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

- Bermuda, Japan and Switzerland were approved as Reciprocal Jurisdictions for purposes of the revised Credit for Reinsurance Model Law and Regulation, and the NAIC took additional steps to implement the reinsurance collateral provisions of the US-EU/UK Covered Agreements.
- Innovation and technology in the insurance industry continues to garner significant attention from regulators, including the use of data, predicative analytics and artificial intelligence, as well as the need to modernize existing regulations.
- The Privacy Protections (D) Working Group held its first meeting and began its work to review and consider updates to state privacy laws and regulations.
- State insurance regulators and industry representatives discussed international regulatory developments, including IAIS adoption of ComFrame and the insurance capital standard (ICS), as well as field testing of the US Global Capital Calculation.
The following are some highlights from the Fall National Meeting. We do not cover every meeting in this report, rather, we comment on select noteworthy developments and matters of interest to our clients.

A. NAIC Continues Focus on Innovation and Technology

1. Regulators Work to Facilitate Review of Predictive Models
2. NAIC to Revise Model Anti-Rebating Law
3. Review of NAIC Privacy Model Laws Kicks Off
4. Principles for the Use of Artificial Intelligence in Insurance Coming Together Quickly

B. Regulation of Financial Condition

1. NAIC Approves Bermuda, Japan and Switzerland as Reciprocal Jurisdictions
2. Restructuring Mechanisms Working Group to Develop White Paper on Insurance Business Transfer and Division Law
3. Updates on International Regulatory Developments

C. Issues of Particular Interest to Life Insurers

1. Suitability in Annuity Transactions Model Regulation Nearing Completion
2. Life Risk-Based Capital Working Group Makes Progress on Longevity Risk
3. Accelerated Underwriting (A) Working Group Underway

D. Issues of Particular Interest to Property/Casualty Insurers

1. Developments of the Surplus Lines Task Force
2. Surplus Lines Broker Licensing Standards Will Not Be Updated for Accident and Health Risks
3. TRIA and National Flood Insurance Program Extended

E. Briefly Noted

1. Revisions Proposed to Property/Casualty RBC Charge for Reinsurance Recoverables
2. SSAP Disclosure Requirements for “Related Parties” Clarified
3. Workers’ Compensation White Paper Exposed for Comment
4. Work on Pet Insurance Model Law Continues
5. Private Flood Insurance White Paper Adopted
6. New NAIC Officers Elected

A. NAIC Continues Focus on Innovation and Technology

1. Regulators Continue Work to Facilitate Review of Predictive Models

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

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

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

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

2. NAIC to Revise Model Anti-Rebating Law

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

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

3. Review of NAIC Privacy Model Laws Kicks Off

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

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

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

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

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

B. Regulation of Financial Condition

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

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

The NAIC also approved the revised Credit for Reinsurance Model Law and Regulation as state accreditation standards, effective September 1, 2020, with enforcement beginning January 1, 2023. Following extensive discussion, the revised Credit for Reinsurance Models were adopted as state accreditation standards on an expedited basis in an attempt to avoid federal preemption of the state collateral reinsurance requirements that are inconsistent with the EU/UK covered agreements. Under the EU/UK covered agreements, the Federal Insurance Office Director is to begin evaluating US state insurance laws and regulations for possible preemption by March 1, 2021, prioritizing those states with the highest volume of gross ceded reinsurance, and complete any necessary preemption determinations by September 1, 2022. Now, it will fall to the states to adopt the revised Credit for Reinsurance Model Law and Regulation on the required time line.

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

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

The Restructuring Mechanisms (E) Working Group was formed with a charge to evaluate and prepare a white paper that summarizes the existing state restructuring statutes and addresses the need for these statutes, the issues the statutes are designed to remedy, alternatives that insurers are currently employing to achieve similar results and the legal issues posed by one state’s approval order affecting the policyholders of other states. Consideration of the impact of a restructuring or liquidation on shareholders, policyholders and other third parties was an emphasis of the discussion, including the idea that a domestic corporation (i.e., a binder not domiciled in the EU) that has not entered into a covered agreement with the US. Effectively, this approval places reinsurers domiciled in Bermuda, Japan or Switzerland on equal footing with reinsurers domiciled in the European Union (including the United Kingdom if it ultimately leaves the EU), which receive the benefits of the covered agreements between the United States and the EU and UK. For background on EU/Covered agreements, their reinsurance collateral provisions, and their genesis, see this Eversheds Sutherland Legal Alert.

The Restructuring Mechanisms (E) Working Group was formed with a charge to evaluate and prepare a white paper that summarizes the existing state restructuring statutes and addresses the need for these statutes, the issues the
addition, the Group Capital Calculation (E) Working Group has been tasked with liaising, as necessary, with the International Insurance Relations (G) Committee on international group capital developments and considering input from US state insurance regulators participating at the IAIS throughout the ICS version 2.0 monitoring period.

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

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

**b. Update on the Holistic Framework**

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

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

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

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

**c. Other International Updates**

The International Insurance Relations (G) Committee also received a report on other international activities from Commissioner Andrew Mais (CT). Most notably, in October 2019, the NAIC and Japanese insurance regulators met to discuss regulatory issues of mutual concern, including Japan’s desire to become a reciprocal jurisdiction under the revisions to the Financial Institutions Act and Law and Regulations on Financial Instruments and Services. Dialogue Project is continuing on its work on cyber insurance and big data, and the project is expected to hold a public event in March 2020. The NAIC has also been working with the Association of Latin American Supervisors as part of their effort to share best practices with other insurance supervisors.

The Committee also received an update on the International Monetary Fund’s (IMF) third Financial Sector Assessment Program (FSAP) of the US financial regulatory system for overall coordinator of this FSAP, and FSAP meetings together were scheduled for February/March 2020. The IMF is expected to publish a technical note on insurance by the summer of 2020.

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

**4. Update on Macroprudential Surveillance Initiatives**

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

**a. Report on FSOC Developments**

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

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

- **Cyber threats.** FSOC has recommended that measures be taken to enhance regulatory supervision over third-party service providers and through coordination and information sharing among the private sector and financial regulators after a cyber-incident. FSOC also has noted the potential vulnerabilities at large, interconnected financial institutions and has recommended regulations for such institutions to have sufficient capital and liquidity.

- **Transition from LIBOR to other alternative reference rates.** The NAIC’s Life Actuarial Task Force is looking into addressing the changes to LIBOR and some of the resulting factors. Other NAIC groups are also looking into this to make sure insurers are aware of, and making appropriate plans to address, the cessation of LIBOR as a reference rate in contracts.

- **Potential risks in the non-financial corporate credit markets, including CLOs.** NAIC staff is monitoring experience with Collateralized Loan Obligations (CLOs) and stressed portfolios to ascertain impacts in the event of a market downturn.

**b. Update on CLO Stress Tests**

Eric Kholikinsky, Director of Structured Securities and Capital Markets at the Securities Valuation Office (SVO), reported on the results of insurance company CLO investment stress testing that the SVO ran in 2019. The “stress thesis” for this stress testing was based on market losses, CLOs, and stressed conditions and is an updated version of the SVO’s stress test in 2018. The SVO ran the stress test on the top 20 global systemically important insurers (G-SIIs) and found that these insurers were aware of, and making appropriate plans to address, the cessation of LIBOR as a reference rate in contracts.

**c. Liqidity Stress Test Framework**

During the past year, the Liquidity Assessment (EX) Subgroup has been working on finalizing a liquidity risk assessment framework for subject insurers. Subsequently, the subgroup has been working with an internal study group comprised of state insurance regulators, insurance groups and NAIC staff to consider the specific data needs and technical aspects of the project, and has expected for comment a draft 2019 Liquidity Stress Test Framework, for which comments are due by February 10, 2020.

**5. Working Group Evaluating Results of GCC Field Testing**

The Group Capital Calculation (E) Working Group heard a presentation that summarized data and initial observations from the latest Group Capital Calculation (E) field testing. The working group also presented its own findings, which included an evaluation of the 2017 Group Capital Calculation (E) field test, comprising 31 volunteer company submissions and providing 28 review summaries to lead states. Fourteen submissions have been presented and discussed with the volunteer companies, and NAIC/lead state calls are expected to be scheduled with the remaining volunteers by January 15, 2020, to complete the field-testing exercise.
Florida Commissioner David Altmaier, Chair of the Working Group, invited interested party comments on the presentation to address open questions about the GCC. Concerns were expressed about on-top adjustments that have the effect of amending all state legal entity rules for reserves and capital. Suggestions for further work were consequently requested on four categories: (1) non XXX/AXXX captives; (2) the treatment of subsidiaries; (3) a proposal to include non-admitted entities, which are effectively zeroed out of the RBC calculation within the GCC; and (4) the use of the trend test level versus the company action level.

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


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

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

C. Issues of Particular Interest to Life Insurers

1. Suitability in Annuity Transactions Model Regulation Nearing Completion

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

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

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

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

3. Accelerated Underwriting (A) Working Group Underway

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

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

D. Issues of Particular Interest to Property/Casualty Insurers

1. Developments of the Surplus Lines Task Force

The Surplus Lines (C) Task Force continues to consider a proposal to modify annual and quarterly financial statement supplementary information and to add a new section for reporting the allowance for unearned premium. The proposal is intended to help regulators reconcile broker-reported surplus lines premium with company-provided information to ensure that states are receiving the proper amount of surplus lines premium taxes. In Austin, APCIA and other industry representatives spoke in opposition to the proposal, noting that imposing additional reporting requirements on surplus lines insurers is inconsistent with the spirit of the NRRA. The Task Force is expected to take the proposal up again during the 2020 Spring National Meeting. In the meantime, regulators will be considering potential alternatives for obtaining the required information without imposing additional reporting requirements on insurers.

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

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

Following several months of discussion, the Producer Licensing (D) Task Force has decided that it will not amend the NASAP Producer Licensing Standards and permit an expedited review of an existing producer license to fulfill the underlying resident producer license requirement for a surplus lines producer license. In Austin, the Task Force announced that its work indicates that there are divergent views among states as to whether insurance and health insurance may be written on a surplus lines basis, and so it would not be appropriate to make changes to the
uniform licensing standards. Instead, states will be allowed to adopt their own requirements, and the Task Force will revisit this issue as this segment of the surplus lines market develops further.

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

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

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

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

E. Briefly Noted

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

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

2. SSAP Disclosure Requirements for “Related Parties” Clarified

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

3. Workers’ Compensation White Paper Exposed for Comment

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

4. Work on Pet Insurance Model Law Continues

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

5. Private Flood Insurance White Paper Adopted

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

6. New NAIC Officers Elected

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

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If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed or the Eversheds Sutherland attorney with whom you regularly work.

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