



NAIC Update — The 2009 Spring National Meeting

by Eric C. Nordman, CPCU, CIE

The National Association of Insurance Commissioners (NAIC) met March 14–18 in San Diego, Calif. The Spring National Meeting is when the NAIC rolls out plans for activities to be held during the coming year. There are many important projects underway that could change the property-casualty business. This article will attempt to highlight just a few of them.

The NAIC's Property and Casualty Insurance Committee

The mission of the NAIC's Property and Casualty Insurance Committee is to monitor and respond to problems associated with the products, delivery and cost in the property-casualty insurance market and the surplus lines market, as they operate with respect to individual persons and businesses. The committee is also to monitor and respond to problems associated with financial reporting matters for property-casualty insurers that are of interest to regulatory actuaries and analysts, and to monitor and respond to problems associated with the financial aspects of the surplus lines market.

At the NAIC's Spring National Meeting, the committee appointed a number of working groups to work on specific projects for 2009. Among the working groups appointed are:

- **The Advisory Organization Examination Oversight Working Group** — to coordinate regulatory involvement in examinations of national advisory and statistical organizations.
- **The Catastrophe Insurance Working Group** — to work on natural disaster matters.

- **The Catastrophe Reserve Working Group** — to study the possibility of implementing a tax-deferred pre-event catastrophe reserve even if Congress does not act to amend the IRS tax code to allow insurers to use pre-tax funds for the reserve.
- **The Consumer Guides Working Group** — to update the NAIC auto and homeowners consumer guides.
- **The Crop Insurance Working Group** — to work with the Federal Crop Insurance Corporation's Risk Management Agency on matters pertaining to regulation of multiperil crop insurance products.
- **The Earthquake Study Group** — to work with seismic and actuarial experts to develop recommendations for measures designed to mitigate losses caused by earthquakes.
- **The Terrorism Insurance Implementation Working Group** — to work with the Treasury's Terrorism Risk Insurance Program Office.
- **The Title Insurance Issues Working Group** — to study issues related to title insurers and title insurance producers, including the impact of current real estate settlement practices on policyholders.

The committee also plans to appoint a Risk Retention Working Group to update the *NAIC Risk Retention and Purchasing Group Handbook* and to consider how best to implement the corporate governance standards for risk retention groups that were developed in 2007.

High on the committee's list for action is a joint hearing scheduled for April 30 with the Market Regulation and Consumer Affairs Committee to study how insurers

are using credit-based insurance scores in light of the economic downturn. The charge calls for a public hearing to be convened to gather information to answer three questions:

- What constitutes a credit-based insurance score?
- How do insurers use credit information to develop credit-based insurance scores?
- How have current economic conditions affected policyholder premiums related to credit-based insurance scores?

The committee also looked into a report from the Insurance Research Council (IRC). The IRC periodically releases estimates of the uninsured motorist population. The IRC develops its estimates using a technique that compares claims made by individuals injured by uninsured motorists with claims made by individuals who were injured by insured drivers. A color-coded chart showing how states fare, based on 2007 data, is available from the IRC. The narrative includes an estimate for the future that is grim.

The IRC has noticed a correlation between unemployment data and the number of uninsureds. Projections suggest that there will be more than 16 percent uninsureds by 2010. This is up from the 13.8 percent estimated using the 2007 data. This will result in some changes in auto insurance premiums as the cost for the uninsured is shifted to the insured-driver population. There was an interesting exchange of opinions following the discussion of the IRC report. Some in the audience disagreed with the IRC's projections,

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noting the IRC has never made projections in the past.

The committee has a Surplus Lines Task Force that is charged with monitoring the surplus lines market and its operation and regulation. As part of that charge, the task force is to monitor the activity and financial condition of U.S. and non-U.S. surplus lines insurers. The task force has appointed a Multi-State Surplus Lines Premium Tax Working Group charged with studying the feasibility of establishing a clearinghouse for the purpose of allocating surplus lines premium taxes on multistate surplus lines policies.

The working group met by conference call on Jan. 28, 2009, and again on Feb. 26, 2009. During the meeting, the working group discussed a draft of a surplus lines survey that it later approved and distributed to the state insurance departments to gauge the complexity of state processes related to surplus lines premium tax calculation, collection and documentation, and to identify state laws that control many of these processes.

The committee also has a Workers' Compensation Task Force, which is charged with studying the nature and effectiveness of state approaches to workers compensation and related issues, including but not limited to, assigned risk plans, safety in the workplace, treatment of investment income in rating, occupational disease, cost containment, and the relevance of adopted NAIC model laws pertaining to workers compensation. During the NAIC's Spring National Meeting, the task force received information regarding a bill before Congress that seeks to create a national commission to study the fairness and adequacy of the current state-based workers compensation systems in meeting the needs of employers and injured employees.

California Congressman **Joe Baca** introduced H.R. 635, the "National Commission on State Workers'

Compensation Laws Act of 2009," on Jan. 22, 2009. The bill would establish a separate body to evaluate state workers compensation laws in order to determine if they provide an "adequate, prompt and equitable" system for injured workers. The bill was referred to the House Committee on Education and Labor. During the task force meeting it was mentioned that in 1972 a national workers compensation commission authorized by the Nixon administration made numerous recommendations and set minimum standards. This 1972 study serves as a benchmark today for measuring the performance of state workers compensation systems. There is no companion bill in the Senate.

The Workers' Compensation Task Force received information from the Ohio Department of Insurance regarding Ohio S.B. 334, which became effective Sept. 11, 2008. The law impacts employers based in other states that do business in Ohio. Other states' coverage will be recognized in Ohio if the other states accept Ohio coverage on employers working in their respective states; however, employers from states that do not recognize Ohio coverage must obtain Ohio coverage for employees working in Ohio. This law is of great interest to insurers, producers and insurance regulators as it provides efficiencies for insurance producers and employers, but allows an exclusive state fund the ability to provide certain limited coverage beyond its borders. Insurers would benefit from being able to provide incidental other states' coverage in Ohio — something that they could not provide before S.B. 334 was enacted.

The Workers' Compensation Task Force also has assigned some working groups to discuss issues and draft papers on some specific topics. Its Large Deductible Study Implementation Working Group continues toward completion of the draft Third Party Administrator (TPA) Guidelines. The Independent Contractor Trucking Issues Focus Group was formed to look specifically at regulatory concerns

related to workers compensation coverage for truckers who claim, or are encouraged by their employer to claim, independent contractor status. The Professional Employer Organization Model Law Working Group is drafting a paper that will provide assistance to states with implementation of the Guidelines for Regulations and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements that were adopted in 2007 by the NAIC.

The mission of the committee's Casualty Actuarial and Statistical Task Force is to identify, investigate and develop solutions to actuarial problems and statistical issues in the property-casualty insurance industry. The task force's goals are to maintain the financial health of property-casualty insurers and to ensure that appropriate data regarding property-casualty insurance markets are available. The task force oversees some of the reports produced by the NAIC's Research Division. Recently released reports include: the 2007 Commercial Lines Competition Database Report and the 2006 Dwelling Fire, Homeowners Owner-Occupied, and Homeowners Tenant and Condominium/Cooperative Unit Owner's Insurance Report.

The task force agreed to elimination of the quarterly accelerated statistical reports, which are included in the NAIC's *Statistical Handbook of Data Available to Insurance Regulators*. The accelerated statistical reports were developed in the 1980s in response to market issues related to the availability and affordability of first product liability insurance and then general liability insurance for businesses. Before the task force would agree to elimination of the accelerated statistical reports, the task force required that notification of the potential discontinuation of the reports be sent to regulators with both of the last two reports. No comments were received from regulators.

The Casualty Actuarial and Statistical Task Force heard a report from **Thomas**

Cohen (Bureau of Justice Statistics) about litigation activity. The bureau studied all general civil trial litigation concluded by jury or bench trials in 2005. Cohen said plaintiffs win more often in front of judges, but the awards are smaller. It also takes six months longer to prepare a case for a jury, and the trial lasts two days longer compared to bench trials.

The Casualty Actuarial and Statistical Task Force adopted a survey to send to some insurance companies regarding the reporting of property-casualty financial data by line of business. The survey is short, but is broad enough to identify issues and disparities with reporting. The aim is to assist the task force in preparation of its statistical reports and to determine whether any changes in reporting by line of business should be proposed to the Blanks Working Group.

In October 2008, the NAIC's Credit Default Swap (EX) Working Group was charged to consider suggestions to other standing committees where financial regulation can be fortified. As a result, the working group asked the Casualty Actuarial and Statistical Task Force, as well as the Life and Health Actuarial Task Force (LHATF), to consider the long-term need to establish new requirements for stress testing of all insurers' reserves, investments, security lending arrangements, reinsurance, etc., against realistic scenarios, and to recommend to the parent committees how these issues should be addressed. The task force adopted a letter to submit to the Property and Casualty Insurance Committee that essentially proposes to work with the NAIC's new Solvency Modernization Initiative (EX) Task Force as it develops requirements for enterprise risk management.

The Casualty Actuarial and Statistical Task Force has appointed a Catastrophe Modeling Subgroup. The subgroup expects to propose modifications to the NAIC's Catastrophe Modeling Handbook by the Summer National Meeting. The Statistical Subgroup will

continue to draft the Guideline for Implementation of Medical Professional Liability Closed Claim Reporting to supplement the model law. The subgroup will also begin to work with LHATF's Statistical Subgroup to aid it with principles-based reserving. The Workers' Compensation Large Deductible Subgroup, in cooperation with industry representatives, is discussing whether to keep premium assessments based on losses on large deductible business rather than to try to develop a new method based on premiums.

The committee's Crop Insurance (C) Working Group received an update on the status of state efforts to encourage all states to permit the use of the Risk Management Agency (RMA) Proficiency Examination in lieu of state examinations for adjuster licensing for crop insurance adjusters. The working group reviewed proposed draft letters to be sent out to states that responded on the state survey that they would be unable to accept the RMA examination. There are 12 states that will receive the letter. There are three states that will receive a similar letter that acknowledges that the states have been working towards updating legislation and asks for a status. The letters were sent to the states at the end of March. The letters will inform the commissioners that they face federal preemption for crop insurance adjuster licensing if they do not make appropriate changes.

The Crop Insurance Working Group received an update on the RMA Standard Reinsurance Agreement (SRA) contract revision and informational memorandum for adjuster licensing. RMA provided its informational memorandum, which included a background and explanation of the amendment. There was also a section within the bulletin of received questions, with answers provided by RMA. RMA also presented its final draft of the SRA amendment, aiming for a deadline of March 31, 2009. If RMA receives a signed amendment from each Approved Insurance Provider (AIP) under the SRA

for the 2009 reinsurance year prior to this deadline, then the amendment will become effective as of July 1, 2009, for the SRA for the 2010 and subsequent reinsurance years. In the event that RMA has not received a signed amendment from all AIPs approved for the 2009 reinsurance year prior to this deadline, then the amendment will not become effective for the SRA for the 2010 and subsequent reinsurance years.

The National Crop Insurance Services (NCIS) reported on the Crop Adjuster Proficiency Program (CAPP) and stated the *Multi-Peril Crop Insurance (MPCI) Loss Adjustment Manual* was updated for the exam as of March 4, 2009, for the 2009 crop year. **Laurence Crane** (NCIS) mentioned that although no CAPP exams have been proctored to date, NCIS is working proctorship into its current system. This effort would include conferring with each state on its individual decisions as to who should be able to proctor an exam, and how and where proctoring would best be appropriate for its respective state. **Craig Witt** (RMA) reported on controlled business. Last spring a farm bill was passed that included a new provision stating that an individual producer may not receive compensation if more than 30 percent of his/her portfolio is derived from his/her, or his/her immediate family's, business. The 30 percent rule applies to federal crop insurance, or a lesser percentage if a state has a lower trigger amount. If states do not have a controlled business trigger amount to any specific line of business, the federal 30 percent rule will supersede.

The committee received a referral from the NAIC's Receivership and Insolvency (E) Task Force regarding a recent opinion released by the Nebraska Supreme Court that involved regulatory exclusions contained in directors and officers insurance policies pertaining to a receiver, conservator and liquidator. The Receivership and Insolvency (E) Task Force requested that the Property and

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Casualty Insurance Committee review this language and advise whether the NAIC and/or individual state insurance departments should pursue policy form requirements to prevent insurers from using this or similar language. The language in question involved regulatory exclusions contained in D&O insurance policies pertaining to a receiver, conservator and liquidator. The committee agreed to look into the matter and advise the Receivership and Insolvency (E) Task Force of its findings.

The NAIC's Market Regulation and Consumer Affairs Committee

The mission of the Market Regulation and Consumer Affairs Committee is to monitor all aspects of the market regulatory process. This includes overseeing:

- (1) The collection of market data.
- (2) The Market Information Systems.
- (3) Automated applications.
- (4) The use of desk audits, examinations, interrogatories, investigations and other resources for monitoring market activities.
- (5) The analysis of data relevant to market issues.

In addition, the committee will help identify and develop uniform regulatory standards and solutions to problems related to market issues. As part of this function, the committee will facilitate interstate communication and coordinate collaborative state regulatory actions. The committee will also review and make recommendations regarding the underwriting and market practices of insurers and producers as those practices affect insurance consumers, including availability and affordability of insurance.

During the NAIC's Spring National Meeting, the committee discussed the

fact that the Market Conduct Annual Statement (MCAS) is in a transitional phase since NAIC membership had voted to have the data centrally collected and stored at the NAIC. This topic has been very controversial, as some in the insurance industry are concerned the NAIC might be unable to protect sensitive market regulatory information from disclosure. The committee acknowledged that the decision regarding the best way to collect the data had not yet been determined. It was pointed out that each state submitting data was provided a confidentiality agreement to sign with the NAIC, if necessary under state law, and there was no intention of publicly releasing the data collected in the current process. The committee discussed that while consumers need data to make insurance-buying decisions, any data released needs to be meaningful. The committee agreed to form two subgroups to evaluate the data elements currently being collected by MCAS.

The committee received a report from its Special Accreditation Standards Working Group. During its meeting, the working group had received a presentation regarding the history and success of the NAIC's Financial Accreditation Program. The committee was reminded that the purpose of the working group was to work through the issues of developing an accreditation program and not to debate the merits of such a program. This, too, is a controversial project, as not all regulators are convinced that an accreditation program for market regulation will work as smoothly as the current Financial Accreditation Program.

The committee received a report from its Market Actions Working Group. The working group discussed ongoing actions with several insurance companies, established its schedule for the rest of the year and hoped to have discussions regarding long-range plans for the working group. The working group adopted policies and procedures as well as settlement best practices documents.

The committee received a report from its Consumer Connections Working Group. The working group discussed the importance of connecting with consumers and learned that a recent NAIC survey indicated consumers thought they knew more about insurance than they actually did. The working group discussed third-party claims vendors and wanted the claims process to be more transparent for consumers. The working group introduced the State Consumer Advocacy Forum and the Consumer Assistance Bulletin Board.

The committee received a report from its Market Conduct Examinations Standards Working Group. The working group reviewed its 2009 charges and tasks. Tasks included the need to finish the draft market conduct examination standards and procedures, which included the revision of a Commercial Property and Casualty Standardized Data Request and the revision of Chapter 18, "Conducting the Title Insurance Company and Title Insurance Agent Examination," in the *Market Regulation Handbook*. The working group discussed performing a review of new and revised NAIC models adopted in the past two years in order to ensure the market conduct examination standards in the *Market Regulation Handbook* are more complete and reflect current issues in the insurance marketplace.

The committee received a report from its Market Analysis Procedures Working Group. The working group plans to create several project groups to accomplish 2009 tasks, which include the following:

- Finishing work on the *Complaint Database System (CDS) Manual* by the 2009 Summer National Meeting.
- Establishing a priority list of new data elements and lines of business to be centrally collected and incorporated into new and existing NAIC systems by the 2009 Fall National Meeting.
- Developing detailed enhancements to the market analysis chapters ("Baseline," "Level 1" and "Level 2") of the *Market Regulation Handbook* by

the 2009 Winter National Meeting.

- Overseeing ongoing enhancements of market tools via the Market Analysis Research & Development Focus Group.

The working group discussed the results of the 2008 working group survey, which found that staffing was often the reason states could not complete proper analysis and that system tools were often the reason for success.

The committee received a report from the Antifraud Task Force. The Agent and Unlawful Activity Working Group decided it would send a survey to states regarding state laws on unauthorized transactions. The Federal and International Enforcement Coordination Working Group discussed working on revisions of the 18 USC 1033 Guidelines. The Antifraud Liaison Working Group discussed comments regarding the draft Anti-Fraud Plan Guideline as a best practices tool for regulators and industry members in the creation of antifraud plans.

The Antifraud Training and Seminar Working Group discussed the 2009 Insurance Investigators Toolbox Seminar to be held following the 2009 Spring National Meeting. The Information Sharing and Technology Working Group announced agreement with the International Claims Association (ICA) to implement the Life Insurance Alert System and reported that the Online Fraud Reporting System (OFRS) and the National Insurance Crime Bureau (NICB) agreement to push NICB suspected fraud claim reports to OFRS will be completed by summer 2009.

The NAIC's Financial Condition Committee

The mission of the NAIC's Financial Condition Committee is to be the central forum and coordinator of solvency-related considerations of the NAIC relating to accounting practices and procedures; blanks, valuation of securities, the Insurance Regulatory Information System (IRIS), financial analysis and solvency;

zone examinations and examiner training; and issues concerning insurer insolvencies and insolvency guarantees. In addition, the committee interacts with the technical task forces. During the NAIC 2009 Spring National Meeting, the committee heard reports from its seven task forces and six working groups on a variety of topics.

The committee adopted a report from its Accounting Practices and Procedures Task Force. The task force announced it had adopted SSAP No. 98 — Treatment of Cash Flows When Quantifying Changes in Valuation and Impairments, an amendment of SSAP No. 43 — Loan-backed and Structured Securities. This Statement of Statutory Accounting Principles (SSAP) was originally adopted by the task force in late 2008; however, it was not presented to the committee until after the Securities and Exchange Commission (SEC) study on fair value was completed. The SEC released its Report and Recommendations Pursuant to Section 133 of the Emergency Economic Stabilization Act of 2008: Study on Mark-to-Market Accounting on Dec. 30, 2008. Pursuant to that report, the SEC noted that FAS 157, Fair Value Measurements, should be improved, but should not be suspended. After the SEC report had been released, the working group conducted a conference call to discuss whether to proceed with the process to submit SSAP No. 98 for adoption to the Accounting Practices and Procedures Task Force. Regulators and interested parties agreed the SEC report did not impact SSAP 98 and decided to proceed with recommending its implementation.

The committee adopted a report from its Capital Adequacy Task Force that included a report from the Property Risk-Based Capital Working Group. The working group announced the second year of phasing in risk charges for the underwriting risk calculation that had been completed. The American Academy of Actuaries had been asked to review the underwriting risk data for three

additional years — 2006, 2007 and 2008. The working group also plans to review whether Schedule P data in the annual statement would be expanded to 10 years for the current two-year lines.

The committee learned that its Receivership and Insolvency Task Force was developing a publication, titled *Directory of Receivership Resources to Assist Receivers*. NAIC staff will mail the publication to regulators in April. In addition, the Committee learned of the referral to the Property and Casualty Insurance Committee regarding a recent opinion released by the Nebraska Supreme Court involving regulatory exclusions contained in D&O insurance policies pertaining to receivers.

The committee heard a report from its Reinsurance Task Force. The task force received an update on reinsurance issues being discussed in Congress. The task force learned that in 2009 representatives intend to re-introduce the Nonadmitted and Reinsurance Reform Act in the House without any changes. This bill passed unanimously in the House in each of the past two years. Changes to the legislation might be supported when a companion bill is introduced in the U.S. Senate. The reinsurance framework and legislation developed by the task force is expected to be discussed very soon in the Senate Banking Committee hearings.

The task force discussed the need for timely completion of draft federal legislation in order for the reinsurance framework to be considered during the current efforts to reform federal financial regulation. The draft bill primarily incorporates the basic legal framework found within the NAIC reinsurance modernization proposal, but leaves many of the details to be developed by the Reinsurance Supervision Review Department throughout the implementation process. The task force has been working on the implementation details regarding the reinsurance

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regulatory modernization framework and drafting the federal legislation that would be required for implementation. The federal legislation is on a most urgent timeline due to federal efforts to reform the financial regulatory system. A draft of this legislation was recently exposed for comment.

Work has also begun on developing standards for evaluating those states wishing to act as home state or port-of-entry (POE) supervisors. Additional items for discussion in the near term include the structure of the Reinsurance Supervision Review Department, model state legislation that will be required for those states wishing to act as home state or POE supervisors, and the mechanics of the process for evaluating non-U.S. jurisdictions. ■