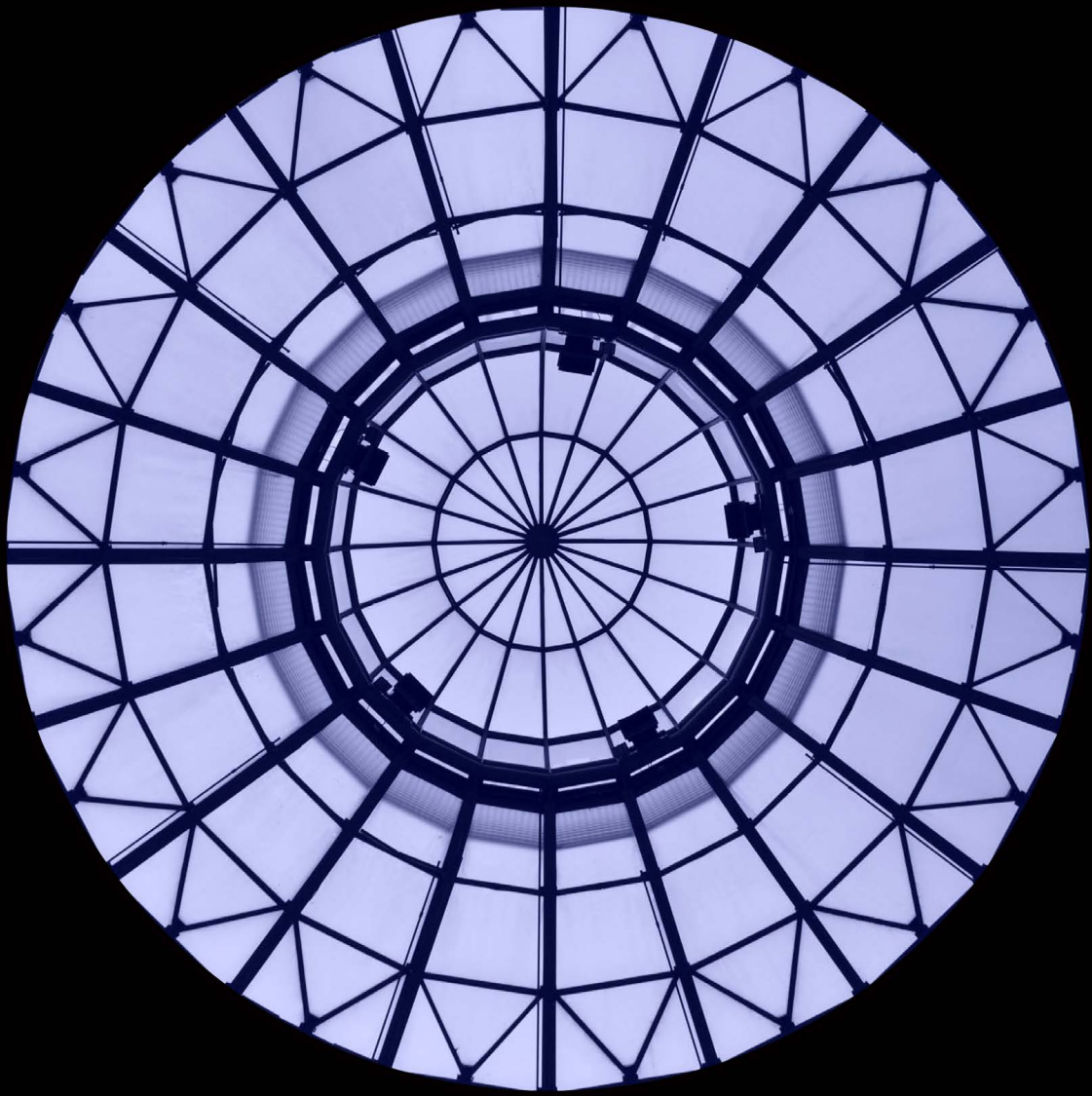


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NAIC update
Summer 2017

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NAIC advances cybersecurity model

PHILADELPHIA, PA—The middle meeting of a National Association of Insurance Commissioners (NAIC) year is usually a quiet one, devoted to advancing the priorities expressed at the first meeting so they may be brought to fruition at the final meeting of the year. The NAIC Summer 2017 National Meeting, held in the City of Brotherly Love, hewed to tradition for the most part.

The single change was a big one, though. After several missteps and delays, a new and accepted cybersecurity model law was unveiled. Very similar to the regulations in place in New York, this new model passed its first two tests in committee. It now will go before the full NAIC membership at the December meeting for approval. Following that, it will be up to individual states to begin adoption.

The need for this model law may be considered obvious in the face of the growing importance of cybersecurity. But despite what may turn out to be a one-year delay between expected and actual adoption, the speed with which the NAIC created this new model might have been considered stunning a decade ago.

Since the financial crisis of little less than a decade ago revealed areas for improvement, insurance regulators have moved to overhaul the US regulatory system.

This action continues, including work on capital metrics and group regulation. Regulators are taking a closer look at long-term care products, even as the implementation of principle-based reserving (PBR) continues, apparently smoothly. Consumer protection remains a priority,

including work on annuity suitability standards and on the availability and affordability of auto insurance.

The single biggest societal change since the financial crisis may be the increased availability of vast amounts of data and the ability to manage it.

Here too regulators are working to stay ahead of the curve, as they are with a new Macro Prudential Initiative, ever mindful of the crisis no one cares to repeat.



An overview of central issues

What it is	What happened	What may be next
Cybersecurity	Model law was adopted by Cybersecurity Working Group and Innovation and Technology Task Force.	<ul style="list-style-type: none"> • Goes to plenary at fall session for adoption by the NAIC. • Similarity to New York law means little unnecessary duplication.
Annuity sales	A “best interest” standard seems to be on its way to widespread acceptance.	<ul style="list-style-type: none"> • Agreement on the need for a new standard seems clear. • Some regulators may wish to expand to include life products.
Group capital calculation	Work continues on developing calculation.	<ul style="list-style-type: none"> • Concept seems accepted, however grudgingly. • Work on scalars may take center stage for now.
Long-term care (LTC)	Concerns about the financial health and future status of the LTC market.	<ul style="list-style-type: none"> • New actuarial standards, data calls announced. • May result in reserve adjustments.
Principle-based reviewing (PBR)	Implementation continues.	<ul style="list-style-type: none"> • The NAIC has named itself as the experience data collector. • Data collection moving from testing to practice.

Annuity sales standards pointing higher

Discussion and some measure of disagreement continued at the meeting of the Annuity Suitability (A) Working Group on potentially revising annuity sales standards by amending the *Suitability in Annuity Transactions Model Regulation*. The working group also heard updates on the US Department of Labor's (DOL) fiduciary rule and related issues.

Consumer representative Birny Birnbaum was the first to present to the working group. He spoke on behalf of the consumer group's proposal for a "best interest" standard.

"We think of the best interest standard as one that would move the standard of care up a notch," said Birnbaum. "There must be meaningful restrictions on conflict of interest . . . We ask you to look at the role of producer compensation."

Concerns about the structure of producer compensation and its effect on the sale of annuities have been expressed by both industry and consumer groups. Some have expressed concern that varying commissions and ancillary compensation may have the effect of creating a conflict of interest for producers, while others have expressed concern that without this compensation the incentive to service the low- to middle-income market disappears.

Birnbaum asked the working group to consider placing limitations on some type of compensation where he said disclosure is not enough. He asked the group to look at what types of disclosures have worked and could work, and he said the working

group's oversight should include regulatory monitoring of consumer outcomes.

Annuity Suitability Working Group Chair Director Dean Cameron of Idaho asked Birnbaum about his perceptions of conflicts of interest.

Birnbaum said that at one end of the spectrum, there could be egregious conflicts where someone may sell a product that barely meets the suitability standard and does not benefit the consumer. He said that could happen because the design of a particular compensation scheme overly

incentivizes such a sale, in which case that scheme should not be allowed.

On the other hand, Birnbaum said there might be a situation with a captive agent who only sells products for one company. In that case, disclosure may be enough. Asked about certain other standards, Birnbaum offered to respond in writing.

Asked directly by the chair if commissions created an inherent conflict, Birnbaum said that compensation structure rewarding producers for a sale as opposed to the longevity of the product is an issue.



Photo courtesy of the NAIC

“An enhanced NAIC model is one we all should strive for.”

Bruce Ferguson, American Council of Life Insurers (ACLI)

He urged the working group to look at the structures associated with sales that have been problematic.

New York regulator James Regalbuto noted New York's support of including life insurance in the new standards model. The regulator said he had also seen illustrations and marketing that might be considered problematic.

“Consumers shouldn't have to think twice . . . based on who they are buying from,” said Bruce Ferguson of the American Council of Life Insurers (ACLI). He said there should be a uniform standard for all. Ferguson said the DOL rule had fundamental flaws, causing some consumers to lose access to advice. Everyone, including the NAIC, needed to be at the table in order to achieve a uniform common standard of care, Ferguson continued.

“An enhanced NAIC model is one we all should strive for,” said Ferguson. He said he found agreement with Birnbaum in part. Citing previous moves to raise the standards for insurance sales, Ferguson said, “We're now asking to raise the bar again.”

The ACLI representative cited areas such as conflict of interest as among those where there could be agreement, however difficult it might be to reach. Ferguson did warn that life insurance was a completely different type of product, bought for different needs, and could not be shoehorned into the current annuity model. There were lots of existing models addressing current issues, he said, and he would be interested in discussing any gaps.

Asked his views on the commission-versus fee-based compensation structure debate, Ferguson said there was a bias in the DOL rule against commissions, and that was not always in the best interest of the consumer. He told the working group the efficacy of disclosure should not be completely dismissed.

Noting the ACLI proposal for a conflict of interest standard, Ferguson said he had hoped for a much more workable definition of conflict than is contained in the current DOL rule.

Jason Berkowitz of the Insured Retirement Institute (IRI) shared Ferguson's concern that the DOL had not given meaningful consideration to the work of the NAIC. Berkowitz told the working group that because of the DOL's rule, recent studies showed 71 percent of advisors would stop giving advice to consumers with less than \$300,000, and 35 percent said they would stop servicing accounts with less than \$25,000.

Berkowitz said that the cost of advice was going up, with one study showing that it had risen by about \$800 per account. He added that there had been a 26 percent drop in variable annuity (VA) sales despite the rising stock market, which usually functioned as a stimulus for VA sales.

Gary Sanders of the National Association of Insurance and Financial Advisors (NAIFA) told the working group that there was a much better chance of stopping bad activity with a Financial Industry Regulatory Authority (FINRA) type rules-based regime. He said data showed that consumers wanted a choice in how producers are compensated.

Sanders said fee-based advisors also had possible conflicts. As an example, he mentioned long-term care products that could remove assets from management. He told the working group there was no need to rush, since the DOL rule was still in effect and the Securities and Exchange Commission (SEC) was getting re-engaged.

Wes Bissett of the Independent Insurance Agents and Brokers of America (Big I) said he was somewhat skeptical about the need to increase the standard of care on a statutory basis. Bissett pointed out that some states still had not adopted the suitability model, and he reiterated that the DOL rule was resulting in a clear loss of advice to low- and moderate-income consumers. He said 48 percent of his members intended to stop selling products that fall within the DOL rule.

Though the discussion seemed far from over, the meeting was drawn to a close. The working group will continue stakeholder discussions via conference calls.

Financial Stability moves the NAIC's Macro Prudential Initiative forward

Macroprudential regulatory issues, the NAIC's Macro Prudential Initiative (MPI), and related topics dominated the meeting of the Financial Stability (EX) Task Force.

The task force heard an update from its chair, Director Peter Hartt of New Jersey, on the implications of International Association of Insurance Supervisors (IAIS) financial stability-related initiatives and Financial Stability Oversight Council (FSOC) matters. Hartt is the state insurance representative on the FSOC.

Regarding IAIS activities, the update noted that the IAIS is conducting its fifth Global Systemically Important Insurers (G-SII) assessment, with more than 50 international insurance groups, of which 16 are from the United States. The IAIS is expected to present its list of G-SIIs to the Financial Stability Board (FSB) in September using its 2016 updated methodology, so that the FSB can make its annual determination in November 2017. The G20 has charged the FSB with determining which insurers should receive enhanced supervision as G-SIIs.

Regarding FSOC activities, Hartt reported that a presidential memorandum was issued on April 21, 2017, directing the Department of the Treasury (Treasury) to review the council's process for designating nonbank financial companies and to report to the president within 180 days (by October 21). The memo called for a review of transparency of the process, whether the council should consider the costs of designation on the company, and whether the council should assess the likelihood of the company's distress.

Hartt said the FSOC also discussed the designation of one particular insurer and its pending litigation. This is on hold until the Court of Appeals has reached a verdict. Lastly, he reported that after review of the FSB's "Proposed Policy Recommendations to Address Structural Vulnerabilities from Asset Management Activities," asset managers and sovereign wealth funds will not be deemed systemically important.

The task force heard an overview of the MPI regarding a proposed framework. Within the framework, there are four focused areas for potential enhancement: liquidity; recovery and resolution; capital stress testing; and exposure concentrations. The task force also discussed a draft of the NAIC MPI work plan within the framework, which described deliverables and timelines over the next two years to address the MPI enhancements. Some large US insurers openly supported the initiative.

The task force heard a discussion from NAIC staff on the draft inventory of NAIC macroprudential tools, as well as a concept for a new NAIC Macro Prudential Heat Map Report. The proposed heat map would be designed for state insurance regulators to provide assessment of the current state of various risks in the US insurance market using the nine branded risk categories. The map's focus would include inbound risks to insurers and outbound risks from insurers. Regulator Bob Wake of Maine suggested that some academics might argue that outbound risks do not exist.

Lastly, the task force appointed a new Liquidity Assessment (EX) Subgroup with the following charges:

- Review existing public and regulator-only data related to liquidity risk, identify any gaps based upon regulatory needs, and propose the universe of companies to which any recommendations may apply.
- Construct a liquidity stress-testing framework proposal for consideration by the Financial Condition (E) Committee, including the proposed universe of companies to which the framework will apply (e.g., large life insurers).

The task force also adopted the following work plan:

- Review existing public and regulator-only data related to liquidity risk, identify regulatory gaps, determine the scope of application, and propose recommendations to enhance these disclosures. (Target completion date: the NAIC 2017 Fall National Meeting)
- Determine the scope of application and begin constructing a liquidity stress-testing framework for the companies in scope (e.g., large life insurers). (Target completion date: the NAIC 2018 Spring National Meeting)
- Once the stress testing framework is completed, consider potential enhancements or additions to disclosures. (Target completion date: the NAIC 2018 Summer National Meeting)

Complex model review proposal draws criticism

A proposed framework for the review of complex models came under fire from both industry and consumer stakeholders at the meeting of the Big Data (Ex) Working Group. The working group was charged with proposing “a mechanism to provide resources and allow states to share resources to facilitate states’ ability to conduct technical analysis of and data collection related to states’ review of complex models used by insurers for underwriting, rating, and claims.”

A central concern was that the proposal seemed to devolve authority to the NAIC staff instead of the state regulators.

In a comment letter sent to Oregon Commissioner Laura Cali-Robison, chair of the working group, the ACLI—which technically would not be affected by the current proposal as it is intended to apply to homeowners and automobile carriers—said, “Though perhaps unintentionally, the proposal appears to delegate responsibility to NAIC staff to determine acceptable parameters or standards for models, the governance and controls, and data quality.”

A comment letter from the Center for Economic Justice (CEJ) agreed: “The June 19, 2017 proposal . . . barely provides a resource while creating the new regulatory structure expressly prohibited. The ornate structure—a unit within the NAIC that reports to an NAIC working group—is precisely another regulatory layer.”

“We want to listen and we want to have a good robust discussion on how to go forward,” Cali-Robison said. “Our focus here is not to debate what are the standards . . . let’s focus on the resources side of things and how states will share resources.”

One regulator suggested a way to address the concerns about the NAIC having authority would be to develop some kind of contract or memorandum of understanding between the states and the NAIC to clarify that the states have the authority, not the NAIC.

Some expressed concern about the two-week turnaround for the NAIC to respond contained in the proposal. The explanation given was that while this timetable would be a subject for discussion, it had been considered a good target. Some regulators suggested the timing could be an issue in some states such as Alabama, which by law has to make a decision on a filing within 30 days.

A question was raised as to the confidentiality of trade secrets when an NAIC employee leaves, with the concern being that confidentiality restrictions that would apply to state employees may not apply to NAIC employees. The chair said they would examine that further.

A National Association of Mutual Insurance Companies (NAMIC) representative said they had several areas of concern as detailed in their comment letter. The potential for the proposed system to slow down speed to market and its existence as a centralized NAIC function caused significant concern.

One regulator said responding to predictive model filings now took nine months to a year in her state as opposed to 30 days in general for all filings. This new resource would be valuable for states, she said. Another regulator, noting the absence of sufficient on-staff actuarial expertise, agreed.

Big Data Working Group Vice Chair Elizabeth Dwyer of Rhode Island said, “I have yet to

hear one insurance commissioner say this isn’t a resource that we need.”

A Property Casualty Insurers Association of America (PCI) representative suggested the first step should be determining which states needed help and with how many models. She expressed concern that the new process could slow everything down, at least initially, but offered to help. “We really want to be part of the solution,” she said.

Consumer representative Birnbaum responded that he had no real issue with confidentiality, but that layering speed to market onto the resource makes it harder. He pointed out that PBR had acquired all the tools to assist the states without this proposed infrastructure. He also expressed concern that the structure focused on pricing models and actuaries, when there were other significant skill sets needed.



Regulators hit start on cybersecurity model

With three states voting no, the Cybersecurity (EX) Working Group adopted a slightly modified version of the sixth draft of the Insurance Data Security Model Law. The working group's parent, the Innovation and Technology (EX) Task Force, later adopted the model law as well. It will now go to the joint session of the executive and plenary at the NAIC 2017 Fall National Meeting in Hawaii for final adoption.

The milestone adoption came after industry objections to previous drafts of the model law, the development of which began in March 2016. It also followed—and has substantial similarities to—the March 2017 cybersecurity regulations issued by the New York State Department of Financial Services (DFS). Indeed, the new model law deems compliance with the New York regulation as equivalent to compliance with the new model law.

Regulators noted that some changes had been made in response to feedback. They also acknowledged that confidentiality concerns had been raised, but said that this law was unlike the Own Risk and Solvency Assessment (ORSA) in that there were no trade secrets involved.

Regulators said they had also addressed materiality concerns but had declined to reduce the five-year retention period to two years because the longer period tracked the five-year examination cycle. Regulators also declined to lower the bar for notification to regulators from 250 to 500 affected consumers. A requirement that more consumers would have to be affected to trigger mandatory reporting to regulators could reduce the number of reportable events. Language explicating third-party confidentiality requirements was also added.

The working group was also updated on federal issues. Members were told that the Financial and Banking Information Infrastructure Committee (FBII) had sought information on the data standards

regulators have in place, and that there was a multitude of cyber legislation currently pending in Congress.

Chair Ray Farmer of South Carolina told the group that six major insurers had recently participated in tabletop exercises for cybersecurity at Treasury. He said this was probably the eighteenth such exercise, but the first involving insurers.

NAIC staff provided an update on the cyber market, estimating the current US market to be approximately \$2.49 billion.



Group keeps working on capital calculation

The Group Capital Calculation (E) Working Group continued its work on various avenues involved in developing a group capital metric for US insurers and insurance groups. Topics covered included the treatment of prescribed and permitted practices, scalars, and the baseline exercise.

The working group discussed an NAIC staff memo on the treatment of captive insurers. The memo covered captives not in a traditional US holding company and pure captives; captives that do not assume XXX/AXXX business; and captives that assume XXX/AXXX business.

A representative of the ACLI requested that the working group consider how grandfathered policies would be handled for captives that assume XXX/AXXX business. He pointed out that the original Rector framework had a clear bifurcation between how to handle grandfathered and non-grandfathered policies.

Julie Garber, NAIC staff support, agreed. The point was added to the memo, which will be exposed for a 30-day comment period.

The working group also discussed how prescribed and permitted practices should be treated in an inventory approach. The Texas representative wanted to better understand the materiality and impact of such permitted practices, as well as the nature, categorization, or grouping of such practices.

He explained that backing out the effect of permitted practices would allow for more comparability and consistency. That would be doable in a calculation, he said,

but may be different for a capital standard. As a result, the working group agreed to summarize data from Note 1 of the annual statutory statement to better answer these questions.

The working group discussed comments received related to a compiled list of jurisdictions for which a scalar should be developed. The group had just adopted past meeting minutes, which included an action to field test two proposed scalar approaches (excess relative ratio approach and pure relative ratio approach).

Garber noted that it was relatively easy to do scalars once the capital ratios from various jurisdictions were available. The NAIC's Lou Felice warned that any adjustment in how US insurers calculate reserves may affect scalars and should be considered. Michelle Rogers of NAMIC suggested the working group should also look at materiality, and how the US might group countries, for example, Solvency II jurisdictions. She said this might simplify the use of scalars.

The working group then directed NAIC staff to begin calculating scalars for its compiled list of jurisdictions based on the pure relative ratio approach and the excess relative ratio approach. The representative of one US insurer recommended that the working group survey US groups writing in various jurisdictions to determine which of those jurisdictions are needed and/or are material to the group.

Lastly, the working group heard an update from NAIC staff on the baseline exercise, which will help inform the decisions of the

group. Most of the nine volunteer groups have provided initial data submissions to their respective lead states and some have provided follow-up information. The volunteers were also asked to provide perspectives on scalars, permitted and prescribed practices, and noninsurance affiliates.

Once the analysis is complete, NAIC staff will identify issues and observations for discussion by the working group. An interested party asked when the technical specifications would be shared with the public. NAIC staff stated the templates are not calculations, but information-gathering tools, so the templates will not be shared. However, NAIC staff is assessing how the working group may share the impact of the exercise without releasing company information.

Company Experience Reporting project moving to production

The Principle-Based Reserving Review (EX) Working Group heard from the NAIC's Larry Bruning that the Company Experience Reporting project was all set to move from testing to production.

In spring 2016, the Executive Committee had charged NAIC staff with finding a software solution for experience reporting. Since then, more than 20 million records from 27 participating companies had been tested with data visualization software through the Kansas-based project.

During testing, feedback from stakeholders—including the ACLI—led to improvements. Now the working group is working with the Society of Actuaries to create a data sharing agreement and with the Life Actuarial Task Force (LATF) to determine data requirements.

January 1, 2020, remains the expected effective date for submitting the data via the system.

In other matters, the working group also adopted the report of the PBR Review Procedures (EX) Subgroup, which included a draft letter to the Financial Examiners Handbook (E) Technical Group requesting the use of the term “qualified actuary” versus the current “credentialed actuary.” The working group heard an update on the status of PBR revisions to the blanks and NAIC Financial Analysis Handbook. These may have to be revisited due to the significant changes planned for the handbook.

Lastly, the working group received a presentation on the development of a standard term insurance model to be used in reviewing PBR filings, including a specific discussion on sensitivity tests performed on key assumptions of term products, to better understand the risks driving the deterministic reserves.



Photo courtesy of the NAIC

Industry opposes proposal to add private flood insurance to MCAS

A proposal from the CEJ to add private flood insurance to the Market Conduct Annual Statement (MCAS) reporting took center stage at the meeting of the Market Analysis Procedures (D) Working Group.

Consumer representative Birny Birnbaum of the CEJ discussed the proposal. Birnbaum cited statistics showing a rapid growth in the market for private flood insurance. That growth, he contended, could lead to market conduct issues.

Birnbaum urged quick action, saying that 2019 experience would be the earliest available if the working group acted today, and that private flood would be a big market by then. Birnbaum told the working group that complaints, or the lack of complaints, was not an indicator of market conduct problems.

Some disagreed with Birnbaum. The PCI representative said, "We believe the time for this line to be added to MCAS is not now." She added that it was too small, would create an unnecessary burden, and there were lots of other tools available. She said that as the market grew in the future, that may be a better time to consider the issue.

A NAMIC representative agreed: "We just don't think it's the proper time right now."

Given the two-year implementation timeline, the committee chair asked when stakeholders would suggest the working group begin. The PCI representative said she was not advocating for it at any specific time, but suggested tabling the proposal for now until there was more clarity from Congress on the issue.

Birnbaum said there were currently 10 to 12 companies reporting in the admitted market in 2016. One regulator asked if the working group delayed a year or two, how could they be sure company data would not become harder to get?

The PCI representative noted that MCAS was looking for outliers. She asked how useful would that data be now with only 10 to 12 companies reporting. She suggested giving companies time to set up their systems to produce the necessary data.



Photo courtesy of the NAIC

Auto insurance study group gets go-ahead to collect data

The desirability of continuing the work of the Auto Insurance (C/D) Study Group was a bone of contention at the meeting of the Market Regulation and Consumer Affairs (D) Committee. The study group was originally set up in response to the auto insurance affordability and availability study produced by the Federal Insurance Office (FIO).

NAIC consumer representative Birny Birnbaum commented on the study group's request to use certain data for the analysis of the availability and affordability of automobile insurance.

Birnbaum said the CEJ and other consumer groups "strongly oppose the study group's recommendation" to use what he called industry selected data. Birnbaum called for the rejection of that request and the disbanding of the study group. He said there were numerous limitations on the data selection, including data accuracy, relevance, and completeness.

"This is an industry-designed study . . . to affirm industry talking points. We don't see any purpose for this further study," he said. He called the refusal of statutory agents to provide company-level data a big issue.

Committee Vice Chair Allen Kerr of Arkansas disagreed with Birnbaum. He said there had been no movement for five years because what everyone was looking for was insurmountable. "This is the starting point," he said, comments that were echoed by other regulators.

Commissioner Mike Chaney of Mississippi disagreed with the allegation that industry had designed the data call. "We've been messing with this for a long time," he said. "We need to move forward with the data call."

With California abstaining, regulators approved the study group's request. In addition, the committee unanimously approved changes to the charge of the Pre-Dispute Mandatory Arbitration Clauses (D) Working Group. These changes, requested by the working group, would allow for other options in addition to "no action" on the model law and would allow consideration of commercial and personal lines separately.

The committee also discussed a minor amendment to the proposed Lender Placed MCAS Data Call. Birnbaum said the amendment would allow regulators to determine if an abnormally large number of consumers were being force-placed.

Auto study group stays in gear at C committee

The Property and Casualty Insurance (C) Committee meeting saw a near repeat of the D committee clash over the fate of the Auto Insurance (C/D) Study Group, with close to the same participants and the same result.

CEJ consumer representative Birnbaum restated his opposition to the study group's request to proceed using what he called industry-designed data. He called it "not a first step, but a misstep." Birnbaum said the proposed study would be missing relevant data and would use data that was unverifiable as correct and complete. He again criticized statistical agencies for not providing company level data and pointed out that the NAIC had budgeted for data to meet such goals.

Commissioner Mike Chaney of Mississippi asked Birnbaum what would be done with the individual data if collected. Birnbaum said that among other things there could be data quality checks, which would tell regulators who was writing where, if they were standard or nonstandard policies, and who was canceling faster than others.

Chaney said that aggregating the data was driven by regulators, not industry, and was meant to cope with confidentiality concerns. "I think you're off-base to criticize the NAIC," Chaney said.

"I don't believe that there is any issue with confidentiality because it's going to regulators," Birnbaum said.

"My goal was to move forward, not to kill it," Chaney responded. Another regulator cited the desirability of having the data provided within 90 days as this proposal would allow. The proposal was approved with Pennsylvania, Connecticut, and Missouri abstaining.



Photo courtesy of the NAIC

Single TRIA data call may be possible

Representatives of at least two trade associations expressed concern with dual data calls at the meeting of the Terrorism Insurance Implementation (C) Working Group.

A representative of the PCI also had concerns about what was being done with the data provided to the NAIC. He asked for transparency, especially about any use of the data for monitoring solvency. The representative said the question was what data was being collected and what was being done with it.

The PCI representative also said there was no reason there should be two data calls—one federal, one state. He suggested that with new leadership at FIO, there may be room for cooperation. “We have been engaged in dialogue with FIO,” said Terrorism Insurance Implementation Working Group Chair Martha Lees of New York. Lees said she was optimistic there would be a resolution.

A representative of the American Insurance Association (AIA) repeated the concern about the two data calls. The representative said they had also had calls with FIO and that office had indicated a new willingness to work with the states.

“The goal that we are reaching toward is to have a single data call,” Lees said.



In brief

Woodall honored

Roy Woodall, former state insurance commissioner and sole voting member of the FSOC with insurance expertise, was honored by President Ted Nickel and the NAIC at the opening session for his work on behalf of insurance regulation. Nickel presented Woodall, whose term is expiring, with praise and a plaque at the event. The audience responded with a standing ovation for Woodall.



Photo courtesy of the NAIC

Travel insurance model law still moving

The Travel Insurance (C) Working Group continued its discussion on the next version of the travel insurance model act, with still some progress to be made. NAIC Consumer Representative Birnbaum suggested that there still needed to be clarity on what is and is not insurance up-front—about what is in the package of products. Birnbaum said the working group was getting sidetracked with debt cancellation/waiver issues. The working group also heard from stakeholders about the proposed scope and definitions of the model, with some suggesting that there remained ambiguity as to whom the act applied. The group will continue its work on the act, most likely at an in-person interim meeting.

CDAWG gets ComFrame update

The ComFrame Development and Analysis (G) Working Group (CDAWG) discussed the progress on ComFrame, including an update on the IAIS consultation, the field-testing process, and the development of the global Insurance Capital Standard (ICS). Additionally, Peter Windsor of the IAIS Secretariat gave a presentation on the recent ComFrame consultation on March 3, 2017, the ICS version 1.0 released on July 21, 2017, and the issues to address with ICS version 2.0, which is due in late 2019. Windsor noted that the

ComFrame consultation was provided in a new structure and had been integrated with newly revised Insurance Core Principles (ICPs). Windsor also noted there are currently more than 50 volunteer international groups participating in the ICS field-testing exercise. Lastly, the key issues to be discussed for version 2.0 include: discounting; Generally Accepted Accounting Principles (GAAP) with adjustments; Margin over Current Estimates (MOCE); and capital resources.

NAIC names itself official data collector

The PBR Implementation (EX) Task Force received an update on PBR activities from the Life Actuarial (A) Task Force, which included, but was not limited to: the adoption of revisions to the valuation manual companywide exemption; adoption of the proposal for VM-22, Maximum Valuation Interest Rates for Income Annuities, making the valuation interest rate for income annuities more responsive to the economic environment; and exposing numerous documents. The task force heard an update on the NAIC's experience data reporting project, including a decision by the Executive Committee at the national meeting to officially designate the NAIC as the data collection agent for company experience data.

What's next in 2017:

- November 2–3: IAIS Annual Conference—Kuala Lumpur, Malaysia
- November 16–19: NCOIL Annual Meeting—Phoenix, AZ
- December 2–4: NAIC Fall National Meeting—Honolulu, HI

Health care update

The Health Insurance and Managed Care (B) Committee and its task forces and workgroups centered their attention on looking to the future—considering options for the many possibilities associated with the repeal, replace, or repair of the federal Affordable Care Act (ACA) still being debated in Washington. This included getting educated on the industry’s ongoing evolution, including drivers of cost.

The B committee meeting kicked off with a federal legislative and regulatory update, including the US Congress’s efforts related to ensuring the continuation of the cost-sharing reduction (CSR) payments. CSRs were also a focus of the Health Actuarial Task Force given they are seen as a key factor in efforts to stabilize the individual market. Recognizing the role pharmacy plays in the industry and with regard to cost containment, the B committee decided to move forward with a project to develop a “Pharmacy 101” education course to increase state insurance regulators’ understanding of the pharmaceutical industry and prescription drug benefit management—including pharmaceutical benefit managers’ (PBMs) role in the process.

The Regulatory Framework (B) Task Force continued to evaluate its activities on NAIC models considering the ACA repeal, replacement, or repair debates and proposals. They renewed discussion on the Model Health Plan for Uninsurable Individuals Act (#85)—given the interest in high-risk pools reflected in recent congressional health reform proposals—and received an update on the status of the Health Carrier Prescription Drug Benefit Management Model Act (#22).

Medicaid and alternative models of health care coverage were the focus of the Health Care Reform Regulatory Alternatives (B) Working Group. The working group heard presentations from the Council for Affordable Health Coverage on how individual market uncertainty and stability might be addressed through Section 1332 waivers, and from Hawaii and Minnesota on how they are using or planning to use these waivers. Hawaii is using the waiver to address the employer mandate requirement in the state. Minnesota is in-process for a waiver for a reinsurance program to subsidize the individual market so the state can address the issues contributing to higher premium costs for those consumers not eligible for federal tax credits. Significant dialogue ensued as each state explored its own alternatives for the current Section 1332 waiver process. Each state has its own unique issues to address, so a one-size-fits-all approach may not be effective.

What will happen with the repeal, replace, or repair of the ACA is unknown, but the NAIC is focused on addressing the impact on state programs and their constituents.

This summary was prepared by Lynn Friedrichs. Lynn is a Deloitte partner with more than 17 years of experience in health insurance. She is a regular speaker on emerging accounting and financial reporting issues to external organizations including accounting matters resulting from health care reform and changing regulatory governance requirements.

Accounting update

This section of the NAIC Update focuses on accounting and reporting changes discussed, adopted, and exposed by the Statutory Accounting Principles (E) Working Group, the Accounting Practices and Procedures (E) Task Force, and the Financial Condition (E) Committee during the NAIC 2017 Summer Meeting and interim conference calls. Substantive changes finalized during these meetings have explicit effective dates as documented below. All nonsubstantive changes finalized during these meetings are effective upon adoption unless otherwise noted.

Statutory Accounting Principles Working Group

Interim developments: The Statutory Accounting Principles (E) Working Group (SAPWG) adopted the following *nonsubstantive* amendments as final during the June 8, 2017 interim conference call:

Ref#	Title	Sec.	Amendments adopted	F/S impact	Disclosure	Effect. date
2016-39	<i>SSAP No. 37—Mortgage Loans</i>	P&C Life Health	Revisions clarify investments within the scope of SSAP No. 37, identifying that in addition to directly originated mortgages, the scope also includes investments in mortgage loans acquired through a participation, assignment, or syndication.	Y	Y	2017
2017-11	<i>SSAP No. 65—Property and Casualty Contracts</i>	P&C Life Health	Revisions incorporate enhanced disclosures for high-deductible contracts, and adds a data-capture process to existing disclosures. In addition, a materiality threshold was added to an existing disclosure on professional employer organizations.	N	Y	2017
2016-45	<i>SSAP No. 101—Income Taxes</i>	P&C Life Health	Revisions reject <i>ASU 2016-16: Intra-Entity Transfers of Assets Other Than Inventory</i> that requires reporting entities to recognize the income tax consequences of an intra-entity transfer of an asset, other than inventory, when the transfer occurs.	NA	NA	NA
2017-09	<i>Appendix A-010—Minimum Reserve Standards for Individual and Group Health Insurance Contracts</i>	Health	Revisions incorporate the <i>2016 Cancer Claim Cost Valuation Table</i> . The revisions are effective for contracts issued on or after Jan. 1, 2019, with early application permitted for contracts issued on or after Jan. 1, 2018.	Y	N	2018
2017-06 2017-07	<i>Appendix D—GAAP Cross-Reference to Statutory Accounting Principles</i>	P&C Life Health	Revisions reject the following US-GAAP guidance as not applicable to statutory accounting: <ul style="list-style-type: none"> <i>ASU 2017-02: Clarifying When a Not-for-Profit Entity That is a General Partner or a Limited Partner Should Consolidate a For-Profit Limited Partnership or Similar Entity</i> <i>ASU 2017-03: Amendments to SEC Guidance.</i> 	NA	NA	NA

Current developments: The SAPWG did not adopt any **substantive** amendments as final during the NAIC 2017 Summer Meeting.

Current developments: The SAPWG adopted the following **nonsubstantive** amendments as final during the NAIC 2017 Summer Meeting:

Ref#	Title	Sec.	Amendments adopted	F/S impact	Disclosure	Effect. date
2016-41 2017-13	SSAP No. 26— <i>Bonds</i>	P&C Life Health	<ul style="list-style-type: none"> Revisions clarify that recognized losses from other-than-temporary impairments shall be recorded entirely to either the asset valuation reserve (AVR) or the interest maintenance reserve (IMR) in accordance with the annual statement instructions. The working group will sponsor a blanks proposal to clarify the annual statement instructions. Revisions reject <i>Accounting Standards Update (ASU) 2017-08: Premium Amortization on Purchased Callable Debt Securities</i> and retains the “yield-to-worst” amortization methodology. 	Y NA	N NA	2017 NA
2017-02	SSAP No. 69— <i>Statement of Cash Flow</i>	P&C Life Health	<p>Revisions adopt <i>ASU 2016-18: Statement of Cash Flows—Restricted Cash</i>, effective Dec. 31, 2019, with early adoption permitted.</p> <ul style="list-style-type: none"> Clarifies that restricted cash and cash equivalents are not to be reported as operating, investing, or financing activities, but instead reported with cash and cash equivalents when reconciling beginning and ending amounts on the cash flow statement. Incorporated a change to SSAP No. 1—Accounting Policies, Risks & Uncertainties, and Other Disclosures to ensure information on restricted cash, cash equivalents, and short-term investments is reported in the restricted asset disclosure. Sponsored a blanks proposal to incorporate revisions to the cash flow statement. 	Y	Y	2019
Model 280	<i>Investments of Insurers Model Act (Defined Limits Version) (#280)</i>	P&C Life Health	Revisions adopt technical edits to remove reference to “class one money market mutual funds” from Model #280, as that concept has been eliminated from statutory accounting. Revisions also correct the definitions for repurchase and reverse repurchase transactions. These revisions were completed as a technical edit exception to the normal model law update process, but the revised Model #280 will be presented to the parent committees for separate consideration.	N	N	TBD

The SAPWG exposed the following items for written comments (due by September 22, 2017) by interested parties:

Ref#	Title	Sec.	Amendments exposed	F/S impact	Disclosure	Effect. date
2016-02	SSAP No. 22— <i>Leases</i>	P&C Life Health	Substantive – Exposed revisions to incorporate recently updated US-GAAP guidance modified to retain the operating lease concept of statutory accounting.	N	N	TBD
2017-12	SSAP No. 41R— <i>Surplus Notes</i>	P&C Life Health	Substantive – Exposed revisions to the current statutory principle that the net balance of a surplus note issued at a discount or zero coupon should never be greater than the amount of cash and liquid admitted assets received. The item includes explicit accounting guidance that requires recognition of a liability for the amount of any discount on the principal of the surplus note for certain transactions (including exchanges or amendments of terms) consistent with the overall principle, and includes disclosures to capture discount or zero coupon surplus note information in the financial statements.	Y	Y	TBD
2017-24	SSAP No. 100— <i>Fair Value</i>	P&C Life Health	Substantive – Revisions proposed to allow net asset value (NAV) per share as a practical expedient to fair value either when specifically named in a SSAP or when specific conditions exist. These proposed conditions mirror US-GAAP concepts, allowing the use of NAV or fair value to be consistent with US-GAAP.	Y	Y	TBD
2017-27	SSAP No. 35R— <i>Guaranty Fund and Other Assessments</i>	P&C Life Health	Substantive – <i>Issue Paper No. 143R—Guaranty Fund Assessments</i> Revisions in the issue paper document substantive changes adopted to SSAP No. 35R related to assessments for insolvencies of entities that wrote long-term care insurance. The revisions allow expected renewals for short-term contracts to be considered in the recognition of assets from accrued liability assessments, and require discounting for assessments and related assets.	N	N	TBD

The SAPWG exposed the following items for written comments (due by September 22, 2017) by interested parties:

Ref#	Title	Sec.	Amendments exposed	F/S impact	Disclosure	Effect. date
2016-13	<i>Appendix F—Policy Statements</i>	P&C Life Health	Substantive – Re-exposed a new policy statement on coordination with the <i>Purposes and Procedures Manual of the NAIC Investment Analysis Office</i> , the Securities Valuation Office (SVO) and the Valuation of Securities (E) Task Force.	N	N	TBD
2017-23	<i>SSAP No. 2R—Cash, Cash Equivalents, Drafts and Short-Term Investments</i> <i>SSAP No. 103R—Transfers and Servicing of Financial Assets and Extinguishments of Liabilities</i>	P&C Life Health	Nonsubstantive – Proposed revisions clarify that acquisitions and disposals of shares in money market mutual funds are not subject to the wash sale disclosure requirements. NOTE: The exposure requests comments on whether all cash equivalents should be excluded from the wash sale disclosure.	N	Y	TBD
2017-05	<i>SSAP No. 12—Employee Stock Ownership Plans</i> <i>SSAP No. 104R—Share-Based Payments</i>	P&C Life Health	Nonsubstantive – Exposed revisions propose adoption, with modification, of <i>ASU 2016-09: Improvements to Share-Based Payment Accounting</i> .	Y	Y	TBD
2017-17	<i>SSAP No. 22—Leases</i>	P&C Life Health	Nonsubstantive – Exposed revision proposes adoption, with modification, of <i>ASU 2017-10: Determining the Customer of the Operation Services</i> to clarify the customer of service concession arrangements.	Y	N	TBD

The SAPWG exposed the following items for written comments (due by September 22, 2017) by interested parties:

Ref#	Title	Sec.	Amendments exposed	F/S impact	Disclosure	Effect. date
2017-10 2017-25	<i>SSAP No. 26— Bonds</i>	P&C Life Health	<p>Nonsubstantive – The following items propose revisions to statutory accounting for bonds:</p> <ul style="list-style-type: none"> Revisions expand the definition of a “bank loan” to include bank loans directly issued by a reporting entity. A referral response on this proposed change is expected from the Valuation of Securities (E) Task Force after the NAIC 2017 Summer National Meeting. Exposed a sponsor-submitted agenda item, which recommends that certain limited liability company (LLC) structures be eligible for inclusion in scope of SSAP No. 26R. This exposure requests comments on the three alternative concept options proposed by NAIC staff. 	Y Y	TBD TBD	TBD TBD
2017-21	<i>SSAP No. 41R— Surplus Notes</i> <i>SSAP No. 97— Investments in Subsidiary, Controlled and Affiliated Entities</i>	P&C Life Health	<p>Nonsubstantive – Exposed revisions propose clarification that the existing concept that restricts the “double-counting” of surplus notes issued by subsidiary, controlled, and affiliated (SCA) entities shall also apply to surplus notes that are issued by the parent and held by an SCA entity. The revisions will require reporting entities to eliminate parent-issued surplus notes held by an SCA entity similar to other equity investments.</p>	Y	N	TBD
2017-22	<i>SSAP No. 43R— Loan-backed and Structured Securities</i>	P&C Life Health	<p>Nonsubstantive – Exposed revisions propose removal of outdated transition guidance related to the 2009 substantive revisions, and updates to the Question and Answer Implementation Guide.</p>	N	N	TBD
2017-28	<i>SSAP No. 61R— Life, Deposit-Type and Accident and Health Reinsurance</i> <i>SSAP No. 62R—Property and Casualty Reinsurance</i> <i>Appendix A-791 – Life and Health Reinsurance</i>	P&C Life Health	<p>Nonsubstantive – Exposed revisions related to short-duration health contracts propose the following:</p> <ul style="list-style-type: none"> Clarification for reinsurance contracts risk transfer requirements Clarifications that reinsurance accounting credit for contracts that pass risk transfer is only for the amount of risk ceded Updates to related terminology New disclosures in SSAP No. 61R to assist in reviewing contracts, similar to existing disclosures in SSAP No. 62R 	Y	Y	TBD

Ref#	Title	Sec.	Amendments exposed	F/S impact	Disclosure	Effect. date
2017-18	SSAP No. 68— <i>Business Combinations and Goodwill</i> SSAP No. 97— <i>Investments in Subsidiary, Controlled and Affiliated Entities</i>	P&C Life Health	Nonsubstantive – Exposed revisions propose several alternatives related to limits on admission of goodwill. The issue focuses on the amount of goodwill admitted related to the total equity value of the investment.			
2017-19	SSAP No. 68— <i>Business Combinations and Goodwill</i> SSAP No. 90— <i>Impairment or Disposal of Real Estate Investments</i>	P&C Life Health	Nonsubstantive – Exposed rejection of five US GAAP Accounting Standards Updates related to goodwill and intangibles.	NA	NA	NA
2016-48 2017-04	SSAP No. 86— <i>Derivatives</i>	P&C Life Health	Nonsubstantive – Exposed the following items: <ul style="list-style-type: none"> Exposed revisions to derivative disclosures to capture future-settled premiums (premiums for derivative contracts collected in the future) that are currently reported net with the derivative item on the derivative reporting schedule (Schedule DB). Exposed revisions propose that variation margin changes to be recognized as unrealized gains or unrealized losses until the derivative contract has matured, been terminated, and/or expired. This revision is proposed for all instances (including over-the-counter or exchange-traded futures) regardless of whether the counterparty or exchange considers the variation margin payment to be collateral or legal settlement. 	Y Y	Y N	TBD TBD
2017-14	SSAP No. 92— <i>Postretirement Benefits Other than Pensions</i> SSAP No. 102— <i>Pensions</i>	P&C Life Health	Nonsubstantive – Exposed revision rejects recent US GAAP updates related to presentation of pension costs.	NA	NA	NA

Ref#	Title	Sec.	Amendments exposed	F/S impact	Disclosure	Effect. date
2017-08 2017-20	<i>SSAP No. 97— Investments in Subsidiary, Controlled and Affiliated Entities</i>	P&C Life Health	<p>Nonsubstantive – Exposed the following related to accounting and report of SCA entities:</p> <ul style="list-style-type: none"> Proposed revisions incorporate a 90-day time period to file a Sub 1 after an initial acquisition or formation of an SCA entity, and an Aug. 31 deadline for Sub 2 filings, with provisions to allow a company a one-month deadline after the audit date for an SCA entity that regularly receives its audit report after Aug. 31. Proposed revisions provide a consistency edit that limited statutory adjustments are required for all foreign insurance SCA entities (8.b.iv. entities) regardless of whether they have audited US GAAP or audited US foreign GAAP financial statements. 	N Y	N N	TBD TBD
2017-16	<i>SSAP No. 104R— Share-Based Payments</i>	P&C Life Health	Nonsubstantive – Exposed revisions to adopt recent US-GAAP updates to accounting for share-based payments that clarify when modification of terms or conditions of share-based payment awards to be accounted for under existing modification accounting requirements.	Y	N	TBD
2017-26	<i>SSAP No. 107— Risk-Sharing Provisions of the Affordable Care Act</i>	Health	Nonsubstantive – Exposed revisions propose guidance to report high-cost risk pools, which were added to the federal Affordable Care Act (ACA) risk adjustment program, similar to an involuntary pool. The revisions incorporate new disclosures and recommend deletion of disclosures pertaining to the transitional ACA reinsurance program, which has ended. In addition to the exposure of suggested revisions, comments were invited on the alternative accounting approach noted in the agenda item.	Y	Y	2018
2017-15	<i>Appendix D— Nonapplicable GAAP Pronouncements</i>	P&C Life Health	Nonsubstantive – Exposed rejection of recent US GAAP updates related to amendments in scope, measurement, and disclosure requirements for investment companies.	NA	NA	NA
2017-01EP	<i>Editorial Process</i>	P&C Life Health	<p>Nonsubstantive – Exposed editorial revisions are as follows:</p> <ul style="list-style-type: none"> Delete transition footnotes for the 2016 year-end and interim 2017 reporting of money market mutual funds. Remove Actuarial Guideline XXXIV—Variable Annuity Minimum Guaranteed Death Benefit Reserves (AG 34) and Actuarial Guideline XXXIX—Reserves for Variable Annuities with Guaranteed Living Benefits (AG 39) from Appendix C. <ul style="list-style-type: none"> Both AG 34 and AG 39 have not been in effect since 2009. 	NA	NA	NA

The SAPWG also took the following actions, received updates, and provided direction to NAIC staff on the following items:

Ref#	Title	Sec.	Description	F/S impact	Disclosure	Effect. date
2016-40	<i>SSAP No. 43R— Loan-Backed and Structured Securities</i>	P&C Life Health	<p>Substantive – Disposed this item without statutory accounting revisions.</p> <p>NOTE: The working group previously directed additional research to be conducted on insurer application of the guidance and to prepare a report. As such, further may be considered based on the report.</p>	NA	NA	NA
Referral Response	To: <i>Valuation of Securities (E) Task Force</i>		Adopted a response to the Valuation of Securities (E) Task Force in response to its April 18 referral requesting assistance in formulating additional procedures or limitations in assigning NAIC designations to investments in an insurer's SCA entity.	NA	NA	NA
2016-03	<i>Special Accounting Treatment for Limited Derivatives Hedging Variable Annuity Guarantees</i>	Life	<p>Substantive – This item relates to the work performed by the Variable Annuity Issues (E) Working Group and the charge from that group to the SAPWG to consider “hedge accounting treatment” for certain limited derivatives (macro hedges) that do not meet hedge effectiveness requirements related to variable annuity products and associated guaranties.</p> <p>The working group re-exposed guidance and received comments related to the following areas:</p> <ul style="list-style-type: none"> • Amortization period for deferred loss • Regulatory review and approval process • Special accounting treatment for other derivatives included in the “clearly defined hedging strategy” • Termination guidance <p>Discussion is expected to continue during the interim period.</p>	Y	Y	TBD
2016-20	<i>Credit Losses</i>	P&C Life Health	<p>Substantive – Received an industry update on the Transition Resource Group formed to advise the Financial Accounting Standards Board (FASB) on implementation issues involving <i>ASU 2006-13: Credit Losses</i>. With this update, the working group directed NAIC staff to post the agenda item to allow for continued industry and regulator review, and noted that discussions would resume to consider this ASU. Specific reference was made to reinsurance recoverables within the scope of the ASU and the lack of separate transition guidance for these items.</p>	Y	Y	TBD
2015-27	<i>Investment Schedules</i>	P&C Life Health	<p>Nonsubstantive – Referral is currently being reviewed by the Financial Condition (E) Committee. This item details past discussions and exposures, noting support for the committee to make a policy change that facilitates collection of second-quarter, electronic-only investment information capturing CUSIP, par, book/adjusted carrying value (BACV), and fair value for Schedule D investments. Discussion during the meeting focused on use of information available from AM BEST. Further discussion is expected during the interim period.</p>	N	Y	TBD

This summary was prepared by John Tittle, Lynn Friedrichs, Diane Craanen, and Ed Wilkins. For your comments and suggestions, please contact the authors: johnntittle@deloitte.com, lfriedrichs@deloitte.com, dcraanen@deloitte.com, or ewilkins@deloitte.com.

Contacts

Gary Shaw

Vice Chairman
US Insurance Leader
Deloitte LLP
+1 973 602 6659
gashaw@deloitte.com

Howard Mills

Managing Director
Global Insurance
Regulatory Leader
Deloitte Services LP
+1 212 436 6752
howmills@deloitte.com

Richard Godfrey

Principal
US Insurance Risk &
Financial Advisory Leader
Deloitte & Touche LLP
+1 973 602 6270
rgodfrey@deloitte.com

Rick Sojkowski

Partner
Risk Manager &
Quality Control
Deloitte & Touche LLP
+1 860 725 3094
rsojkowski@deloitte.com

George Hanley

Managing Director
Deloitte & Touche LLP
+1 973 602 4928
ghanley@deloitte.com

Ed Wilkins

Partner
Deloitte & Touche LLP
+1 402 444 1810
ewilkins@deloitte.com

Contributors

John Tittle

Senior Manager
Deloitte & Touche LLP
+1 312 486 5486
johntittle@deloitte.com

Lynn Friedrichs

Partner
Deloitte & Touche LLP
+1 813 273 8342
lfriedrichs@deloitte.com

David Vacca

Senior Advisor
Deloitte & Touche LLP
+1 913 486 2295
dvacca@deloitte.com

Diane Craanen

Managing Director
Deloitte & Touche LLP
+1 312 486 3625
dcraanen@deloitte.com

Bryan Berkowitz

Senior Manager
Deloitte & Touche LLP
+1 973 602 4578
bberkowitz@deloitte.com

Senior editor

Andrew N. Mais

Senior Manager
Deloitte Center for Financial Services
Deloitte Services LP
+1 203 761 3649
amais@deloitte.com



About this publication

The NAIC Update is published after each meeting of the National Association of Insurance Commissioners (NAIC) by Deloitte's Insurance Industry Group. The purpose of this publication is to briefly describe key regulatory, actuarial, accounting, and other developments that occurred at the preceding NAIC national meeting. Readers seeking additional information about a topic may reach out to the contacts listed and should not rely solely on the descriptions included in this communication.

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