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NAIC update: Fall 2022 National Meeting

Overview: The tide has turned

The National Association of Insurance Commissioners (NAIC) is charting a new course in 2023, delivering a heavier cargo of consumer protection mechanisms and tools to the states while still navigating through macroprudential concerns.

The organization's fall national meeting, held in a temperate and sometimes unseasonably cool December in Tampa, was the last fall national meeting for NAIC President and Idaho Insurance Director Dean Cameron. It also served as the official election for Missouri Insurance Director Chlora Lindley-Myers to take the helm, setting course for a year that appears to be focused on more deliverables and timetables. In Lindley-Myers' words, "improving our industry, enriching the lives of our consumers, and maintaining our state-based system." She also indicated that in setting sail to achieve the organization's goals, she isn't afraid to rock the boat.

With the primacy of state-based regulation of insurance safely docked in the harbor for now, and Florida taking a breather from hurricane season and urgent legislative efforts, other concerns are cresting. These center on potential algorithmic bias from artificial intelligence/machine learning (AI/ML), financial inclusion, life insurance investment portfolio risk, consumer privacy protections, and adherence to global capital standards, which filled regulatory sails during the fall meeting.

The NAIC is taking the helm on addressing AI and its implications for consumers. The organization announced at the meeting it will take on the work of crafting its first principles-based guidance on AI in the coming year, which will cause ripples throughout the industry as technology's algorithmic use in assessing underwriting and claims is increasingly embedded in insurers' operations.

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Lindley-Myers' remarks coupled with the NAIC's proposed strategic plan, *State Connected*, reveal an organizational pivot, a new tack toward consumer-driven priorities from the heavy financial solvency-driven theme. The NAIC is steering away from its old organizational design, *State Ahead*, adopted in 2018 and extended past year-end 2020 through the COVID-19 pandemic, into its new *State Connected* plan.[1]

According to the 2023 budget, *State Connected* will build upon *State Ahead*, with the ultimate goal envisioned to be the protection of consumers, including further education of the population on risk management tools and insurance coverage protection choices so they can make informed decisions as the marketplace evolves.[2]

The themes of *State Ahead* also included consumer protection, as well as top-notch services and resources for members, but emphasized as its first theme the importance of safe, stable, and solvent markets emphasizing the evaluation of regulatory opportunities coming from macroprudential surveillance measures and data analytics.

As self-styled "pirate" tour boats and other watercraft in a bay festooned with twinkling holiday lights and other seasonal decorations navigated past the dockside during the fall national meeting, other, more immediate events were in motion.

The 2023 leadership was elected in Tampa at the close of the meeting. On deck for this year are Lindley-Myers, the first Black woman to take the helm of the NAIC membership; Connecticut Insurance Director Andrew Mais as president-elect; North Dakota Insurance Commissioner Jon Godfread as vice president; and the newest member to enter into NAIC leadership, Virginia Insurance Commissioner Scott White as secretary-treasurer. All four ran unopposed.

Lindley-Myers acknowledged many past and current regulators in her nomination speech "for placing your trust and confidence in me, a little girl who was raised in public housing in Atlanta; a young woman who sought to make a difference—someone who wanted and chose to do more, wanted to be more, strove—and still strives—to make a difference." Among the many people she called out by name as friends were George Nichols III, who was NAIC president in 2000 when he served as Kentucky's insurance commissioner with then-department staffer Lindley-Myers, a lawyer by training; and retired South Carolina Insurance Director and 2020 NAIC President Ray Farmer. The group also included current NAIC insurance commissioners, Alaska Insurance Director Lori Wing-Heier, Rhode Island's Beth Dwyer, and Maryland's Kathleen Birrane. Lindley-Myers has held senior regulatory positions not only in Missouri and Kentucky, but in Tennessee, and thanked her colleagues there as well.[3]

"I thank very deeply from the bottom of my heart, and finally, as my colleague from Nebraska quipped last night, 'Let the reign of terror begin'," she concluded. Despite her joking, the Missouri insurance director made clear she would sail a broad course through any choppy waters to benefit consumers and the industry by listening to all—but could still make waves when needed. Lindley-Myers described herself as a "woman who is willing to shake things up but yet willing to honor traditions. A woman, as president of this organization, who believes in the betterment of our citizens and our industry. A woman who was raised to believe that everyone is valued, every idea is important, and every thought is to be considered."

This hybrid meeting, occurring in year three of the pandemic, was more like "old times" than the handful of meetings that preceded it, as one participant noted. It also functioned as a reunion, of sorts. Nichols III, Farmer, and Terri Vaughan (a former NAIC CEO (2009–2012) and former longtime Iowa insurance commissioner) were all in attendance during the week in Tampa as part of the new NAIC Foundation, a nonprofit entity. Nichols, the first Black NAIC president; Farmer; and Vaughan were selected in spring 2022 as the inaugural officers. The NAIC acronym in the foundation's name has been repurposed to stand for "New Avenues in Insurance Careers" and is intended to back students financially as they pursue education toward an insurance career in the public or private sector.[4]

Local insurance market makes waves nationally as NAIC gathers

A dramatic set-sail notice during the conference caught the attention of attendees and members when the meeting's location host, 2021 NAIC President and then-Florida Commissioner David Altmaier, announced his resignation after a few days of speculation.[5] First appearing by video at the opening session to greet attendees from a special session of the state legislature in Tallahassee, Altmaier later appeared in person at the fall meeting's conclusion after pushing all week to get significant property insurance legislation passed. The special legislative session was called in the wake of a bruising season for both insurance coverage in the market—six insurers have gone insolvent in 2022 and others have departed the market altogether, according to news reports—and the ravages of Hurricane Ian, which further hurt consumers due to uninsured flood losses and caused at least $42 billion to $50 billion in insured damages, mostly from wind damage.[6] The legislature passed, and the governor signed, Senate Bill (SB) 4-A while the NAIC was still meeting. It's a measure to reduce litigation against the insurance industry while also infusing it with $1 billion to help support it with reinsurance. Another bill signed into law on disaster relief gives $750 million for hurricane recovery and mitigation efforts in the communities impacted by fall Hurricanes Ian and Nicole, along with property tax relief if homes became inhabitable due to the storm damage.

"The issues in Florida's property insurance market did not occur overnight, and they will not be solved overnight. The historic reforms signed today create an environment which realigns Florida to best practices across the nation, adding much-needed stability to Florida's market, promoting competition, and increasing consumer choice," stated Governor Ron DeSantis on December 16—the day the NAIC meeting wrapped up.[7] "We have taken an all-hands-on-deck approach to cut through bureaucracy to help our communities recover from Hurricanes Ian and Nicole," DeSantis said.

Altmaier was a key player at the NAIC, where he co-chaired its Climate and Resiliency Task Force, and as a representative at the International Association of Insurance Supervisors (IAIS), where he was vice chair of its Executive Committee. Dean Cameron lauded Altmaier during the December 16 joint meeting of the Executive Committee and Plenary leadership of fellow members in developing the group capital calculation (GCC), the state-based analytical framework for evaluating insurer solvency and monitoring trends at the group level, not just at the insurance entity level. The Idaho insurance director characterized both the former Florida insurance commissioner and Massachusetts Insurance Commissioner Gary Anderson as battle champions in presenting them with the new awards. They had led the way forward "against all odds," he exclaimed. Or "more accurately, they forced a way forward," through both negotiation and diplomacy and perhaps a "near brawl" at times, to reshape the discussion at the IAIS. These two state regulators opened the door for the Aggregation Method (AM), the US capital methodology intended to be comparable globally to the Insurance Capital Standard (ICS), Cameron said.[8]

Cameron also celebrated Altmaier's and Anderson's leadership efforts to avoid federal preemption of state insurance laws under the terms of the 2017 covered agreement on credit for reinsurance reciprocity between the United States and the European Union through "total adoption of all [credit for reinsurance adoption] requirements by every state and territory." Like Altmaier had been, Anderson is active in international forums and has served as chair of the NAIC International Insurance Relations (G) Committee since 2019. The stakes were high for the organization: The EU-US and the subsequent UK-US Covered Agreements, signed by the US Treasury and the Office of US Trade Representative, gave states five years to adopt significant changes to their reinsurance and holding company laws to eliminate reinsurance collateral requirements entirely or be subject to federal preemption. Cameron called the states' success a "remarkable accomplishment" and "one of the greatest long-game strategies in NAIC history, and one few thought we could meet, including some friends in the federal government."[9] The five-year timetable expired in 2022.[10]

Senate Bill (SB) 4-A is a measure to reduce litigation against the insurance industry while also infusing it with $1 billion to help support it with reinsurance.

Once more into the breach

During the opening session, Cameron extolled this and other accomplishments of the NAIC and various leaders among its membership in making progress in many areas, making points both in letters and live testimony to Congress, federal agencies, and advocating on state-based approaches on rating agency proposals and its perspectives and/or progress on diversity; Medicare Advantage; climate risk and resiliency; AI and big data; private equity (PE); and premium tax credits. He also highlighted progress in such areas as the long-term care actuarial review framework and the new NAIC strategic plan, *State Connected*, a diversity initiative for new member connectivity. Additionally, Cameron championed efforts of the NAIC to push back against any federal intervention or oversight:

"We worked and made progress and defended our state system of regulation of our domestic industry. We candidly expressed our views on the International Capital Standard and our Aggregation Method with our international colleagues. That discussion hit a crescendo at our successful international forum, which, after very clear and direct statements of our position, resulted in concessions of better understanding, increased transparency, and increased stakeholder engagement," Cameron said. However, much remains ahead on the global front as controversial ICS implementation takes shape and the US capital calculation regime undergoes scrutiny to see whether it will be accepted.[11]

With the primacy state regulation of insurance safely docked in the harbor for now, and Florida taking a breather from hurricane season and urgent legislative efforts, concerns around potential algorithmic bias from AI/ML, financial inclusion, life insurance investment portfolio risk, consumer privacy protections, and adherence to global capital standards filled regulatory sails during the fall national meeting.

The topics the NAIC addressed in Tampa and will continue to develop in 2023 are intertwined with consumer protection, be it in scrutiny of AI models; of third-party roles in providing insurers with policies, claims, underwriting, and marketing data tools; or in increasing consumer financial literacy or disclosing the risks consumers need to consider. The rapidly changing climate with its extreme weather events spreading to new areas and destroying neighborhoods has regulators thinking hard about helping insurers access affordable coverage while mitigating their losses from wildfires and storms, even if it means creating, as Colorado is considering, a residual market. Even attempts to bolster capital for certain types of investments serves the purpose of enhancing policyholder protection.

Lest there be any question of the direction of the NAIC, the 2023 budget notes that the purpose of the Innovation, Cybersecurity, and Technology (H) Committee, its first new "letter" committee since 2004, "is to focus on consumer protection through the perspective of cybersecurity, innovation, data security and privacy protections, and emerging technology issues." That focus is beginning to crest now.

Top stories in-depth

Updated privacy protections expected to get their day in the sun

The NAIC Privacy Protections Working Group is continuing its work on a reference document, having been rebranded so it does not have "the gravitas" of a white paper but is information-loaded to explain regulators' thoughts on why they are proposing changes to the legacy privacy model acts #670 (Insurance Information and Privacy Protection Model Act) and #672 (Privacy of Consumer Financial and Health Information Regulation) to create an updated model law representing the best of both models to be known as #674. If it is adopted later this year, and then passed by state legislatures, it will modernize existing privacy laws by updating them to reflect technological advancements, most notably making insurers responsible for the oversight of their third-party service providers and arrangements but not having state regulators step in to regulate these third parties directly themselves. The initial plan was to do so, but the drafting group changed course. As a result, the draft now gives state regulators authority "through any contract or agreement they hold" with the licensees or insurance companies and brokers.[12]

The new model act will also be borrowing from existing guidance and laws, such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Gramm-Leach-Bliley Act, the European Union's General Data Protection Regulation, and the California Consumer Privacy Act. The new Privacy Protections Model Act reference paper will explore collection of data, ownership of data, and disclosure of information in insurance transactions to support state insurance departments as they attempt to get the new act through their state legislatures.[13] After the meeting, the proposed new model #674 was exposed for comment until April 3, 2023.[14] At the spring national meeting in Louisville in March, there will be an open session to discuss the comments on it after being rolled out Feb. 1, 2023.[15]

At stake is the protection of consumer data as it travels through a network of insurers, affiliates, and third parties and the scope of regulatory authority to protect it.

Regulators expressed some unease about third parties and how to deal with them when they are not under state insurance regulatory authority. A regulator from Maine on the working group, Robert Wake, expressed concern about treatment of privacy to just the sensitivity of passwords and biometrics without encompassing "the universe of things that we need to protect against."

"At a minimum, you need HIPAA-like protections that when sensitive personal information is shared with a third party, the third party has to contractually agree to keep whatever protections already exist in place." Wake asked where it is appropriate for the states to do something similar to HIPAA. "State insurance departments can't regulate [search engines.] So where do you draw this line—that's something to think about." Wake also talked about identifying information as nonpublic, even if it was pulled from public sources as part of a big data catch.

Cynthia Amann, co-vice chair of the working group and a regulator with the Missouri Department of Insurance, Financial Institutions & Professional Registration, noted that, to Wake's point, these are the type of issues that "we have struggled with for a long time" on their many conference calls.

The working group also heard from stakeholders' perspectives on the use of personal information during the insurance process, including an industry representative and a consumer representative. There needs to be strong regulatory oversight and accountability regarding data use, regulators were told.

At stake is the protection of consumer data as it travels through a network of insurers, affiliates, and third parties and the scope of regulatory authority to protect it.

Several points stood out, including the finding that "overwhelmingly, consumers told us that the US should support a national data protection standard when it relates to the use of personal data," according to study results presented by Matthew Smith, executive director of Coalition Against Insurance Fraud (CAIF) and a consumer representative to the NAIC. There was even more support for applying a global standard among respondents in the study, which was on the ethical use of data to fight insurance fraud and released in November 2022, Smith said. However, although there was little appetite for a patchwork of rules, it is state insurance regulators who are the most trusted to actually write the policies, even though they want them implemented at a national level, according to the results of the study, which garnered more than 2,000 responses and was the first and only study of its kind. Speaking to regulators and legislators over the past few years, Smith said he was asked by them to prove that consumers would support appropriate use of data in fighting insurance fraud. He called the study far-reaching, beyond the world of insurance fraud, and ground-breaking. "The data onslaught is here—consumers need regulators to make sure they are protected," his presentation slides declared.

Smith noted that there are only five generally applicable state data privacy laws that are on the books so far, with others parked in state legislatures. Those five states at the time of the meeting were in California, Colorado, Connecticut, Utah, and Virginia. However, Smith predicted that those bills will be filed in many if not all of the states including updates in states that already have filed bills and adopted them.

Smith's point that consumers' interests need to be protected "first and foremost" was embraced by regulators on the working group.

Amann said regulators have the same sort of concern about the industry's data models as a trade secret or black box, the same kind they may have had about the use of credit scoring, which she said she was old enough to remember. With regard to data collection, she asked the industry rhetorically, "Do you really need all of my telematic information? I don't know."

Industry remarks through a presentation underscored the need for clarity with consumers, including what the company is collecting, how the company is collecting it and the uses to which it is putting the data, and also take some responsibility for third-party data the insurer might use, as well as clarity during collection of that data.

Throughout the discussion on third-party data development and deployment in all aspects of insurance, consumer relationship was woven through multiple committees on multiple days during the fall meeting, indicating its staying power as a point of contention and discussion.

"The data onslaught is here—consumers need regulators to make sure they are protected."

Matthew Smith
Director, Coalition Against Insurance Fraud (CAIF) and a consumer representative to the NAIC

The NAIC will develop and adopt a regulatory framework for use of AI by the insurance industry.

Grasping the expanded use of data: A mandate emerges for oversight of AI

In terms of new actions taken at the fall meeting, the centerpiece was the announcement at the Innovation, Cybersecurity and Technology (H) Committee meeting that the NAIC will develop and adopt a regulatory framework for use of AI by the insurance industry and get started now.

The framework will be articulated in the form of a model bulletin. The initiative was unveiled by Maryland Insurance Commissioner Kathleen Birrane, who made a few key points about it. The effort, while sponsored by H Committee and the individual working groups that are within it, has the collective weight and support behind it of the membership, as that is where the consensus is and where the collaboration has been happening, she said. It will be the task of the H Committee through the Collaboration Forum and the many NAIC working groups that comprise the Collaboration Forum to draft a model interpretive bulletin. Responsibility for the drafting of each of four delineated sections is being divided among the working groups that currently comprise the Collaboration Forum, leveraging work that has already been done within these groups' subject areas. All NAIC members are welcome to participate in each of the subgroups.

1. The reason the new AI guidance should be in the form of a model bulletin is because members feel strongly that AI is a means by which industry engages in conduct that is already subject to regulatory standards and authority related to underwriting and rating standards as well as unfair trade and settlement practices.
2. The members believe that the framework at this point should be principles based and not prescriptive and articulate standards at a high level that would apply generally as opposed to specific use cases and application.
3. Testing for AI bias is not going to happen right away. Birrane said that members prefer at this point a focus on governance requirements and the establishment of AI-use protocols that rely on external and objective standards such as the National Institute of Standards and Technology (NIST), International Organization for Standardization (ISO), or American National Standards Institute (ANSI) standards.[16] Members agree that efforts of validation should be part of the requirements but with recognition of the practical difficulties and limitations associated with testing at this time.
4. Third parties will not be regulated for now. "There is a strong preference of members to place responsibility on licensees to conduct appropriate diligence with respect to third-party data and model vendors and to hold licensees responsible as opposed to attempting to directly regulate third parties at this time," Birrane said.
5. Format: The current table of contents section for the interpretative bulletin is still being formed at a very high level, Birrane said. There will be four sections: a) an introduction, background, and anchoring of the NAIC's legislative authority for the bulletin; b) a definitional section that will incorporate the vocabulary project that the group has already been working on; c) regulatory expectations for the use of AI by the insurance industry that would incorporate governance and enterprise risk management expectations; and d) a section on regulatory oversight and examination standards that would address market conduct, financial rate filings, and those areas.

Timing: State regulators were just beginning to "put pen to paper" in these areas during the Tampa meeting. The H Committee will develop a deadline for when it feels it will be able to expose for comment some of the sections. Work is already underway for the definitional section of the guidance, so this element might be addressed before the other sections. The hope is that there will have been enough written and exposed to have "a robust conversation about where [the NAIC's H Committee] is going in advance of our next national meeting in Louisville," Birrane informed stakeholders. "This is obviously a very high-level discussion that we've had and where our consensus is ... the devil will no doubt be in the details, and we will be discussing them in many different meetings going forward," Birrane concluded.

"That dreaded word—algorithm."
The H Committee segued to a panel on presentations related to transparency and explainability to consumers regarding adverse decisions from the use of big data and AI.[17]

Longtime NAIC consumer advocate and former consumer economics professor Brenda Cude asked how many people in the room could explain what an algorithm is and whether consumers would know, and suggested there be testing of the disclosure material with the consumer population before it is used and engagement with communication people to help write materials.

If carriers are going to do the work to create disclosures and transparency, "the questions rest on whether the disclosures are understandable to the consumer and can they do anything about it," said an industry InsurTech representative. She said a question for regulators and consumers to consider is what helps consumers interface with the product to get them the most helpful and least expensive product they need.

Dorothy Andrews, the NAIC senior behavioral scientist and actuary who moderated the panel, asked whether it would be fair to inform the consumer that their bad credit score was the most important factor in that decision.

The question should be whether consumers could improve their credit scores based upon the knowledge they are given by the insurer on rating or price factors, the industry representative replied. Sure, that variable can be changed, the InsurTech representative answered. Actions that help consumers mitigate their risk and avoid a policy decline, such as stopping smoking, are easy variables to identify for change by the consumer, but actual disclosures for ML will have to be tailored to what spurred a decline of policy (in health or life insurance) and what was included as a policy pricing variable in the P&C sector, she noted.

"Just because it is doable, it may not mean it is desirable and it may not be scalable," said Frank O'Brien, vice president, state government relations with the American Property Casualty Insurance Association (APCIA) in reference to disclosing rating factors and reasons to consumers.

"That dreaded word—algorithm. That's the secret sauce that allows a company to be competitive in the marketplace," O'Brien said as he further expressed concerns.

O'Brien argued that, for the most part, the insurance market system was very successful and competitive, an environment where people can get coverage for what they need when they want and when it is convenient for them. "So," he concluded, "you want to make sure, to be blunt, you don't screw that up."

Birrane reminded stakeholders that the refurbished Data Privacy Model Act would be exposed for comment at the end of January and would touch upon almost every point that panelists raised.

Regarding insurance sandbox legislation, a handful of states have such laws in place—Kentucky, North Carolina, South Dakota, Utah, Vermont, and West Virginia—and nine others have indicated that they have innovation regulatory legislation or flexibility allowing for innovation in insurance products or services, NAIC staff updated. The National Conference of Insurance Legislators (NCOIL) adopted the model act during its November 2022 meeting.

"That dreaded word—algorithm. That's the secret sauce that allows a company to be competitive in the marketplace."

Frank O'Brien
Vice president, state government relations with the American Property Casualty Insurance Association (APCIA)

Regulators poised to scrutinize data
Earlier in the day, the H Committee's Big Data and AI (H) Working Group dove into the use of AI in underwriting, third-party data, and unfair discrimination.

An AI/ML private passenger auto public report, released on December 8, 2022, was based on a survey conducted mostly in fall 2021 of larger insurance auto insurer writers in nine states, according to Vermont Commissioner Kevin Gaffney. The survey was conducted with several goals in mind, including seeking information that could aid in the development of guidance or a potential regulatory framework to support the industry's use of AI/ML, he indicated.[18]

Of the 193 company responses received, almost 90% indicated they were doing something pertaining to AL/ML, with 169 companies using, planning to use, or planning to explore using ML, or about 88% of the companies. The survey was intentionally limited to only the most advanced types of AI/ML. The results found that claims were the largest application area for the use of AI/ML, followed by (in order of use) marketing, fraud detection, rating, underwriting, and loss prevention.
Many companies discussed having a consumer dispute process, he said. In discussing where regulators would go from

here, Gaffney underscored transparency and emphasized there would be a lot to do around third-party models.

According to Gaffney and the private passenger auto survey report conclusions, next steps at the NAIC include:[19]

- Evaluating the survey analysis and determining whether to further explore the following subjects:
  - AI/ML model usage, level of decision-making, and human involvement element in that decision-making;
  - Company data elements;
  - Companies' governance frameworks and the documentation of these frameworks; and
  - Consumer data recourse and third-party regulatory frameworks.
- Creating a risk hierarchy to prioritize the need for more model governance and company oversight. The general concept is that more oversight of a model will be needed as the consumer risk or impact increases from the modeling or models.
- Evaluating consumer data recourse: "Consumers may not even know about their data being used, so consumer transparency is a priority," the study concluded. The Privacy Protections Working Group will be tackling these issues.
- Evaluating the regulatory framework around the use of third-party models and third-party data. This includes evaluating the ability of companies and regulators to obtain needed information from third parties and for regulators to oversee this work either through the companies or third parties in some way. This is also part of Workstream Two of the Big Data and Artificial Intelligence (H) Working Group.
- Evaluating concerns about third-party vendor concentration by insurance company use.
- Determining if additional best-practices white papers would be useful on subjects in the AI/ML space.

Third-party vendor models in the hot seat

Third-party development of AI models concerns many stakeholders, and although the NAIC is not going to try gathering them in under their regulatory tent as licensees for now, according to H Committee Chair Birrane's announced interpretive guidance development, there are still some hefty measures regulators can take or are already taking to monitor and scrutinize their use.

Iowa Insurance Commissioner Doug Ommen said, during the Big Data Working Group, that the workstream he oversees dovetails into the work underway by Vermont's Gaffney. It will involve determining the appropriate regulatory evaluation of third-party data and model vendors, a recommended regulatory framework for monitoring and overseeing the use of third-party data and model vendors.[20] In accordance with this charge, there are examination standards or questions that regulators can ask about any data or models used by insurance companies and third-party vendors, whether the model is developed internally or obtained from external sources.

Regulators have already developed base questions that ask insurers and third parties about any type of AI model or data they use in an AI model whether that be rating, marketing underwriting, fraud detection, claims handling or more, Ommen pointed out. The Iowa commissioner said there will likely be additional regulatory questions needed when focusing on a specific insurer operational task especially for rating and underwriting. The detailed series of questions to pose to insurers were exposed for a two-month comment period.

The idea is that these questions would form the base and other NAIC working groups could add additional task-specific questions such as predictive models and accelerated underwriting questions in recent papers, he said.

The Big Data Working Group draft "Model and Data Regulatory Questions"[21] is separated into three sections: 1) questions to insurers on a) their own models and b) about the third-party model; 2) the use of third-party models and data inputs into such models; and 3) the use of third-party data, according to the NAIC document.

Dave Snyder, vice president of policy, research and international for the APCIA, said the nine pages of questions on data models—while promoting uniformity and potentially very good, if not tailored to the business size and scope—could lead to the exhaustion of resources that could be used to provide more and better coverage to consumers. He also worried about the NAIC through the questions creating *de facto* privacy legal standards and also expressed concern about innovation. He said he would like the kind of balance the NAIC traditionally seeks.

Birny Birnbaum, director of the Center for Economic Justice, raised the specter of prohibited antitrust activities with the use of big data by third-party providers, as they are a mechanism for collected decision-making among insurers and create the algorithms. Birnbaum, a decades-long NAIC-funded consumer advocate, said that the working group does a good job of identifying data, models, and governance, but it doesn't go into the broader issue of the role of the third party and whether they should be required to be licensed as an advisory organization or be at risk for running into antitrust prohibition because the third party is providing an algorithm based on data it has collected from insurers and providing back guidance, whether it is for claims settlement pricing or marketing.

Birnbaum also expressed concern about the oversight of data in accelerated underwriting in the life insurance industry, where consumers would need the same protection that P&C consumers do with regard to the use of credit information, as life insurers use credit-based information for their underwriting. He was told the accelerated underwriting draft guidance work is still underway and open to feedback once it is exposed, including with a public meeting.

Race and insurance workstreams get reorganized, results-oriented

The Special (EX) Committee on Race and Insurance's charges for 2023 are a work in progress and generally the same as the prior year with structural changes that divide workstreams into insurance product lines rather than numbered, topical areas, according to 2022 co-chair Lindley-Myers. However, some issues span the industry, so the new Life, P&C, and Health Workstreams will all consider enhanced data reporting and record-keeping requirements to identify race and other sociodemographic factors of insureds, including consideration of legal and privacy concerns. This includes the consideration of a potential data call to identify insurance producer resources available and products sold in specific ZIP codes to identify barriers to access.

What is likely to change more substantively in 2023 under NAIC President Lindley-Myers is a tighter ship in terms of timing and a bigger vision of what can be accomplished.

"I do want to add that as I look ahead to my year as president, I do want to spend some time discussing with the membership and interested parties how we should move forward with identifying some specific timelines and deliverables for the workstream," she told the committee before the charges were approved. "This is a challenging work and we're making some progress, but I want to explore ways that we can do more."

She did not specify, but those deliverables should be apparent soon. The Special Committee is the NAIC's coordinating body on identifying issues related to race, diversity, and inclusion within the insurance sector, in access to the insurance sector and insurance products and exploration of practices within this realm that potentially disadvantage people of color and/or historically underrepresented groups.

However, it coordinates with groups such as the Innovation, Cybersecurity, and Technology Committee and its Big Data and AI Working Group as well as the Casualty Actuarial and Statistical Task Force with a particular focus now on predictive modeling, price algorithms, and AI. Third-party data also figures in this constellation of topics the Special Committee will weigh, as it is entwined with data modeling.

Specifically, among its charges, the group will continue research and analysis of insurance, legal, and regulatory approaches to addressing unfair discrimination, disparate treatment, proxy discrimination, and disparate impact. Areas for recommendations or action as divided into the new workstreams include :

- Life Workstream
    a. The impact of traditional life insurance underwriting on traditionally underserved populations, considering the relationship between mortality risk and disparate impact.
    b. The marketing, distribution, and access to life insurance products in minority communities, including the role that financial literacy plays.
    c. Disparities in the number of cancellations/rescissions among minority policyholders.
- Property & Casualty Workstream
    a. Developing analytical and regulatory tools to assist state insurance regulators in defining, identifying, and addressing unfair discrimination in P&C insurance, including issues related to rating and underwriting variables, such as socioeconomic variables and criminal history, including identifying proxy variables for race; correlation versus causation, including discussion of spurious correlation and rational explanation; potential bias in underlying data (testing for bias was not specifically mentioned), and proper use of third-party data.
    b. Whether steps need to be taken to mitigate the impact of residual markets, premium financing, and nonstandard markets on historically underrepresented groups.
- Health Workstream
    a. Measures to advance equity through lowering the cost of health care and promoting access to care and coverage, with a specific focus on ways to remedy impacts on people of color, low-income and rural populations, and historically marginalized groups such as the LGBTQ+ community, individuals with disabilities, and Alaska Native and other Native and Indigenous people.
    b. Examination of the use of network adequacy and provider directory measures (e.g., provider diversity, language, and cultural competence) to promote equitable access to culturally competent care.
    c. Conduct additional outreach to educate consumers and collect information on health and health care complaints related to discrimination and inequities in accessing care.

The Special Committee on Race & Insurance reported on the research and work done under its existing workstreams on everything from addressing and mitigating bias in marketing and advertising in personal lines insurance, work with the NAIC's platform, the Collaboration Forum, on algorithmic bias consumer education, and what agents and advisers are doing to increase diversity, equity, and inclusion (DEI) in their products. The committee adopted the recommendations of the then-Workstream One on DEI efforts and resources to use sector-wide, including among industry, insurance trade associations, and state regulatory bodies. Under these recommendations, the insurance industry should assess DEI progress not at the organizational and producer level but at third-party suppliers to identify opportunities for improvement and to measure changes in diversity over time. As part of this initiative, insurance trade associations are encouraged to share information they collect from their member companies in and to make such information able to be evaluated well and accessed publicly on a regular basis. Insurers should also be prepared to discuss their efforts relating to DEI talent recruitment and retention and their impact.[22] Trade association representatives speaking at the meeting supported the recommendations.

After an update on the IAIS report on what is happening on DEI around the globe, Lindley-Myers, who participated in the IAIS annual conference in November on a panel on how embedding DEI supports better governance, added a few words. She noted that her commentary at the Santiago-based meeting highlighted much of the work of the Special Committee and its progress in its workstreams and the milestones and achievements reached through the work of the organization's DEI council and of NAIC DEI Director Evelyn Boswell.[23] She stressed the important of regulators to review and maintain DEI within their organizations to reflect the diverse pool of consumers we represent throughout the country.

Capital is king

The NAIC is not hitting pause on its plans to include collateralized loan obligations (CLOs) as a financially modeled security and diving in perhaps to use risk-based capital (RBC) methodology to analyze other structured assets, perhaps bringing more capital charges to popular insurer investments. It is taking in a lot of commentary and discussion from stakeholders as it charts its course, though. The NAIC's securities-specialized groups will evaluate the appropriate RBC treatment of asset-backed securities (ABS), including CLOs and collateralized fund obligations (CFOs).

Industry representatives continue to plead the case that CLOs, which the NAIC terms as structured securities backed by a pool of debt, typically corporate loans with low credit ratings, are not a major risk to insurer surplus or solvency. The industry has expressed concern that that higher RBC charges for the investments will reduce insurers' holdings in what they believe has been a tried-and-true investment record in CLO liabilities.

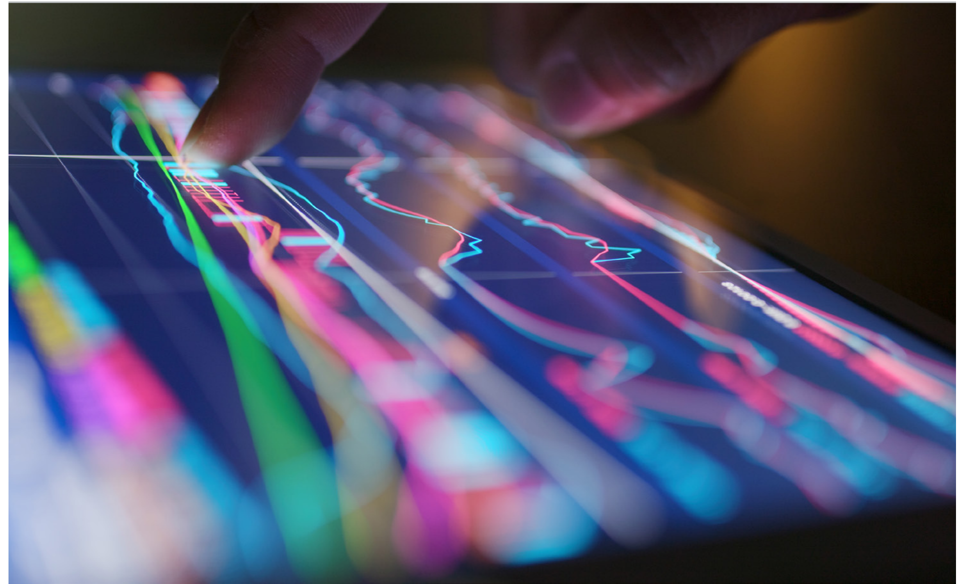
The RBC Investment Risk & Evaluation Working Group heard a presentation from the American Academy of Actuaries (AAA) on CLO obligations.[27] At the request of the working group, the AAA had been researching considerations for establishing capital requirements for CLOs, defined as tranched securities issued by a Special Purpose Vehicle (SPV) holding a large, diversified portfolio mostly composed of bank loans. An AAA representative, Steve Smith, updated the working group while announcing the association's research conclusions, which at times veered from NAIC IAO's approach.

According to the NAIC Capital Markets Bureau, as of year-end 2021, US insurers' CLO exposure increased by about 12% to $216 billion.

The Valuation of Securities (VOS) Task Force exposed the CLO financial modeling methodology it proposes to use for a 60-day comment period and adopted an amendment to the *Purposes and Procedures Manual* of the NAIC Investment Analysis Office (IAO) to include CLOs as a financially modeled security.[24] The VOS Task Force first exposed a proposal to have the NAIC's Structured Securities Group (SSG) model CLOs during the Summer 2022 National Meeting in Portland.

According to the NAIC Capital Markets Bureau, as of year-end 2021, US insurers' CLO exposure increased by about 12% to $216 billion in book/adjusted carrying value from $192.2 billion at year-end 2020, a lower increase than the 23% year-over-year increase from $156.9 billion at year-end 2019.[25] These are CLOs collateralized predominantly by broadly syndicated bank loans.[26] The NAIC stated in a Capital Markets Special Report that the stress thesis concern remains the same, namely that "the consequences of less stringent underwriting on the underlying bank loan collateral will result in substantially lower recovery rates during the next recession."

The two main conclusions presented by the AAA at the meeting were 1) bond factors are not appropriate for CLOs, and 2) the exposure across the life industry and at individual companies is small, and there is not a major risk to surplus or solvency. This prompted the AAA's Smith to argue that "collectively, we all have time to get the CLO factors right—we don't believe there is an urgency to get this done immediately…. We can take the time to get it right."



The AAA stated in its presentation slides that it recognizes the limitations in identifying CLO holdings coupled with the possibility that industry exposure to CLOs could increase in the future. However, it stated that "it is important to remember that RBC is a blunt measure based on industry averages that should not be relied upon as the sole indicator of risk; there may be individual life insurers with more material exposures." The AAA stressed that in the view of its working group on the issue, CLOs don't present a material risk to the aggregate solvency of the life insurance industry currently.

Chair of the working group, District of Columbia Department of Insurance, Securities and Banking (DISB) Associate Commissioner Phil Barlow, and other regulators peppered the AAA representative with questions about such topics as the different risk profiles and rating agency treatment of CLOs and bonds. Barlow wanted to know whether rating agencies update their ratings for these as the structures of them change over time.

The AAA responded that the rating agencies conduct regular "surveillance" on them, and they can be upgraded or downgraded over time. The view from the rating agencies is that they believe their methodology is more conservative on CLOs than on corporate bonds, the AAA representative said.

He noted that, in a May 2022 memo, the NAIC IAO recommended a model to eliminate arbitrage.[28] Specifically, the NAIC had written that the "SSG can model CLO investments and evaluate all tranche level losses across all debt and equity tranches … to assign NAIC Designations that create equivalency between securitization and direct holdings, thereby eliminating RBC arbitrage." This proposed model would assign new designations to the CLO debt tranches so when the RBC is tallied, or C-1, it would add up to what the underlying banking loans' RBC would have been. Bank loans are usually below investment grade. Specifically, the IOA paper recommends that total C-1 requirement for all debt and equity issued by a CLO (vertical slice) should equal the total C-1 requirement for all the underlying collateral if an insurer owns the vertical slice.

The issue is that in a typical CLO, total C-1 for the underlying collateral is about three times more than the C-1 would be for the vertical slice or all the tranches, so in a scenario where RBC was applied, capital costs could jump for these insurer investments. In short, the C-1 sets capital requirements for certain investment risks, often default risk.[29]

Barlow responded that the working group interest is the RBC methodology for CLOs and ultimately expanding it to other structured assets. "There is an interest in addressing the arbitrage issue in our interim proposal, our interim work … but we want to make sure we get the methodology correct," Barlow said.

The AAA C-1 working group agrees with the basic concept of the total risk in a portfolio of loans equalling the total risk of all the CLO tranches that are collateralized by these same loans.

"Structuring doesn't magically create or destroy risk," Smith said. "It rearranges risk." However, the AAA group does not agree with the "RBC arbitrage principle" put forth in the IOA paper, Smith said. So, while CLOs total collateral and vertical slices of the tranches have the same risk at a point and time, it does not follow that they must have the total C-1 requirement. C-1 corporate bond factors are not appropriate for bank loans or for CLOs due to different assumptions and models, Smith argued, noting that bank loans and bonds have different recovery rates and default rates. We believe it would not be appropriate to force an equivalence using the current C-1 corporate bond factors, he said. Not only does the AAA believe the C-1 corporate bond factors are not appropriate for CLOs, but it also believes they are not even appropriate for bank loans, he told regulators. These C-1 corporate bond

factors were developed using the assumption that the risk being measured is unsecured corporate credit, but bank loans are senior secured, Smith explained.

If the NAIC is going to change the CLO risk factors, forcing an equivalence to the underlying bank loans is not the ideal solution—it would eliminate the RBC arbitrage. "Let's come up with a methodology that gets them right," Smith told Barlow in an exchange.

International capital discussions united US stakeholders

Later at the Tampa meeting, the IAIS held a special stakeholder meeting to discuss the ICS and the US-based Aggregation Method's comparability assessment process. As followers of the ICS development saga know, the US insurance sector, from federal and state regulators to the industry, has put forth its own methodology as an outcomes-equivalent alternative to the ICS for implantation for its domestic industry, championing it as more in step with the long-term liabilities and group solvency approaches of US products and firms rather than a more fluctuating, market-based methodology it perceives in the ICS.[30]

The comparability assessment will consider whether the AM and the ICS both can identify operations within a company or a legal entity that could pose material risk to the insurance operations. Late in 2022, the IAIS extended the period for the design of the scenarios and pushed consideration of the final criteria for the AM from November 2022 to March 2023. The actual AM comparability assessment is still scheduled to begin in the second half of 2023.[31]

In Tampa, IAIS said it was seeking input from stakeholders to identify the appropriate type of scenarios that could be used for sensitivity analysis. What variables should be considered in the scenarios to reflect changes in financial and economic market conditions, it asked.

Industry representatives came to the microphone to tell the six-person IAIS panel their thoughts on scenario analysis and the need for more guidance, more explanations, and clarity about such terms of art such as "significantly correlate."

One company representative told the IAIS panel that this sector is going to look "quite robust" under an ICS lens and wants to see the distinction made between the life and P&C sectors. An IAIS representative assured industry stakeholders that there would be multiple scenarios.

Steve Broadie, vice president of financial policy for the APCIA, told the panel that the trade organization's members agree any capital measure should be incremental and a proven method that guides principles in the United States, namely statutory accounting, and RBC. Broadie said this is embraced in the NAIC's model Holding Company Act and the GCC being adopted now by states.[32] He said that the ICS would require a lot of additional work. He also raised the issue of differentiation between life companies and non-life insurers.

Of interest, this meeting would turn out to be the last one for Tom Sullivan in his ninth year as FRB (senior) associate director, a champion of the Team USA approach to assessing groupwide capital, whether through the FRB's work on a building block method domestically or through the AM approach internationally for US-based internationally active insurance groups. Sullivan announced his retirement in January, a month after the Tampa meeting. The US approach fundamentally builds on existing capital requirements for the various legal entities in an insurance group to fashion a capital requirement of the entire group.[33] As Deloitte pointed out closer to the outset of the ICS development process, US stakeholders have been hesitant to adopt a seemingly bank-centric approach to insurance regulation.[34]

Big board risks

Wildfires
Colorado is now considering a Fair Access to Insurance Requirements (FAIR) Plan due to its growing vulnerability to wildfires in populated areas. Colorado is one of a handful of states that does not have a FAIR Plan or a residual market, as Peg Brown, the state's chief deputy commissioner, pointed out during the Climate Change and Resiliency Task Force meeting.[35]

After the Marshall fire in late 2021, the most destructive in the state's history, the Colorado Division of Insurance engaged in multiple townhalls and outreach and has been working with multiple state agencies that oversee energy, public safety, and economic development as well as colleagues from other states that more regularly deal with weather and climate disasters, according to Brown.

Colorado is developing programs and public policy to make sure it can rebuild for the future, with better building standards and sustainable rebuilding. The Division is also conducting studies and doing research in regard to underinsurance and to look at insurance in the face of increased risk as part of its consideration of a residual market mechanism. When someone is underinsured with the home that they lost, it is very difficult to come back and ask for increased standards, although we know that the long-term effect of those increased standards is to actually reduce the risk, Brown said. She thanked colleagues in California, Connecticut, Louisiana, North Carolina, Oregon, and South Carolina for helping the state when it asked how to move the ball forward.[36]

California Deputy Commissioner on Climate and Sustainability Mike Peterson spoke virtually about wildfire mitigation and the role insurance can play in pre-disaster mitigation and stressed that the role of state insurance regulators is essential in making that work. In mid-October, the California Department of Insurance finalized regulations to incentivize consumers to harden their homes and worked with emergency and other state agencies.

These regulations will improve wildfire safety across the state, but we really wanted that encouragement for pre-disaster mitigation in our areas subject to wildfires. The research helped state officials figure out on what hardening efforts work best. Peterson listed Class A fire-rated roofs, enclosed eaves, fire-resistant vents, multi-pane windows and functional shutters, and at least six inches of noncombustible vertical clearance at the bottom of the exterior of the building. We want homes to become safer, and these regulations help build a bridge between risk mitigation research and insurance, producing better and better data that may inform future research, the California regulator said. In addition, the new California wildfire mitigation regulations ensure that if a homeowner invests in hardening their property and is nonrenewed, any other insurance company will offer incentives for the same home-hardening measures, thereby increasing consistency of treatment, according to Peterson.

TK Keen, administrator for the Oregon Division of Financial Regulation, weighed in by noting Oregon was a few years behind California in its efforts and has learned a great deal with the help of Peterson and Commissioner Ricardo Lara. Oregon had five simultaneous fires over Labor Day weekend in 2022 that caused $2.4 billion insured losses, caused nine deaths, and burned more than 1 million acres. The state legislature passed Senate Bill 762 to address wildfires to get state agencies working together, and step one was creating a wildfire risk map it expects to be ready sometime this year and mapping the wildland-urban interface to see what the true risks are.

This wildfire risk map is still being drafted by the Oregon Department of Forestry. "It has been at least 20 years since we had any significant mapping efforts to understand Oregon's risk," Keen said. There has been a state focus on a 20-year plan of land management and coordinated partnerships among agencies and private organizations. The state is emphasizing property-hardening activities and prescribed fires to cut down on fuel load in wooded areas, he said. Regulators want policyholders to get credit for creating defensible space and hardening their properties against wildfires, and to have these efforts reflected in policy rating

When someone is underinsured with the home that they lost, it is very difficult to come back.

and underwriting, so it will be putting the concept forward in the state legislative session to address affordability of policies. There's been "a pretty dramatic shift for the residents of Oregon" over the past 20 years, Keen said. He highlighted the plight of a lot of people who bought property where there was almost no wildfire risk but who are now finding out due to climate change. Although they haven't physically moved, they are in a higher risk area and are having trouble buying homeowner insurance to meet their needs.

Flooding

Altmaier, who arrived in Tampa December 15 to lead the Climate and Resiliency Task Force meeting, suggested that access to insurance products amid the market impacts of catastrophic events would be part of the task force discussion in 2023 (although he would no longer be a regulator at the time). Fresh from the state legislature in Tallahassee after the special session to deal with Florida's turbulent property insurance market had concluded, Altmaier described the ballooning of the residual market in Florida to more than 1 million homeowners from 400,000 just a few years back.[37]

Catastrophic events harden the market and affect availability for coverage, he explained. Flooding destroyed properties and killed residents in Florida during the September 2022 Category 4 storm Hurricane Ian while devastating and costly rain and floods swept through California a month after the Tampa meeting, putting more than 26 million people in that state under flood watches.[38] Amy Bach, executive director of United Policyholders and an NAIC consumer advocate, pointed out during the NAIC/Consumer Liaison Committee meeting that in the aftermath of Hurricane Ian, about one-third of claims have been closed without payment. She said she's not sure if that's due to a lack of flood insurance, but this is a high percentage based on her experience with other catastrophic hurricanes.[39]

In the Property & Casualty (C) Committee, Birnbaum told state insurance regulators to take the leadership role to guide Congress and look for an enhanced role for state insurance for flood, a federal flood insurance pool of sorts. His concern is that relatively few homes and businesses buy flood insurance and instead depend on disaster relief or personal savings to cover losses. Birnbaum's presentation, "State insurance regulators must step up to offer a new national strategy needed," made a splash, prompting energetic reaction toward the end of the meeting both in the room and in conversations afterward. He compared it to the federal terrorism program for mega-flooding events. He called for a 100% flood insurance requirement for federally involved mortgages. In an ideal world, states would require flood insurance to be offered as part of a residential property policy, Birnbaum said. States would be free to exclude it, but that would defeat the purpose, he said. Regulators had a few questions about how it would work, expressing concern about the price of the coverage—if it becomes too high, it becomes out of reach for most. The percentage of the total flood exposure of the state would be involved in the price calculations.

John Huff, CEO of the Association of Bermuda Insurers and Reinsurers and a former NAIC president (2016), remarked that Birnbaum was "spot on" for wanting to initiate a national dialogue on the future of flood insurance. Only 4% of homes have flood insurance today, Huff noted. In addition, through abrasion, or claims process friction, "we make it too hard when customers have a loss," Huff said.[40]

"Catastrophic events harden the market and affect availability for coverage."

David Altmaier
President, 2021 NAIC and former Florida commissioner

Cyber

Brooke Stringer, an NAIC Washington office staff official, brought federal/state cyber activities into focus. In September, the US Office of the Treasury released a request for comment on whether the federal government should create a new program to shore up the insurance industry to cover cyberattacks. The federal government is especially concerned with addressing the risk to critical infrastructure—train lines, power grids and the like, she pointed out. This collective cyber insurance effort emerged as a result of a Government Accountability Office (GAO) report at the outset of summer 2022 that stated the Treasury and the Department of Homeland Security (DHS) should study to see if there should be a federal catastrophic cybersecurity program.[41]

"The NAIC has historically supported a federal backstop ... But I don't think we think this is a case where the market has failed," she said. Insurers do indeed want to write this coverage, Stringer added. Even though there has been hardening of the market, the NAIC doesn't think the federal government should create a new program, although it is up to Congress, she made clear. Attendees of the P&C Insurance Committee meeting also heard that Sen. John Hickenlooper, D-Colo., is working on federal insurance legislation that would create a federal working group at the Department of

Commerce to investigate cyber insurance and create a cyber insurance office. The NAIC staff official said the standard-setting association would indeed "love" to see a state regulator involved.

The legislation, the Insurance Cybersecurity Act of 2023, was subsequently introduced in February 2023 by Hickenlooper and Shelley Moore Capito, R-WVA.[42] It would require the Assistant Secretary of Commerce for Communications and Information to establish a working group on cyber insurance with members from NIST, Treasury, the Cybersecurity and Infrastructure Security Agency, and the Department of Justice. The NAIC is not mentioned in the bill, which would require the group to provide informative resources for issuers and customers of cyber insurance. The group would be tasked with identifying the constraints of insurers in covering higher amounts of cyber losses and considering new cyber risk areas currently not covered, including reputational damage and intellectual property lost. As drafted, the bill also outlines requirements to develop recommendations for potential customers on how to assess various types and levels of coverage offered under policies and develop recommendations for insurers, agents, and brokers on how to communicate policy provisions in a clear and easy-to-grasp fashion for customers.

Looking ahead—and in the meeting's wake

After a long winter, the NAIC will have a packed spring agenda for its national meeting in March when it meets in Louisville. As Lindley-Myers pointed out in the final 2022 session, the package of charges for 2023 includes continued work on financial solvency market conduct; challenging public policy issues; and continued engagement with consumer representatives, the insurance industry, and the states' federal and international colleagues. "The NAIC and its committee groups will not be slowing down in 2023," Lindley-Myers told attendees.

It will be a heavy cargo load for sure, but it's not for nothing that Florida's Altmaier left with parting words that included his sentiment that his time as a state insurance regulator will be the highlight of his career anytime he looks back at his time served. "Wherever it takes me in the future, I will always look back on this time as my favorite part," he said.

The NAIC will convene under a hybrid format March 21–25, 2023, in Louisville, Kentucky, for its spring national meeting, which is expected to be the last full meeting during the COVID-19 pandemic before President Biden plans to end the public health emergency in May.[43]

The NAIC will convene under a hybrid format March 21–25, 2023, in Louisville, Kentucky.

NAIC accounting update

This section of the NAIC update focuses on accounting and reporting changes discussed, adopted, or exposed by the Statutory Accounting Principles (E) Working Group (SAPWG), the Accounting Practices and Procedures (E) Task Force, and the Financial Condition (E) Committee during the fall 2022 national meeting and interim meetings between the summer national meeting and the fall national meeting. New Statutory Accounting Principles (SAP) concepts (formerly known as substantive changes), which are changes in accounting principles or methods of applying the principles and finalized during these meetings, have explicit effective dates as documented below. All SAP clarifications (formerly known as nonsubstantive changes), which are changes that clarify existing accounting principles and finalized during these meetings, are effective upon adoption unless otherwise noted.

Statutory Accounting Principles Working Group

Current developments: The SAPWG adopted the following new SAP concept during the Fall 2022 National Meeting.

Ref#	Title	Sector	Revisions adopted	F/S impact	Disclosure	Effective date
2022-09	**SSAP No. 86—Derivatives**	P&C Life Health	**NEW SAP CONCEPT** Revisions to incorporate US GAAP guidance from ASU 2017-12, Derivatives and Hedging: Targeted Improvements to Accounting for Hedging Activities, and ASU 2022-01, Fair Value Hedging—Portfolio Layer Method related to certain portfolio hedges and partial-term hedges. The partial term hedging revisions are consistent with the ASU with the exception that they only apply to asset hedges, not liability hedges. Revisions also mirror US GAAP guidance for hedge assessment on the portfolio layer method for fair value hedges, which allows assessment to exclude prepayment risk when measuring the hedged item. Appendix A of *SSAP No. 86* was also revised for consistency with US GAAP guidance in the ASU. Disclosures for portfolio layer method hedges were added to provide information when such hedges no longer qualify for hedge accounting. **Effective: January 1, 2023, with early adoption permitted.**	Y	Y	2023

Current developments: The SAPWG adopted the following SAP clarification items as final during the Fall 2022 National Meeting and Interim Meetings.

Ref#	Title	Sector	Revisions adopted	F/S impact	Disclosure	Effective date
2021-25	**SSAP No. 19—Furniture, Fixtures, Equipment and Leasehold Improvements** **SSAP No. 73—Health Care Delivery Assets and Leasehold Improvements in Health Care Facilities**	P&C Life Health	Revisions require leasehold improvements to be expensed upon lease termination, excluding such improvements related to the functionality of health care delivery assets. • Exclusion relates to situations where the real estate lease agreement has a purchase option that contains language that allows leasehold improvements necessary for the functionality of specific health care delivery assets to be excluded from the purchase cost of the real estate.	Y	N	2022
2022-13	**SSAP No. 25—Affiliates and Other Related Parties** **SSAP No. 97—Investments in Subsidiary, Controlled and Affiliated Entities**	P&C Life Health	This item reconsiders the guidance that clarifies that investments in exchange-traded funds and mutual funds do not reflect ownership in an underlying entity unless ownership results in "control," with the owner having the power to direct or cause the direction of management of an underlying company. Revisions add investments in foreign open-end investments funds regulated by foreign jurisdictions to the clarification.	Y	N	2022
2022-10	**SSAP No. 36—Troubled Debt Restructurings**	P&C Life Health	Revisions reject ASU 2022-02: *Troubled Debt Restructurings and Vintage Disclosures*. This ASU eliminates prior US GAAP guidance for troubled debt restructurings (TDRs) by creditors and requires evaluation of whether the modification is a new loan or continuation of an existing loan given the guidance in *ASU 2016-13: Measurement of Credit Losses on Financial Instruments*. The Working Group continues to evaluate *ASU 2016-13*, but full adoption is not likely to be supported given existing statutory accounting, as follows: • Insurers commonly hold assets at amortized cost. • Asset Valuation Reserve for life and fraternal insurers establishes a reserve to offset potential credit-related investment losses on most investments. Under existing SAP, this ASU is not applicable.	N	N	N/A

Ref#	Title	Sector	Revisions adopted	F/S impact	Disclosure	Effective date
NA	**SSAP No. 101—Income Taxes** **SSAP No. 9—Subsequent Events**	P&C Life Health	**INT 22-02: Third Quarter 2022 Through First Quarter 2023 Reporting of the Inflation Reduction Act—Corporate Alternative Minimum Tax** The Inflation Reduction Act was enacted on August 16, 2022, and includes a new corporate alternative minimum tax (CAMT). This INT addresses immediate issues for third quarter 2022 through first quarter 2023 reporting. • Issue 1—Consideration of the Act for Third Quarter 2022 through First Quarter 2023 Financial Statements (valuation allowance, deferred tax assets admittance, etc.) impacted by the CAMT – Conclusion—A reasonable estimate is not determinable. Disclose the following: 2 Act enacted August 16, 2022 2 A statement regarding whether the reporting entity has determined they expect to be liable for the CAMT in 2023 2 A statement regarding whether the reporting entity is an "applicable corporation" as determined under the Act • Issue 2—Consideration of Subsequent Events for Third Quarter 2022 through First Quarter 2023 Financial Statements – Conclusion—CAMT updated estimates or other calculations affected by the Act determined subsequent to filing date shall NOT be recognized as Type I subsequent events – Also applies to 2022 audited financial statements **NOTE:** The Working Group also exposed an additional interpretation (INT 2022-03) that has not been adopted. Given the current absence of insurer-specific guidance from the US Treasury Department on key elements of the Act, the Working Group continues to study this matter.	Y	N	2022

The SAPWG exposed the following items for written comments by interested parties.

Ref#	Title	Sector	Revisions adopted	F/S impact	Disclosure	Effective date
2019-11	**SSAP No. 26R—Bonds** **SSAP No. 43R—Loan-Backed and Structured Securities**	P&C Life Health	**PROPOSED NEW SAP CONCEPT** The Working Group exposed the following: • Updated Bond Definition • Updated Issue Paper • *SSAP No. 26R—Bonds* • *SSAP No. 43R—Asset-Backed Securities* • Bond Proposal Reporting Revisions Overall, the Working Group is separating bonds from asset-backed securities in both the SSAPs and the investment schedules. To be reported on Schedule D, investments must comply with the definition of a bond (issuer credit obligation) or an asset-backed security. The proposed bond definition is as follows: *A bond shall be defined as any security representing a creditor relationship, whereby there is a fixed schedule for one or more future payments, and which qualifies as either an issuer credit obligation or an asset-backed security.* Investments that are NOT within the scope of the proposed revisions to *SSAP No. 26R* and *SSAP 43R* will likely be moved to Schedule BA: Other Long-Term Invested Assets. The exposed proposed effective date is Jan. 1, 2025.	Y	Y	TBD
2022-14	**Revised or New SSAP**	P&C Life Health	**Proposed SAP Concept** Relates to the New Market Tax Credits (NMTC) Program established by Congress in December 2000. • Permits receipt of non-refundable tax credit against federal income taxes for making equity investments in financial intermediaries (corporations or partnerships). • States have enacted similar programs. FASB has a current project evaluating the application of the proportional amortization method for these structures that is currently used for Low-Income Housing Tax Credits (LIHTC). Current proposal considers a new SSAP or a revision to *SSAP No. 93—Low Income Housing Tax Credit Property Investments*. A discussion document is exposed, considering alternatives in expanding *SSAP No. 93* to other qualifying tax equity investments. This item has the potential to impact annual statement disclosures and risk-based capital. A review of *SSAP No. 94R—Transferable and Non-Transferable State Tax Credits* will also occur during this project.	Y	TBD	TBD

Ref#	Title	Sector	Revisions adopted	F/S impact	Disclosure	Effective date
2022-01	**SSAP No. 5R—Liabilities, Contingencies and Impairments of Assets**	P&C Life Health	**Proposed SAP Clarification** Re-exposed the issue paper related to the definition of liabilities related to newly adopted US GAAP in *Concepts Statement No. 8, Conceptual Framework for Financial Reporting—Chapter 4, Elements of Financial Statements*. Re-exposure provides interested parties time to analyze individual SSAPs and provide further comment.	TBD	TBD	TBD
2022-19	**SSAP No. 7—Asset Valuation Reserve and Interest Maintenance Reserve**	P&C Life Health	Rising interest rates have created an increased likelihood for insurers to move into a negative interest maintenance reserve (IMR) position for realized losses reserved for and amortized into income over time. Current guidance requires nonadmission of a negative IMR position and reporting on the exhibit of nonadmitted assets. The Working Group directed the development of an issue paper.	TBD	TBD	TBD
2022-11	**SSAP No. 21R—Other Admitted Asset**s	P&C Life Health	**Proposed SAP Clarification** Proposed revision clarifies that collateral loans must be collateralized by assets that would qualify as admitted assets if held directly.	TBD	TBD	TBD
2022-15	**SSAP No. 25—Affiliates and Other Related Parties**	P&C Life Health	**Proposed SAP Clarification** Clarification as to when an investment is considered an affiliated investment and reported on the "parent, subsidiaries and affiliates" reporting lines in the investment schedules. • Any invested asset held by a reporting entity that is issued by an affiliated entity or that includes the obligations of an affiliated entity is an affiliated investment. • Also recommends clarification in the annual statement instructions.	Y	Y	TBD
2022-17	**SSAP No. 34—Investment Income Due and Accrued**	P&C Life Health	**Proposed SAP Clarification** The purpose of this item is to enhance reporting of interest income on Schedule D-1-1: Bonds by adding disclosure in Note 7. Proposes to expand disclosures, with data capturing, to include gross, nonadmitted and admitted amounts for interest income due and accrued. The blanks proposal will also include cumulative amounts of paid-in-kind (PIK) interest included in the current principal balances.	N	Y	TBD

Ref#	Title	Sector	Revisions adopted	F/S impact	Disclosure	Effective date
2017-33	**SSAP No. 86—Derivatives**	P&C Life Health	Exposed an issue paper related to *ASU 2017-12, Derivatives and Hedging: Targeted Improvements to Accounting for Hedging Activities* outlining the elements addressed in statutory accounting. When the issue paper is adopted, this agenda item will be disposed.	N	N	N/A
2022-16	**SSAP No. 100R—Fair Value**	P&C Life Health	Proposed revision to adopt ASU 2022-03, *Fair Value Measurement of Equity Securities Subject to Contractual Sale Restrictions*. • Provide clarity in situations involving equity securities that have restrictions related to the sale of the asset. • Modification is proposed to reject the US GAAP disclosure but identifies that items restricted as to sale would be captured as restricted assets per *SSAP No. 1—Accounting Policies, Risks & Uncertainties, and Other Disclosures*.	Y	Y	TBD
2022-18	**SSAP No. 105R—Working Capital Finance Investments**	P&C Life Health	Proposed rejection of *ASU 2022-04, Liabilities—Supplier Finance Programs (Subtopic 405-50) Disclosure of Supplier Finance Program Obligations*. • As insurance reporting entities are not the buyers (obligors) of supplier chain finance programs, the disclosures in *ASU 2022-04* are not relevant. • Reporting entities that invest in working capital finance programs are the providers of capital (investors), not the buyers (obligors) of such programs.	N	N	N/A
2022-12	**INT 03-02: Modification to an Existing Intercompany Pooling Arrangement**	P&C Life Health	Re-exposed, this agenda item proposes to nullify INT 03-02, which is an interpretation of the following SSAPs: • *SSAP No. 61R—Life, Deposit-Type and Accident and Health Reinsurance* • *SSAP No. 62R—Property and Casualty Reinsurance* • *SSAP No. 63—Underwriting Pools* This interpretation requires transferred assets and liabilities among affiliates in conjunction with the execution of a new reinsurance agreement(s) that substantively modifies the existing intercompany pooling arrangement to be valued at book value for assets and statutory value for liabilities. Valuation at book or statutory value for transfers between affiliates and related parties is inconsistent with *SSAP No. 25—Affiliates and Other Related Parties*. As such, the Working Group is considering nullification of the interpretation.	Y	N	TBD

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