technologies also precipitated the action with comprehensive laws and regulations already in place in California, Colorado, Virginia, Connecticut and Utah, and under consideration in at least five other states. And like these early statutory and regulatory regimes,

the model law will create six fundamental rights as the foundation for a privacy protection framework of consumers' personal information:

1. The right not to share data.
2. The right to limit data sharing.
3. The right to correct data.
4. The right to delete data.
5. The right to data portability.
6. The right to restrict data usage.

The Committee spent two years studying the issue and plans a first draft of the law by the end of 2022, with full enactment expected at the NAIC's 2023 fall meeting.

Financial Regulation Activity:

The Financial Condition (E) Committee has been busy in 2022 working on various and interrelated projects.

I. Private Equity Considerations

The Macprudential (E) Working Group has been coordinating the NAIC response to the rise of private equity owned insurers. While concern about private equity involvement in insurance is not new, MPWG has begun to address it in a more systemic way in recent years. This has led to MPWG publishing a list of 13 regulatory considerations applicable (but not exclusive) to private equity owned insurers (the "PE List"). In 2022, the PE List has been finalized and adopted by the NAIC Executive Committee, and MPWG has begun the work of referring projects to different NAIC groups to address each of the considerations.

Some of the considerations on the PE List include (1) concern about holding companies structuring agreements to avoid regulatory disclosures; (2) determining when control may exist even when the "controlling" entity has



a less than 10 percent equity stake; (3) identifying related party-originated investments, including structured securities; (4) the material increase in privately structured securities; and (5) an overreliance on rating agencies. Some of the considerations will engender new projects while others are being addressed by ongoing projects in other working groups and task forces. For example, the multi-faceted work being undertaken by multiple groups to address the rise of private structured securities, including the Statutory Accounting Principles Working Group's bond project and the Valuation of Securities Task Force project to model collateralized loan obligations. Both of these are discussed below.

II. Bond Project

The Statutory Accounting Principles (E) Working Group has been working on a new principles-based bond definition and other corresponding changes throughout 2022. This specific bond project is part of SAPWG's larger Investment Classification Project, begun almost a decade ago to review the investment statements of statutory accounting principles (SSAPs). As part of that project, SAPWG began reviewing possible revisions to "SSAP No. 43R — Loan Backed and Structured Securities." In 2020, that effort expanded as a small group of regulators and industry representatives began working together to create a new principles-based definition of a bond that would be applicable to all securities. This small working group has stated that the new definition responds to a concern that certain asset types are being inappropriately reported as bonds on Schedule D-1. As of the time of this article, SAPWG has released a second version of the Principles Based Definition of a bond, along with corresponding changes to Schedule D-1, SSAP No. 43R and SSAP No 26R. The new definition will likely go into effect beginning in 2025, but may be ready at the beginning of 2024.

III. Modeling CLOs

The Valuation of Securities Task Force began a project this year to change how collateralized loan obligations (CLOs) are assigned their NAIC designation, moving from the designation being based on credit rating provider's ratings to a modeling process that the NAIC Investment Analysis Office will eventually develop. The development of the new model will address this concern, and, according to Iowa Division of Insurance Chief Investment Specialist Carrie Mears, chair of VOSTF, be a fully transparent and deliberate process. Work on the project will continue into 2023, and perhaps even into 2024.

IV. New Risk-Based Capital Investment Risk and Evaluation Working Group

Finally, 2022 saw the creation of a new working group, the Risk-Based Capital Investment Risk and Evaluation

(E) Working Group. Reporting to the Capital Adequacy (E) Task Force, the new group is charged to "perform a comprehensive review of the RBC investment framework for all business types." RBC IR & E WG's first project will be collaborating with VOSTF on creating an "interim" model for analysis of the residual tranche of CLOs and possibly other asset-backed securities, in order to raise their capital charge. After that initial project, District of Columbia Deputy Commissioner and Chief Actuary Philip Barlow, the chair of the new RBC IR & E WG, has stated he hopes the group will be able to create a framework capable of properly assigning RBC charges to any new type of asset as soon as they are created, even before SAPWG and VOSTF are able to classify them.

2022 Elections and State Insurance Regulation

In 2022, the November elections may affect up to 40 insurance commissioners, which is a sizable number of commissioners to be awaiting elections to determine the fate of their appointments and those of their top staff members. Governors and, in a few cases, other executive branch officials appoint most insurance commissioners. Insurance commissioners are elected executive branch officers in a minority of states.

In 2022, elected insurance commissioners in four states — California, Georgia, Kansas and Oklahoma — are up for reelection. Of appointed commissioners, governors in 36 states are on the November 2022 ballot. These elections could influence the NAIC Executive Committee, with all states where 2022 zone officers are serving — Colorado, Iowa, Massachusetts, Michigan, Oregon and Tennessee — holding gubernatorial elections. Likewise, states where two NAIC officers — Idaho and Connecticut — serve are also holding elections.

Election years and the months after elections can result in significant turnover in commissioners and their staff. With officials in 40 states potentially impacted by 2022 elections, the NAIC could have a much different look in 2023.

Next Meeting:

The NAIC will next convene in December at its Winter 2022 Annual Meeting in Tampa, Florida.

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