

PROPERTY AND CASUALTY INSURANCE (C) COMMITTEE

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Draft: 8/25/20

Property and Casualty Insurance (C) Committee
Virtual Summer National Meeting
August 12, 2020

The Property and Casualty Insurance (C) Committee met via conference Aug. 12, 2020. The following Committee members participated: Vicki Schmidt, Chair (KS); Mike Chaney, Vice Chair (MS); Jim L. Ridling (AL); Ricardo Lara and Bryant Henley (CA); Andrew N. Mais and George Bradner (CT); David Altmaier (FL); Colin M. Hayashida and Martha Im (HI); James J. Donelon and Warren Byrd (LA); Kathleen A. Birrane (MD); Jillian Froment (OH); Glen Mulready represented by Ron Kreiter and Shelly Scott (OK); Larry D. Deiter (SD); Mike Kreidler (WA); and James A. Dodrill (WV). Also participating were: Travis Grassel (IA); and Andy Case (MS).

1. Adopted its June 10 Minutes

The Committee met June 20 and took the following action: 1) adopted its 2019 Fall National Meeting minutes; 2) adopted edits to the NAIC Uniform Risk Retention Group Registration Form for inclusion in the *Risk Retention and Purchasing Group Handbook*; 3) discussed regulatory actions related to COVID-19; and 4) adopted the private passenger auto (PPA) insurance study.

Commissioner Lara made a motion, seconded by Commissioner Mais, to adopt the Committee's March 10 minutes (Attachment One). The motion passed unanimously.

2. Adopted the Reports of its Task Forces and Working Groups

Commissioner Chaney made a motion, seconded by Commissioner Lara, to adopt the following task force and working group reports: the Casualty Actuarial and Statistical (C) Task Force; the Surplus Lines (C) Task Force; the Title Insurance (C) Task Force; the Workers' Compensation (C) Task Force; the Cannabis Insurance (C) Working Group; the Catastrophe Insurance (C) Working Group (Attachment Two); the Climate Risk and Resilience (C) Working Group (Attachment Three); the Lender-Placed Insurance Model Act (C) Working Group; the Pet Insurance (C) Working Group (Attachment Four); the Terrorism Insurance Implementation (C) Working Group (Attachment Five); and the Transparency and Readability of Consumer Information (C) Working Group (Attachment Six). The motion passed unanimously.

3. Adopted an Extension for Revisions to the Proposed Real Property Lender-Placed Insurance Model Act

Birny Birnbaum (Center for Economic Justice—CEJ) urged the Committee to redouble its efforts in finalizing revisions to the Real Property Lender-Placed Insurance Model Act as there may be industry abuses such as kickbacks from insurers to servicers as economic conditions deteriorate.

Commissioner Chaney made a motion, seconded by Commissioner Birrane, to adopt an extension to the 2020 Fall National Meeting for revisions to the proposed Real Property Lender-Placed Insurance Model Act. The motion passed unanimously.

4. Adopted the *Workers' Compensation Policy and the Changing Workforce White Paper*

Mr. Byrd said in 2018, the NAIC/IAIABC Joint (C) Working Group of the Workers' Compensation (C) Task Force was charged with updating the 2009 white paper, *An Overview of Workers' Compensation Independent Contractor Regulatory Approaches*. The Working Group expanded this charge to incorporate the draft of a white paper regarding workers' compensation policy and the changing workforce, and it also updated the independent contractor state standards.

Mr. Byrd said the white paper explores how changes in work and the evolving landscape surrounding the legality of employment options are shifting responsibility for coverage and benefits related to occupational injuries, illnesses and fatalities. The white paper is divided into the following sections: 1) Changing Relationships with Work; 2) Determining Employment Status; and 3) Alternative Coverage Models. The white paper also includes an appendix that provides state standards used to determine independent contractor status. Mr. Byrd said the Workers' Compensation (C) Task Force adopted the white paper on July 22, 2020.

Mr. Byrd made a motion, seconded by Commissioner Mais, to adopt the white paper titled *An Overview of Workers' Compensation Independent Contractor Regulatory Approaches* (Attachment Seven). The motion passed.

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5. Adopted the State Disaster Response Plan

Mr. Bradner said the Catastrophe Insurance (C) Working Group was charged with updating the *NAIC State Disaster Response Handbook*. He said states participating in the drafting group included: Alabama; Connecticut; Louisiana; Maryland; Missouri; and Rhode Island. The *NAIC State Disaster Response Plan* is a document the state insurance departments can use as a template to create a disaster response plan. Mr. Bradner said the document provides state insurance regulators with information regarding: 1) the purpose of the disaster response plan; 2) NAIC disaster assistance; 3) preparation steps and planning; 4) the data collection process; 5) the disaster response and incident management team and its roles and responsibilities; 6) business continuity organizational charts; 7) response levels and definitions; and 8) sample contact lists that state insurance departments can use.

Mr. Bradner said state departments of insurance (DOIs) are able to edit and format the document to meet their needs. The Catastrophe Insurance (C) Working Group adopted the document on May 26. He said there may be a need to go back to the document and explore the need to expand information regarding pandemics.

Mr. Bradner said in addition to the creation of the *State Disaster Response Plan*, it is important to note that the NAIC is creating a disaster program that will provide a one-stop shop for regulators. This resource will include sample bulletins, publications to help state DOIs educate consumers about catastrophic events, information regarding NAIC data calls and various other tools for regulators. The NAIC Communications Department will also help to create interactive tools and podcasts regarding topics around catastrophe.

The NAIC envisions there being a website where state regulators can access information and tools prior to a disaster to be better able to help protect citizens. As part of this project, the NAIC would like to identify a point person in every DOI to be that state's disaster representative, so someone will be reaching out to states soon to identify such a person and add information to this online resource.

Mr. Bradner made a motion, seconded by Commissioner Lara, to adopt the *NAIC State Disaster Response Plan* (Attachment Eight). The motion passed.

6. Heard a Recap of the FEMA and DOI Flood Workshops

Mr. Grassel said the Midwest experienced catastrophic floods in 2019. In September 2019, Federal Emergency Management Agency (FEMA) Region VII hosted a flood insurance roundtable that included FEMA and state DOI staff. A key takeaway was to develop an improved understanding of how states could better coordinate with FEMA. In January 2020, the Center for Insurance Policy and Research (CIPR) hosted a flood workshop with a goal of communication and coordination between FEMA and DOIs. Iowa, Kansas, Missouri, Nebraska, FEMA, state emergency management agencies and the University of Iowa Flood Center participated and discussed how they can all work together before, during and after a flood. Other topics covered were FEMA's desk reference guide, FEMA's flood event response, messaging and data sharing, the *NAIC State Disaster Response Plan*, and private flood data collection. Mr. Grassel said the Iowa Flood Center discussed capabilities of real-time flood data by using sensors on rivers and creeks to map out current and potential risks.

Jason Hunter (FEMA) said that FEMA Region IV encompasses eight southeastern states and that 40% of NFIP policies are in those states. He said FEMA Region IV and CIPR hosted a disaster resilience roundtable in July 2020. State DOIs, emergency management agencies, and FEMA Region IV and national headquarter staff participated. Objectives included building on existing relationships, identifying new partnership opportunities and focusing on how COVID-19 has changed disaster response. The organizational structure of each entity was covered, with a focus on mitigation and recovery. FEMA covered the disaster declaration process, Risk Rating 2.0 and mitigation grants. An outcome of the roundtable was establishment of a working group of FEMA Region IV and the DOIs. A draft charter was subsequently created, with objectives such as the exploration of coordination opportunities, data sharing and messaging.

7. Heard a Preview of the Southeast Zone Workshop

Mr. Case said a private flood forum was originally scheduled ahead of a southeastern regulator conference in May, but that was cancelled due to COVID-19. The purpose was to identify barriers to a viable private flood and help states identify steps to take to improve the private flood market. The forum has been rescheduled as a virtual event for the afternoons of Sept. 29 and Sept. 30, and southeastern states and industry representatives will participate. Mr. Case said states will complete a self-assessment prior to the forum to identify where states stand in building the private flood market. An agenda will be created based on those assessments. He said eight states have already agreed to participated in the forum.

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8. Heard a Presentation from the ICC on Building Codes

Ryan Colker (International Code Council—ICC) said the ICC is best known for development of model building codes, but it also conducts product evaluations, accreditation services, education and training, and the development of community resilience benchmarks. He said model building codes are available for communities to adopt. He said the ICC is interested in working with DOIs to address code-related issues.

Mr. Colker said the ICC has developed 16 different types of codes. He noted that some states' responsibility for codes might sit within the insurance commissioner's office. He explained that the National Institute of Building Sciences (NIBS) conducted a study showing a 4-to-1 benefit-cost ratio for investing in hazard mitigation. The initial study focused on federal grants, but an update has found a 6-to-1 benefit-cost ratio when looking at broader mitigation steps. The NIBS has also found adoption of building codes has resulted in an \$11 benefit for every \$1 in investment. Mr. Colker noted that NIBS also looked at benefit cost ratios of building codes at regional levels for wildfire, hurricane winds and earthquakes. When looking at which stakeholders benefit from building codes, the NIBS found that tenants and title holders were large beneficiaries in addition to builders and communities.

Mr. Colker explained that many communities have not updated building codes, although most consumers assume that their community has up-to-date building codes that will protect their homes. He said building codes and insurance intersect with the Building Code Effectiveness Grading Schedule (BCEGS), which is a score used by insurance companies to underwrite and rate risks. He noted that FEMA looks to provisions within building codes to meet National Flood Insurance Program (NFIP) requirements. Mr. Colker said the NIBS has an initiative regarding how to translate economic numbers into actions. He said the costs typically fall to building owners to make retrofits, but the benefits go to the community, insurers and the financial community. He said the NIBS is looking into how there can be incentives for investment in mitigation strategies.

Mr. Colker said the ICC has put together white papers on how building codes contribute to resilience. He said energy efficiency codes can improve community and individual resilience. The Alliance for National and Community Resilience (ANCR) looks across the community at functions that can support resilience. He said there is an opportunity for increased collaboration that could include a best practice guide on insurance and codes and how to engage with code officials, including case studies on how commissioners use codes. He also noted that potential research on codes and insurance could be conducted by the CIPR.

Mr. Bradner asked how the ICC could look at the Insurance Institute for Business & Home Safety (IBHS) standards. He said there tends to be reluctance to adopt codes that are not adopted by the ICC but that are recommended by the IBHS. He said it would be helpful for the ICC to look at what the IBHS is doing and adopt some of those measures into codes. He said building trades push back on IBHS recommendations, and he would like to see the ICC adopt additional standards to strengthen homes. Mr. Colker said the content within the code is generated by those subject matter experts (SMEs) that recommend changes. He said the ICC has strong, ongoing relationships with both the IBHS and the Federal Alliance for Safe Homes (FLASH) and is currently working with the IBHS on joint standards.

9. Heard a Report on Business Interruption Policies and Claims

Aaron Brandenburg (NAIC) said state insurance regulators issued a business interruption data call in May, with the premiums portion of the data due June 1. The first part of the data call showed that nearly 8 million commercial insurance policies include business interruption coverage. Of that amount, 90% were for small businesses, as defined as having 100 or fewer employees; 8% for medium businesses; and 2% for large businesses, as defined as having more than 500 employees. Significantly, 83% of all policies included an exclusion for viral contamination, virus, disease or pandemic, and 98% of all policies had a requirement for physical loss. Smaller policyholders generally have a higher percentage of policies with exclusions.

Mr. Brandenburg said the second part of the data call collects claim and loss information on a monthly basis from June through November. As of the July submission, insurers reported approximately 185,000 claims. About 72% of claims have been closed without payment. Less than 1% of claims, about 1,100, have been closed with payment, with about \$97 million being paid. Case incurred losses stand at about \$1.56 billion. Mr. Brandenburg said cumulative claims data is being submitted by insurers every month, and reports are posted under the business interruption (BI) data call portion of the NAIC website.

Amy Bach (United Policyholders) said there are many questions about BI coverage, such as whether the policy covers COVID-related losses; whether forced closure, loss of use or infiltration of the insured premises constitute a direct physical loss; and whether losses due to mandatory closure qualify for typical 30 days of coverage under civil authority coverage.

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Ms. Bach said regulators must balance insurer solvency and profitability with policyholders' reasonable expectations and need for coverage. She said there is a question as to whether insurers properly communicated exclusions for pandemics when they were first developed and whether exclusions were accompanied by premium reductions. She said insurer trades have stressed that policies do not cover pandemics, but other policies do not include the word "pandemic." She said each policy is different, and each claim should be evaluated on its merits.

Ms. Bach said total potential losses are unknown and speculative, although the state regulator data call will help discern some of these numbers. She noted there are three court rulings so far, each focused on the physical damage language within the policy. She said there are also some state and federal proposals to pay for business interruption losses. She explained small businesses are bearing the brunt of the losses because they either do not have business interruption coverage or they have a virus exemption.

Ms. Bach said it is important to know what regulators were told by insurers at the time the 2006 Insurance Services Office (ISO) virus exclusion was added and whether there was a rate decrease when the virus exclusion was adopted. She also said that claims that pandemic losses were never covered are contradicted by the fact that severe acute respiratory syndrome (SARS) claims were paid.

Ms. Bach said United Policyholders has a website with information including the tracking of litigation. She noted that the Business Interruption Relief Act of 2020 (H.R. 7412), unlike other legislation that looks forward, sets up a fund that assists current policyholders.

10. Discussed a Proposal to Collect Additional Homeowners and Auto Data

Mr. Birnbaum introduced a proposal that would assist in measuring average homeowner and auto premiums (Attachment Nine). He said there is great interest among stakeholders in understanding average premiums across states and over time. The NAIC publishes two reports that list average premium figures, but the data has about a two-year lag, which hinders its value. He said adding written and earned exposure data fields to the annual and quarterly annual statement for auto and homeowner lines of business will greatly increase the usefulness of the data. Adding exposure data will allow for average premium to be calculated on a written and earned basis.

Commissioner Schmidt said she would like to receive feedback on the proposal and would also like to hear from all parties about the need for additional, more granular, data.

11. Heard a Presentation on Race in the Property/Casualty Insurance Industry

Robert Klein (consultant) said recent events have refocused attention on race and insurance issues, which have been around a long time. He said prior to 1970, the record indicates that many insurers explicitly discriminated against certain groups, e.g., African Americans, in pricing and underwriting. He said the practice of "redlining" was common in property insurance, and certain urban areas were designated as too high-risk or otherwise undesirable for writing insurance. After 1970, explicit redlining and unfair discrimination diminished, but concerns with respect to implicit unfair discrimination have continued.

Mr. Klein said some contend that certain rating or underwriting factors, e.g., credit scores, are unfairly discriminatory because they have a disproportionately negative effect on certain groups and are not good measures of risk. Some also might contend that explicit unfair discrimination has continued to occur.

Mr. Klein said after the 1992 Los Angeles riots, it was determined that many property owners in certain urban areas lacked "good" insurance coverage. He said this prompted the NAIC to establish a task force that investigated whether insurers engaged in unfair discrimination in home and auto insurance. Also, during the 1990s, several prominent insurers were the subject of class action lawsuits in which they were alleged to have engaged in redlining or unfair discrimination in home insurance. He said the NAIC task force in 1998 ultimately found that people living in high-minority, low-income areas tend to pay higher premiums, have less adequate coverage and are more likely to be insured through a residual market. However, the task force also asserted that these outcomes could be caused by various factors, including those related to risk as well as industry practices, intended or not. The task force recommended that investigation continue and that insurers, regulators and other stakeholders undertake initiatives to improve the availability and affordability of insurance for low-income and minority consumers.

Mr. Klein said certain academics, who have specialized in lending and housing issues, have published considerable research contending that redlining and unfair discrimination in home insurance was prevalent at least up to 2000. Using different methods, insurance economists have reached different conclusions. Mr. Klein noted that Harrington and Niehaus (1998) did

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not find evidence of unfair discrimination in pricing against minorities in auto insurance in Missouri. He said Grace and Klein (2001) did not find evidence of unfair discrimination in pricing in home insurance in Texas, but did find a greater predominance of dwelling fire policies in minority or poor areas but could not determine why this was the case. Mr. Klein said the differences in findings are due to differences in methodologies. The researchers who have found evidence of unfair discrimination have tended to focus on the practices of insurers, e.g., underwriting guidelines and using testing to assess agents' responses to requests for insurance quotes. Insurance economists have tended to focus on outcomes, controlling for other factors (e.g., claim costs), such as loss ratios or the types of policies issued. Mr. Klein said the most rigorous studies were performed using data from the 1990s and have not been updated.

Mr. Klein said several insurance departments, as well as various other groups, think tanks and organizations, have published their own reports on insurers' practices. Some reports contend the evidence indicates that insurers do engage in unfair discrimination (explicit or implicit), and others contend that the evidence indicates that insurers do not unfairly discriminate. He believes the primary issue faced now is whether the use of certain factors in pricing and underwriting, e.g., credit scores, occupation, education, etc., are unfairly discriminatory and disproportionately affect certain groups, such as minorities and low-income populations. He said there would be value in updating and extending the studies that were done 20 years ago. One could also research how the use of the factors in question affect certain groups of interest and why. Potentially, such research, combined with proposed standards for unfair discrimination, could be used to develop opinions on how fair these factors are.

Mr. Klein also said regulators may be able to examine the efficiency and equity effects of the prohibition of certain factors. Another potential topic for research is the ability of certain groups to effectively shop for insurance. Markets work better the more informed consumers are and the better able they are to obtain quotes from different carriers. Mr. Klein said another course of study would be to evaluate how well measures intended to improve insurance availability and affordability have worked and what more can be done. He said when a rating factor is prohibited, it compels insurers to place greater weight on the factors they are allowed to use. Assuming claim costs do not decrease, this means that some consumers will pay more and others will pay less due to the prohibited factor. Hence, the equity effects of restrictions on rating factors need to be considered. He also noted that what could be learned from new research will depend on the data that are available to researchers. He believes good research necessitates data at a ZIP code level on premiums, exposures, claim costs and the types of policies issued.

Having no further business, the Property and Casualty Insurance (C) Committee adjourned.

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Draft: 7/14/20

Property and Casualty Insurance (C) Committee
Conference Call
June 10, 2020

The Property and Casualty Insurance (C) Committee met via conference call June 10, 2020. The following Committee members participated: Vicki Schmidt, Chair, (KS); Mike Chaney, Vice Chair, (MS); Jim L. Ridling (AL); Ricardo Lara represented by Ken Allen (CA); Andrew N. Mais (CT); David Altmaier (FL); Colin M. Hayashida (HI); James J. Donelon represented by Warren Byrd (LA); Kathleen A. Birrane represented by Joy Hatchette and Robert Baron (MD); Jillian Froment (OH); Glen Mulready (OK); Larry D. Deiter (SD); and Mike Kreidler (WA). Also participating was: Gennady Stolyarov (NV); and Sandra Bigglestone (VT).

1. Adopted its 2019 Fall National Meeting Minutes

Director Froment made a motion, seconded by Commissioner Kreidler, to adopt the Committee's Dec. 9, 2019, minutes (*see NAIC Proceedings – Fall 2019, Property and Casualty Insurance (C) Committee*). The motion passed unanimously.

2. Adopted Edits to the NAIC Uniform Risk Retention Group Registration Form for Inclusion in the *Risk Retention and Purchasing Group Handbook*

Ms. Bigglestone explained that the Risk Retention Group (E) Task Force worked with state insurance regulators and interested parties to address concerns from non-domiciliary states and industry regarding the registration process of risk retention groups (RRGs) in non-domiciliary states. Concerns were discussed regarding extensive registration processing time and fees imposed as well as RRGs attempting to register that were in a hazardous financial condition or were not compliant with the federal Liability Risk Retention Act (LRRRA). To help address some of the concerns, the Task Force proposed updates to the NAIC Uniform Risk Retention Group Registration Form (Registration Form), as it is the main way to provide information to non-domiciliary states. The Registration Form was changed to indicate a clear connection to the LRRRA. The Registration Form asks for basic information about the RRG to ensure the RRG is operating legally under the LRRRA. Ms. Bigglestone said all states should be encouraged to use the Registration Form.

Director Deiter made a motion, seconded by Commissioner Chaney, to adopt the proposed revisions to the Registration Form for inclusion in the *Risk Retention and Purchasing Group Handbook*. The motion passed unanimously.

3. Discuss Regulatory Actions Related to COVID-19

Commissioner Schmidt said the COVID-19 pandemic has greatly affected the insurance world. She noted that state insurance regulators issued a data call in early May to collect information on business interruption policies, including the degree to which the policies have pandemic exclusions or requirements for physical loss. She said claims data is due June 15, and additional information on that data call be found on the NAIC website. She said the NAIC will release some national aggregate data from this data call in the near future. She also noted that state insurance regulators will receive an email this week about how to access tools giving them the ability to analyze the data received in the data call.

Commissioner Schmidt said the states quickly took action on a wide variety of property and casualty related issues affected by COVID-19. She noted that the NAIC has been keeping track of state actions, and those can be found on the NAIC website. In addition, industry and consumer groups sent letters to the states asking for certain regulatory relief actions or actions to help policyholders. Commissioner Schmidt reported that the Committee met in regulator-to-regulator session on April 29 to review actions the states had taken on various issues to see if there was a need for any Committee-level activity.

Doug Heller (Consumer Federation of America—CFA) said the CFA and the Center for Economic Justice (CEJ) urged state insurance regulators to address auto insurance rates because they have become excessive as states have moved to lock downs. He said consumers need protections to ensure that they do not pay excessive auto premiums. He noted that most insurers gave some premium relief, but it was inconsistent and insufficient. He said about 30% average premium relief is needed, which is about double what most insurers have offered. California, Michigan and New Jersey have required refunds, but Mr. Heller believes all states should do this. He said driving has rebounded, but it is still down by 25%. He noted that only a few rate reductions go beyond May 31. He believes that rates remain excessive and a monthly refund program should be created and mandated. As consumer credit scores decline, Mr. Heller said the states should issue a moratorium on the use of credit scores.

He said the states need a plan to ensure that future rates account for the new normal. He said state insurance regulators need more data and should collect auto insurance accident and loss data on a monthly basis.

Erin Collins (National Association of Mutual Insurance Companies—NAMIC) said NAMIC appreciates the way the states have adjusted their workflow during the COVID-19 pandemic. She noted that adjuster restrictions have been eased and e-commerce has helped consumers. She asked that the NAIC be a force for collaboration and uniformity. She said uniformity in financial reporting has helped, and she encouraged flexibility in general. She said auto insurers have returned billions of dollars in premiums to policyholders. She encouraged state insurance regulators to not increase mandates, as what the industry is doing is working. She asked state insurance regulators to review temporary emergency measures before they expire. She also said state insurance regulators should consider what has worked in terms of virtual inspection and notarization and consider maintaining some regulatory changes.

Keri Kish (Wholesale & Specialty Insurance Association—WSIA) said WSIA agrees with what NAMIC said. She said WSIA has a concern about retroactive business interruption coverage, and it is appreciative of the NAIC statements regarding retroactive coverage. She said WSIA is appreciative of state insurance regulators working with industry on relief efforts related to the pandemic. She said state insurance regulators may wish to consider making some of the temporary relief measures, such as virtual delivery of policies and e-signatures, permanent.

David F. Snyder (American Property Casualty Insurance Association—APCIA) said industry members have seen a constructive relationship with state insurance regulators that has ensured market solvency. He said industry is appreciative that the NAIC opposed retroactive coverage for business interruption policies. He said auto insurers have refunded over \$10 billion in premium to policyholders. He said state insurance regulators allowed this while ensuring solvency. He emphasized that the states differ, and there should not be one-size-fits-all solution to these matters. He said some states have enacted the National Council of Insurance Legislators (NCOIL) model related to credit-based insurance scores that includes extraordinary life situation language protecting individuals from declines in their credit-based insurance scores. He said states without this model might consider it. He said efficiency could be enhanced by making some of the regulatory relief actions permanent. He also said the APCIA is in favor of the Private Passenger Auto Study and new tools allowing state insurance regulators to look at focused segments of the marketplace.

Mr. Stolyarov asked Mr. Snyder if there have been any federal mandates for lenders to offer forbearance on auto loans, credit cards or personal loans other than mortgages. He also asked whether the insurance industry has the capability to process hundreds of thousands of requests related to extraordinary life circumstances affecting credit. Mr. Snyder said consumers should exercise those rights, and companies do have the ability to respond. He said he would follow up on the federal activity related to loans, but he said the states have gone beyond what the federal government has done.

Birny Birnbaum (CEJ) said consumer representatives will speak before the NAIC/Consumer Liaison Committee about consumer protections in a pandemic era. He said state insurance regulators have done a tremendous job on grace periods and extending claims deadlines. He noted that some states have gone further in not allowing risk characteristics like credit-based insurance scores. He said federal legislation put a moratorium on lenders reporting negative scores to credit bureaus, and forbearance was offered on federal mortgages. He said in the future, bad credit information will appear and harm individuals' credit-based insurance scores. He said Pennsylvania issued a bulletin for insurers not to take action because of declining credit scores.

Mr. Birnbaum said industry would not be able to field millions of requests for extraordinary life events related to credit-based insurance scores, and state insurance regulators would not be able to monitor these. He said consumers should not have the burden of notifying industry of declining scores. He said insurers need accountability, and data collection can help with accountability. He said a transition to a digital interface raises consumer protection issues. He also said protections are needed to protect against biases in algorithms.

Lisa Brown (AICPA) applauded the NAIC for prompt responses related to the business interruption data call.

Amy Bach (United Policyholders) asked whether results from the business interruption data call would be released. Aaron Brandenburg (NAIC) said national aggregate data would be released soon.

4. Adopted the Private Passenger Auto Insurance Study

Commissioner Schmidt said work on auto insurance affordability issues began seven or eight years ago, and several documents were produced prior to discussions related to data collection. She said the Auto Insurance (C/D) Working Group, before it was

disbanded in 2018, had previously agreed to receive data from statistical agents in January 2018 that was meant to help analyze the private passenger auto insurance market such as reviewing differences in premiums, as well as losses, compared to incomes at a ZIP Code level. She said the Working Group adopted an outline for the report at the 2018 Fall National Meeting, and NAIC staff completed an introductory narrative and a state-by-state analysis described in that outline in early 2019. The Committee then decided to update the study with more recent, 2016 and 2017, data that was received in 2019. Commissioner Schmidt said the NAIC finalized an updated study in Fall 2019, and the states reviewed the data through the end of the year. She said the NAIC has also loaded the data into an analytical tool on I-SITE, and the states are able to look at geographic areas to learn more about auto rates as they compare to demographic data. She said the Committee may wish to consider how to receive additional auto insurance data in the future, either through statistical agents, the Annual Statement, or some other mechanism such as data calls. She expressed her opinion that the Committee should adopt the study and move forward with future discussions about the possibility of getting additional data. Commissioner Chaney agreed that it is time to adopt the study and consider additional data collection later.

Mr. Birnbaum said the NAIC has not taken action to address proxy discrimination. He said the report is not as useful as it could be, and the data is handpicked by industry. He said the report does not include prices quoted. He noted that the data is stale, as 2017 is the most recent data. He said it is unclear how the report can be used to address affordability. He said state insurance regulators should collect timely data like they did with the business interruption data call. He recommended that the Annual Statement add columns to the State Page for written and earned exposures for auto and homeowners on a quarterly and annual basis. He said state insurance regulators could have 2019 data in the first quarter of 2020. He also said the Market Conduct Annual Statement (MCAS) should be collected on a quarterly basis.

Commissioner Schmidt said Mr. Birnbaum should take his MCAS request to the Market Regulation and Consumer Affairs (D) Committee, and the Property and Casualty Insurance (C) Committee should consider additional data collection in future conversations.

Commissioner Chaney made a motion, seconded by Director Deiter, to adopt the Private Passenger Auto Study. The motion passed unanimously.

Commissioner Schmidt said the Committee would hear an update at the Summer National Meeting on recent and upcoming workshops that states are holding with the Federal Emergency Management Agency (FEMA) regarding disaster preparedness and response.

Having no further business, the Property and Casualty Insurance (C) Committee adjourned.

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Catastrophe Insurance (C) Working Group
Virtual Summer National Meeting
July 31, 2020

The Catastrophe Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met virtually July 31, 2020. The following Working Group members participated: Mike Chaney, Chair, David Browning, Andy Case, Kim Causey and John Wells (MS); David Altmaier, Vice Chair, Ainsley Armstrong, Alexis Bakofsky, Nicole Altieri Crockett, Linda McWilliams, Susanne Murphy, Jane Nelson, Sheryl Parker, Erin Vansickle, Wendy Vincent and Christy Virginia (FL); Mark Fowler, Gina Hunt and Jerry Workman (AL); Katie Hegland and Katrina Kelly (AK); Ken Allen, Patrick Campbell, Wan Choi, Bryant Henley, Kim Hudson, Lucy Jabourian, Saifur Rahman, Mitra Sanandajifar, Kenneth Schnoll, Lisbeth Landsman-Smith, Henry Tam, Lynne Wehmueller and Tianhong Zhao (CA); Susan Andrews, George Bradner, Danny Chan, Wanchin Chou, Qing He and Doris Schirmacher (CT); Melanie Fujiwara, Colin M. Hayashida, Randy Jacobson, Andrew Kurata, Patrick P. Lo, Kathleen Nakasone, Cindy Neeley, Colin Okutsu, John Pang, Roland Teruya and Paul Yuen (HI); Travis Grassel (IA); Patrice Dziire, Judy Mottar, Lauren Peters, KC Stralka and Erica Weyhenmeyer (IL); LeAnn Crow, Heather Droge and Tate Flott (KS); Charles Hansberry and Ron Henderson (LA); Caleb Huntington, Richard Looney and Matthew Mancini (MA); Joy Hatchette, Cheryl Kouns, James Mobley and Joanna Noppenberger (MD); Cynthia Amann, LeAnn Cox, Nicole Huls, Teresa Kroll and Jeanna Thomas (MO); Fred Fuller (NC); Mark McGill and Diana Sherman (NJ); Tom Botsko and Karen Vourvopoulos (OH); Matthew Harmon, Landon Hubbart, Ron Kreiter, Cuc Nguyen and Andrew Schallhorn (OK); Brian Fordham (OR); David Buono, Shannen Logue and Michael McKenney (PA); Elizabeth Kelleher Dwyer and Beth Vollucci (RI); Katie Geer (SC); David Combs, Brian Hoffmeister, Bill Huddleston and Rachel Jade-Rice (TN); Marianne Baker, J'ne Byckovski, Miriam Fisk, Andy Liao, David Muckerheide, Patty Otto, Bethany Sims, Amy Wills and Mark Worman (TX); and David Forte, John Haworth, John Martinsen and Eric Slavich (WA). Also participating were: William Lacy (AR); Vanessa Darrah and Brooke Lovallo (AZ); Mitchell Bronson, Peg Brown, Rolf Kaumann and Eric Unger (CO); Christina Miller (DE); Renee Campbell, Adam Goldhammer, Jonathan Kelly, Tammy Lohmann, Connor Meyer, Christine Peters, Alycia Valento, Megan Verdeja and Phil Vigilaturo (MN); Chris Aufenthie (ND); Gordon Hay, Bruce R. Range and Connie Vanslyke (NE); Robert Doucette and Anna Krylova (NM); Robert Kasinow, Sylvia Lawson, Rebecca Morrow, Leigh Solomon and Larry Wertel (NY); Carla Colon (PR); Maggie Dell (SD); Todd E. Kiser, Tracey Klausmeier and Tomasz Serbinowski (UT); Rebecca Nichols (VA); Isabelle Keiser and Rosemary Raszka (VT); Rebecca Rebholz (WI); Bill Cole, D'Anna Feurt, Kristi Alma Jose and Amanda Tarr (WY).

1. Adopted its May 29 Minutes

The Working Group conducted an e-vote that concluded May 26 to: 1) adopt its 2019 Fall National Meeting minutes; and 2) adopt the NAIC *State Disaster Response Plan*.

Commissioner Altmaier made a motion, seconded by Mr. Workman, to adopt the Working Group's May 26 minutes (Attachment Two-A). The motion passed.

2. Heard an Update Regarding Federal Flood Insurance

Brooke Stringer (NAIC) said the National Flood Insurance Program (NFIP) is currently operating under its 15th short-term extension, which is expiring Sept. 30. The last substantive action taken by the U.S. House Committee on Financial Services took place in June 2019. This action approved a five-year reauthorization bill. However, coastal state lawmakers objected to this bill and introduced an alternative bill as they did not feel the original bill substantially protected policyholders from rate hikes. Neither of these bills proceeded any further in the U.S. House of Representatives, and the U.S. Senate has not focused on any type of reauthorization bill.

Ms. Stringer said the current NFIP extension is part of the last congressional annual spending packages, and it is likely the next extension will be temporarily extended in the next continuing resolution. She said with hurricane season underway and the focus on disaster preparation, the NAIC sent a letter to House and Senate leaders urging action on a long-term reauthorization. This letter is posted on the NAIC website and includes the following key priorities: 1) encouraging increased growth in the private flood insurance market as a complement to the NFIP to help provide consumers with more choices; 2) encouraging support for mitigation planning and legislative efforts to allow individuals to set aside funds in a tax-preferred savings account for disaster mitigation expenses; 3) support of the inclusion of H.R. 1666 by Rep. Kathy Castor (D-FL) and Blaine Luetkemeyer (R-MO) to ensure that private flood will satisfy the NFIP's continuous coverage requirements, which allows policyholders who leave the NFIP and purchase a private flood insurance policy to return to the program without penalty or loss of subsidy; 4)

support of the inclusion of the Catastrophe Loss Mitigation Incentive and Tax Parity Act (H.R. 5494), which would ensure that state-based disaster mitigation grants receive the same treatment as federal grants; and 5) urging the Federal Emergency Management Association (FEMA) to provide increased transparency to all stakeholders regarding its decision-making process for developing and updating its flood maps.

Ms. Stringer said currently grants provided through FEMA are excluded from federal income tax, but state grants for the same purpose are not excluded from federal income tax. This means if homeowners receive a state-based grant for disaster mitigation work to protect their homes from catastrophe, they must pay federal income tax on the grant money, on top of their personal investment in these projects. Ms. Stringer said H.R. 5404 would fix this tax inconsistency and provide parity for residential mitigation grants provided by state public entities.

Ms. Stringer said the five federal banking agencies issued new and revised proposed interagency questions and answers (Q&A) regarding flood insurance at the end of June. The document is intended to help lenders meet their responsibilities pursuant to the federal flood insurance laws. The agencies note they are drafting new interagency Q&A related to the 2019 private flood insurance final rule and will propose those at a later date.

FEMA released a guide to help emergency managers and health officials prepare for disasters while continuing to respond to COVID-19. This guide was released at the end of May and outlines updated federal hurricane response and recovery planning in light of the pandemic. The guide, *COVID-19 Pandemic Operational Guidance for 2020 Hurricane Season*, describes anticipated challenges to disaster operations posed by COVID-19, as well as planning considerations for emergency managers. It also outlines how FEMA plans to adapt response and recovery operations to these new realities. FEMA says that while its guide focuses on hurricane season preparedness, most planning considerations can also be applied to any disaster in the COVID-19 environment, including flooding, wildfire and typhoon response.

Ms. Stringer said the guide states, “Due to the risks associated with COVID-19 and congregate sheltering, including standards for occupancy rates, equipment requirements and assessment of at-risk or vulnerable populations, this approach will be adjusted.” Per FEMA’s guidance, local governments are tasked with identifying structures that can be used as “non-congregate shelters,” where people can find shelter while following social distancing guidelines issued by the Centers for Disease Control and Prevention (CDC). According to FEMA, these non-congregate shelters can “include, but are not limited to, hotels, motels and dormitories.”

Ms. Stringer said FEMA released an “Exercise Starter Kit for Preparedness in a Pandemic” June 1 to provide sample documents to state and local governments to use to conduct their own workshops on preparedness in a pandemic. The questions and considerations contained in the guide were developed from FEMA’s *COVID-19 Pandemic Operational Guidance for the 2020 Hurricane Season*.

3. Heard a Presentation from Milliman on the Concept of a Catastrophe Modeling Clearinghouse

Nancy Watkins (Milliman) said she believes state insurance regulators are struggling with the use of catastrophe models in the rate-making process while at the same time balancing their need to ensure that rates are not excessive, inadequate or unfairly discriminatory. She said this is the language that guides most rate regulation in the states. The data needed to develop models regarding catastrophic events is typically sparse and volatile, which means past experience may not be a sufficient basis for accurate expectations of the future. Ms. Watkins said as a result, catastrophe models have been created and widely adopted, and there are some areas where insurers would like to use catastrophe models in their rate-making process. She said catastrophe rate-making regulation can affect insurance affordability and availability, which she believes is a concern for everyone attending the conference call today. Ms. Watkins said Milliman is seeing a lot of challenges for state insurance regulators, catastrophe modelers and the insurers that are trying to use the catastrophe models.

Ms. Watkins said catastrophe models start with historical experience and decompose the historical experience—i.e. what happened—and then they decompose that historical experience of the various catastrophic events into their component parts. The questions answered are: What kind of risks were exposed? What kind of insurance did those risks purchase? What kind of events would have happened for the risk? How intense were the events? How vulnerable were the risks that were affected by the events? What would be the calculated damage?

Ms. Watkins said if a catastrophe model is not being used, insurers have to base risk on historical data. She said there are only two ways to make rates: 1) you can use experience; or 2) you can use exposures, as this is the fundamental starting point. Ms. Watkins said catastrophe models do use experience. However, they move into the types of risks that there is exposure to

currently. The disadvantage of using experience for catastrophic events, which are low frequency and high severity, is that essentially if experience is the only thing being used, the geographies that have previously experienced catastrophic events are going to experience high premium. Likewise, the geographies that have not previously experienced catastrophic events will have low premiums. Ms. Watkins said this does not represent the true underlying risk. Ms. Watkins said it is important to not only reflect on the catastrophic events that did occur, but also it is important to reflect on events that could happen. She said catastrophe models will allow insurers to make rates that represent the probability that a catastrophic event could happen.

Ms. Watkins said the time horizon matters greatly. She said if one wants to follow Actuarial Standards of Practice (ASOPs), the rate-making methodology should not be overly sensitive to how many years are being put into the experience period. Ms. Watkins said, for example, in California, if one were trying to make rates based on data through 2016 for wildfires, one would have vastly understated the risk of wildfire in the state. She said once the data for 2017 and 2018 are added, the picture completely changes averages, which fails the test for actuarial reasonability.

Ms. Watkins said exposures have changed a lot over time. She said one of the reasons wildfires are more damaging in California now is because more houses are in places experiencing wildfires. Ms. Watkins said this is the same issue that occurs with flooding on the coast; there are more houses on the coast. She said this is another reason historical experience alone does not provide an accurate picture.

Ms. Watkins said it is important to be able to measure mitigation. She said there is value and importance in mitigating the risk upfront. She said to provide policyholders with the benefit of making investments to reduce their risks, the change in premium reflecting mitigation needs to reflect the premium reduction due to the mitigation. Catastrophe models can reflect premium changes, while historical data cannot.

Ms. Watkins said catastrophe risk is costing more than it used to cost, and it is not good enough to treat catastrophe risk as it is immaterial. She said there are protection gaps due to a lack of proper measurement for flood risk, for example. Ms. Watkins said there are hardly any private flood insurance policies relative to what is needed. She said part of this is a failure of measurement, and the only way to close that gap is to allow the insurers and reinsurers the ability to use a flood catastrophe model to manage and measure flood risk.

Ms. Watkins said there are rating agencies requiring insurers to use more sophisticated modeling with their risk management process and risk disclosures. She said there are also real estate investors using catastrophe models to decide where to invest, and they are better considering future climate risk as important regarding where they are going to invest their money. Ms. Watkins said there is a disconnect between insurance premiums and risk incentivizing property development in harm's way.

Ms. Watkins said that there are a lot of regulatory challenges regarding catastrophe modeling and that catastrophe model treatment varies widely among states. She said the state of Florida is really the only state that has a government body that is tasked with scientific and technical review of hurricane models. Ms. Watkins said a lot of states do allow catastrophe modeling, but the states vary in terms of the type of validation and rules they require. However, there are some states that explicitly prohibit the use of catastrophe models when establishing rates. She said these states may also restrict catastrophe models to certain lines of business or certain perils.

Ms. Watkins said challenges for state insurance regulators include: 1) the lack of appropriate expertise and/or resources to review catastrophe models comprehensively; 2) the balancing of the needs of affordability, availability, insurance company solvency and consumer protection; and 3) the inability to protect proprietary information of the modelers and insurers.

Ms. Watkins said she has come up with the idea of a catastrophe modeling clearinghouse, and while it might not be the idea everyone agrees with, it is a good starting point for discussion. She said the catastrophe modeling clearinghouse would be available for states that wanted to voluntarily participate, and the clearinghouse would provide some type of expert model review for catastrophe models used in ratemaking. The clearinghouse would consist of a multidisciplinary panel that could develop standards and then select expert reviewers who would conduct the reviews. Ms. Watkins said the third-party experts could perform confidential and very rigorous reviews. She said flood models, for example, would be reviewed for two or three years by the same panel. She said the wildfire models would be reviewed by the same panel, etc. She said this would provide a consistent report card for all the different types of models for a given period of time. Ms. Watkins said some standardized disclosures state insurance regulators could rely on would be helpful for state insurance regulators so they could put them side-by-side between different models. She said validation of high-level items could be released publicly, whereas the private proprietary items would be seen only by the expert reviewers.

Ms. Watkins said there could be a questionnaire that is used by all states. However, states would be able to add their own special supplementary questions. These supplementary questions would include issues that are most important to a particular state. Ms. Watkins said the vision for catastrophe model usage in insurance would include a rigorous framework. She said there should also be continuous improvements in data, modeling and risk communication. Ms. Watkins said there should also be the ability to anticipate, measure and plan for future climate scenarios. It is important to figure out what type of mitigations options are going to be most effective to price risks and get sound actuarial rates in the end. Ms. Watkins said she believes risks can be reduced, which will make insurance more affordable and allow insurers to become more comfortable offering premiums that are accurately priced. This will make insurance more available.

Ms. Watkins said the minimum requirements for the success of a catastrophe modeling clearinghouse include: 1) widespread buy-in among state insurance regulators, insurers and catastrophe modelers; 2) cost and time efficiency; and 3) the flexibility to allow innovation and multiple perspectives.

4. Heard a Presentation from the RAA on the Use of Catastrophe Models

Dennis Burke (Reinsurance Association of America—RAA) said it is the RAA's position that natural catastrophe risks are insurable in the free market as long as the free market is permitted to work. He said the best way for the free market to work is to share infrequent high-severity risks, like natural catastrophes across many balance sheets. Mr. Burke said when he evaluates the best tools available for understanding risk, he looks at demographics and asks if there is anything that is the same as it was 20 years ago. He said there are more homes and more people than there were 20 years ago, and people are moving to the risk and building houses that are much bigger. People have electronics now than were used 20 years ago and so their contents cost more now than the historical records show.

Mr. Burke said there are a lot of risks and considerations that indicate the use of historical data is not the best way to estimate and price risk. He said the extent that state insurance regulators could get comfortable with insurers using the best possible tools, which include catastrophe models, to support the rate filings, the RAA believes this would improve the resiliency of insurance and the ability for insurers to provide reasonably priced insurance in the U.S. and Europe.

Mr. Burke said the RAA encourages this dialogue and encourage state insurance regulators, insurers and models to come together to discuss this issue. He said the RAA believes it is important for the states that do not currently permit insurers to use catastrophe models in their rates to be willing to engage in the proposed process and whether or not that would provide them with the comfort to take steps to authorize insurers to use catastrophe models. Mr. Burke said he understands this might require regulatory changes. These issues need to be understood upfront to understand whether the cost and redundancy potentially involved in this process are worthwhile as a cost benefit. Mr. Burke said the RAA does not know if the Milliman proposal is the answer. However, it is an opening step and a process that will only work if all of the interested parties, including state insurance regulators, catastrophe modelers, insurers and consumer advocates who are stakeholders, to have a comfort level with the outcome of the process. He said confidentiality is important, so all involved need to find a way to deal with these issues without sacrificing trade secrets and the confidentiality of catastrophe models. Mr. Burke said redundancy also needs to be avoided to the extent possible, as work that has already been done needs to be used, as there is no need to reinvent the wheel and increase costs.

Mr. Burke said he thinks if state insurance regulators become comfortable with and understand catastrophe models, it will lead to their willingness to permit insurers to use catastrophe models. He said the RAA believes this proposal is a great way to start conversation with stakeholders, whether it ends up being the answer or not.

5. Heard a Presentation from the APCIA on the Use of Catastrophe Models

Lisa Brown (American Property Casualty Insurance Association—APCIA) said the APCIA agrees that historical experience may not be sufficient to measure future risk. She said she believes mitigation is a valuable tool in establishing appropriate pricing through the underwriting process. Ms. Brown said unlike other property perils coverage, be it for flood, wildfire or hurricane, it cannot be reliably priced based on historic loss information. It should be clear based on increased severity and levels of loss that insurers cannot accurately predict future losses based only on those incurred in the past. Ms. Brown said Mr. Burke's point regarding the quickly changing demographics across the country, especially in catastrophe-prone areas, simply underscores this point. She said she believes everyone agrees catastrophe models are a valuable tool to help insurers manage their exposure to financial risks from an underwriting perspective.

Ms. Brown said one thing that differentiates insurers and the marketing and sales of their products is competition and the ability of one insurer to do things differently from another insurer. She said the catastrophe modeling clearinghouse proposal indicates there are different third-party models, which are not consistently regulated in the rate-making and underwriting context. Ms. Brown said the APCIA would like to add that individual rate-making and underwriting practices, at least from a regulatory process, are not always regulated consistently either.

Ms. Brown said if the insurance industrywide standards governing catastrophe models are general and provide the basic framework from which to evaluate and use the model, the freedom should exist as it does in other aspects to the property/casualty (P/C) market to allow for creativity, innovation and specialization, without being subjected to a significant oversight, required standardization or other intrusion to the industry that uses the product. She said the regulation of the insurance industry is related to the products provided and the state insurance regulators' evaluation of the fact that the rates charged are not inadequate, excessive nor unfairly discriminatory. Ms. Brown said this is not to say the methodology's inputs, outputs and credibility should be assessed and centralized so that the models are all the same, contain the same data and end up with the same results. She said one of the great things about the process that drives the competition is the variability within that black box that everyone talks about exists. Therefore, different customer bases can be served, and insurers can have different programs and serve different customers.

Ms. Brown said the APCIA fully supports the increased ability to insurers to use catastrophe models and would request the states that do not allow their use to amend their laws to allow the use of catastrophe models. She said Milliman's presentation makes it clear there are several questions that would have to be resolved before moving forward with any type of clearinghouse or any alternative solution. Ms. Brown said the AIPCA can commit to the willingness to be part of ongoing conversations with state insurance regulators and other stakeholders.

6. Heard an Overview from the CIPR on the CIPR Wildfire Catastrophe Modeling Project

Jeff Czajkowski (Center for Insurance Policy Research—CIPR) said he will provide an update regarding a wildfire resiliency research project. He said the project has taken on some of the notions discussed head-on with a boots-on-the-ground approach working with state insurance regulators in California and Oregon, as well as the vendors in the catastrophe modeling community, particularly Risk Management Solutions (RMS), as well as organizations on the mitigation side, namely the Insurance Institute for Business Home & Safety (IBHS) and the National Fire Protection Association (NFPA) Firewise USA program.

Mr. Czajkowski said the wildfire risk is increasing for policyholders. He said this indicates an availability or affordability problem. One way to address this issue is through increasing the use of risk reduction. Mr. Czajkowski highlighted fire-resistant modifications to a structure and community-wide abatement. The applications of mitigation in the current use of fire risk models, particularly in California, do not allow for the accounting of this mitigation.

Mr. Czajkowski said one good thing about the use of catastrophe models is that one is able to account for mitigation within the modeling framework. He said for the research efforts of this project, it is important to address the issues of ratemaking, solvency and what is being done around mitigation.

Mr. Czajkowski said a paper released last year by the American Academy of Actuaries (Academy), *Acceptance and Widespread Usage of Wildfire Cat Models are in an Early Stage*, discusses the acceptance and widespread usage of wildfire catastrophe models as being in the relatively early stages as compared to hurricane and earthquake models. He said the paper indicates that vendors are critical partners in educating the insurance industry and state insurance regulators regarding the use of wildfire models. Mr. Czajkowski said state insurance regulators should also be encouraged to become more familiar with the wildfire models. He suggested state insurance regulators think about licensing catastrophe models themselves and begin working through the models if they have the capability to do this.

Mr. Czajkowski said there was a meeting in California with the California Department of Insurance (DOI). He said the Oregon DOI joined the meeting virtually. Mr. Czajkowski said the project has been ongoing and will culminate during the NAIC 2020 Insurance Summit in September. He said the project is focused on bringing the science to the operations and engaging the state insurance regulators around this issue. Mr. Czajkowski said the two main outputs of the project are: 1) to leave state insurance regulators with an educational or reference document they can have in terms of looking at the latest wildfire science; and 2) how this is being approached in the catastrophe modeling community. This reference guide is meant to be a blend between the NAIC *Catastrophe Computer Modeling Handbook* and the more traditional standard practice from the actuarial community.

Mr. Czajkowski said the CIPR wants to highlight how catastrophe models can be used by state insurance regulators in the decision-making perspective for public policy purposes, in particular regarding mitigation. Partnering with FireWise and IBHS in the process allows the ability to show state insurance regulators where the science from these entities is embedded in the catastrophe models, allowing the models to be run in different locations. This project involves three locations in California, three locations in Oregon and three more from a control environment in Colorado. Running these models illustrate both using mitigation and not using mitigation, and a cost-benefit analysis is run from this information.

Mr. Czajkowski said one of the ongoing project goals includes presenting the results of the study during the NAIC Insurance Summit in September. There will be a similar agenda for climate change to again highlight the science and the modeling.

Amy Bach (United Policyholders) said California has been in the middle of an availability and affordability crisis regarding insurance, as well as a legislative battle. She said California has two bills that the insurance lobby is pushing hard to get through this session. One of these bills will force the California DOI to allow catastrophe modeling over their objection. Ms. Bach said as a consumer advocate, she is worried about the dials on the catastrophe model being susceptible to being turned up and down for profit and business objectives. She asked Ms. Watkins if the California DOI should be facing a mandate that they are opposing to allow. Ms. Watkins said they are at a point where the current state of regulation could end up with an availability crisis that would not only affect the people in the most risky areas, but also could actually push insurers to pull their business out of the state of California. She said she believes the state is at a point where things have to change. There have been two years where the insurance industry lost \$20 billion on its entire portfolio of California homeowners insurance business. Ms. Watkins said in the prior 26 years, the total profits for the insurance industry were \$10 billion. She said there is a formula in California that allows one to recoup his or her bad year's losses by using a 20-year average. Ms. Watkins asked if one lost two times of his or her 26 years of profit in two years, how many years of experience will it take to load that back in. She said there is not anyone who can defend the current California formula and say that it produces reasonable results. Ms. Watkins said the people of California may have been underpaying for the wildfire risk for many years. She said if models would have been used all along, some people would have incurred higher rates, and maybe there would not have been such huge rate increases once a couple of big events occurred. Ms. Watkins said if models would have been used all along, the models could have smoothed out all the rate shock by being implemented more gradually over time. She said the California DOI might have had a difficult time regulating this using its current staff. Ms. Watkins said it takes an enormous amount of manpower to vet numerous wildfire models.

John Huff (Association of Bermuda Insurers and Reinsurers—ABIR) said he believes everyone involved is dealing with catastrophe modeling modernization. He said he knows all of the pressure state insurance regulators are under to balance affordability and accessibility of insurance and believes this is the path to provide those tools. Mr. Huff said he does not know what the end product will look like, but he cannot think of a better use of the NAIC collective brainpower and resources than to help the states with this type of project.

Commissioner Chaney said many states allow the use of catastrophe modeling. However, some states restrict the use of certain models, such as those with warm sea surface temperature. He said he believes Alabama still restricts itself to the use of three models. Commissioner Chaney suggested finding out from states what models they are allowing to be used within their state.

Mr. Bradner said Connecticut has allowed models. He said there was some market disruption in 2008–2009, especially in its homeowners market, as insurers wanted to increase their rates by up to 50%–60%. Mr. Bradner said Connecticut has worked with insurers over the past eight to 10 years and gradually got them up to where insurers are in a good position. He said most insurers in Connecticut are sitting with a loss ratio of 30%–40%.

Mr. Bradner said where he has had problems with the models is that an insurer can project a 40%–50% or 80%–90% loss ratio to the DOI based on its model, catastrophe loads and reinsurance loads, and every year justify a rate increase. He said this is where he struggles and must start pushing back on insurers. Mr. Bradner says while he knows insurers need to have a cushion, it is difficult for state insurance regulators because they are public facing. He said state insurance regulators have to understand how to deal with this issue because it is not simple. Mr. Bradner said he believes insurers should start looking at the states where they are making money and investing in providing greater incentives for mitigation credits.

Having no further business, the Catastrophe Insurance (C) Working Group adjourned.

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Draft: 7/30/20

Catastrophe Insurance (C) Working Group
E-Vote
May 26, 2020

The Catastrophe Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee conducted an e-vote that concluded May 26, 2020. The following Working Group members participated: Commissioner Mike Chaney, Chair (MS); Jerry Workman (AL); George Bradner (CT); Colin Hayashida (HI); Travis Grassel (IA); Heather Droge (KS); Warren Byrd (LA); Joy Hatchette (MD); LeAnn Cox (MO); Timothy Johnson (NC); Cuc Nguyen (OK); Beth Vollucci (RI); J'ne Byckovski (TX); David Forte (WA); and James A. Dodrill (WV).

1. Adopted its Interim Minutes

The Working Group conducted an e-vote to consider adoption of its Fall National Meeting minutes, Dec. 7, 2019. The motion passed, with a majority of the Working Group members voting in favor of adopting its Dec. 7 minutes (*see NAIC Proceedings – Fall 2019, Property and Casualty Insurance (C) Committee*).

The Working Group also adopted the *NAIC State Disaster Response Plan*.

Having no further business, the Catastrophe Insurance (C) Working Group adjourned.

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Draft: 8/12/20

Climate Risk and Resilience (C) Working Group
Virtual Summer National Meeting
July 31, 2020

The Climate Risk and Resilience (C) Working Group of the Property and Casualty Insurance (C) Committee met via conference call July 31, 2020. The following Working Group members participated: Mike Kreidler, Chair, and Jay Bruns (WA); Ricardo Lara, Vice Chair, represented by Michael Peterson (CA); Alex Romero (AK); Peg Brown (CO); George Bradner (CT); Colin Hayashida and Paul Yuen (HI); Travis Grassel (IA); Judy Mottar (IL); Joy Hatchette and Cheryl Kouns (MD); Peter Brickwedde (MN); Brooke Lovallo (MT); Bruce R. Ramage (NE); Anna Krylova (NM); Marshal Bozzo (NY); Tom Botsko (OH); Andrew R. Stolfi and Brian Fordham (OR); David Buono, Mike McKenney and Shannen Logue (PA); Rafael Cestero-Lopategui and Carla Colon (PR); and Kevin Gaffney (VT). Also participating were Barbara Richardson (NV) and Lorraine Ratchford (NY).

1. Adopted its June 18 Minutes

The Working Group met June 18 and took the following action: 1) received an update on the drafting of the *Insurance Regulatory Discussion Points on Catastrophic Events* document; 2) heard an update on California's development of a Sustainable Insurance Roadmap; 3) heard a high-level summary of Ceres' recently released *Addressing Climate as a Systemic Risk: A Call to Action for U.S. Financial Regulators* report; and 4) discussed its work plan for 2020.

Mr. Grassel made a motion, seconded by Mr. Botsko, to adopt the Working Group's June 18 minutes (Attachment Three-A). The motion passed unanimously.

2. Heard an Update on the NAIC Climate Risk Disclosure Survey Analyses Being Done by CIPR and the Academy

Lisa Groshong, Ph.D. (NAIC) said the NAIC Climate Risk Disclosure Survey (Climate Survey) was adopted by the NAIC in 2010, and it is administered in a multi-state initiative—California, Connecticut, Minnesota, New Mexico, New York and Washington—with survey responses being held on a California Department of Insurance (DOI) database. Insurers with over \$100 million in direct written premium are required to complete the Climate Survey. Currently, there are more than a thousand survey responses, representing about 70% of the U.S. insurance market. The 2018 Climate Survey responses included nearly 500,000 words. There are nine Yes/No questions and eight narrative responses that ask the respondent to discuss their: 1) plan to assess emissions; 2) risk management; 3) process for identifying risks; 4) risks posed by climate change; 5) investment strategy; 6) policyholder loss reduction efforts; 7) engagement with constituencies; and 8) actions to manage risks. Challenges to analyzing the responses include difficulty interpreting Yes/No questions, a high amount of time needed to digest narrative responses, and numerous duplications among legal entities. The multi-state initiative is currently working towards aligning climate reporting with the Financial Standards Board's (FSB's) Task Force on Climate-Related Financial Disclosures (TCFD). It would be helpful to know exactly what information is already being provided, so future surveys should be revised to incorporate findings from previous surveys. The NAIC's Center for Insurance Policy and Research (CIPR) aims to report in September 2020 on the Climate Survey's quantitative and qualitative responses for 2018. The focus will be on quantitative relationships and qualitative understanding of responses to individual questions. This is particularly relevant for question 6, which asks for the "steps the company has taken to encourage policyholders to reduce the losses caused by climate change-influenced events." The CIPR's research methodology will focus on two research questions: 1) how insurers across all lines of business assess and manage risks related to climate change; and 2) how these responses have changed over the past 10 years. Its quantitative analysis will focus on descriptive statistics of yes/no responses to survey questions. Its qualitative analysis will be a thematic analysis of open-ended responses to the survey questions to identify patterns of meaning across a dataset. The CIPR research team read survey responses for questions 4 through 8 and generated themes. These themes were coded using NVivo software, and the results are currently being compiled. Preliminary quantitative results focus on how to visualize responses to balance the number of companies versus premium dollars. Of the 1,245 responses, 63% were property and casualty insurers, 20% were life insurers, 13% were health insurers, and the remainder were from various other lines of business. Total premium for the six states participating in the multi-state initiative consisted of 40% life, 32% property and casualty, 26% health, and the remainder from various other lines. The analysis will examine distinct responses, rather than all legal entities. It will provide "building blocks" for assessments rather than "grades" for companies. It will also provide multiple-choice questions that might easily be included, capturing responses already being provided in a more easily accessible manner.

Steven Jackson, Ph.D. (American Academy of Actuaries—Academy) said the Academy plans to report its findings on the 2018, 2015 and 2012 Climate Survey responses in December 2020, and TCFD findings and other alternatives will be reported in 2021. The analysis is being conducted by the Academy’s ERM/ORSA Committee, chaired by Michelle Young. The focus is on quantitative relationships and a qualitative understanding of company responses. This may include question 5, which asks for the “impact of climate change on its investment portfolio and...alterations in investment strategy in response to these considerations.” The analysis will focus on addressing the following questions: 1) how companies prepare their responses and if they devote significant time to the task; 2) how much attention companies give to climate risk as reported; 3) what the most commonly and least commonly referenced risks and responses are; 4) With respect to Investment Strategy (question 5), what specific sub-questions companies are answering; and 5) how these answers differ by year, line of business, and size of company. Preliminary results indicate that 8.5% of responses switched from “No” to “Yes” and 4.4% switched from “Yes” to “No” between 2012 and 2015. It is anticipated that more responses will switch from “No” to “Yes” as climate risk gains attention. Explanations for companies’ switching responses from “Yes” to “No” over time are less straightforward, and answers to the questions raise further questions. Like the CIPR’s analyses, the Academy will examine distinct responses, rather than all legal entities. It will provide “building blocks” for assessments rather than “grades” for companies. It will also provide multiple-choice questions that might easily be included, capturing responses already being provided in a more easily accessible manner.

Dennis C. Burke (Reinsurance Association of America—RAA) asked for clarification on Mr. Jackson’s comments related to potential changes to the Climate Survey questions. Commissioner Kreidler said the most significant change is a move to align with the TCFD. Respondents to this year’s Climate Survey were advised that they can submit their TCFD in lieu of the Climate Survey. Those that submitted a Climate Survey were advised to refer to the TCFD guidelines when filling it out. The advantage of the TCFD is that it provides a source of uniform reporting for the insurance and financial services sectors that are not otherwise in place.

3. Heard an Update on California’s Climate Smart Insurance Product Database

Mr. Peterson stated that the California DOI partnered with the United Nations Environment Programme (UNEP) to develop a Sustainable Insurance Roadmap. As part of this Roadmap, it launched the Climate Smart Insurance Product Database (Climate Smart Database). The Climate Smart Database is the first consumer-oriented list of climate-related insurance products. There are more than 400 internationally available products that address climate risks, harness new technologies, and build resilience. The California DOI developed the database to help the public understand and access these products and encourage further insurance policy innovation in commercial, homeowners, auto and other lines. Products listed in the database provide green-rebuild coverage and promote fuel-efficiency by offering lower premiums for low-emission vehicles, discounts for green energy use/certification, and discounts for businesses that operate hydrogen and hybrid electric buses and protect low-income communities and natural ecosystems. It is hoped that insurers will explore the database as a starting place for innovative products. The database is searchable by product features and insurance category.

Commissioner Richardson asked if California’s Climate Smart Database provides the ability to search by insurance carriers who invest in green investments. Mr. Peterson said the database just searches products offered by insurers.

Mr. Grassel asked where the Climate Smart Database sources its data. Mr. Peterson said Evan Mills, a researcher from Lawrence Berkeley Labs, accumulated the data over years of research. Future updates will be maintained by the DOI.

4. Heard a Presentation on Swiss Re’s Approach to Climate Change and Sustainable Insurance Products

Yommy Chiu (Swiss Re) said Swiss Re created a Macroeconomic Resilience Index to measure the ability of economies to withstand shock events. In using the index to track and compare countries, Swiss Re has found that the world economy has less capacity to absorb shock events than it did a decade ago. Swiss Re also created an Insurance Resilience Index to measure the contribution of insurance to the financial stability of households and organizations. The index indicates that the U.S. insurance gap increased from 2000–2018, with the widest protection gap being health. Results are being driven by the U.S. health care system structure. Insurance supports macroeconomic resilience by funding recovery in an efficient manner. It also provides the public sector with a sustainable financial framework from which to build policy. Swiss Re has a public-private pilot project with the California DOI to address the health care protection gap.

Samantha Dunn (Swiss Re) said modelling dynamic risks like climate change comes with many uncertainties. In the absence of hard data, the approach should be to assess risk in terms of levels of confidence. Longer and more frequent heat waves, droughts, water scarcity and wildfires will increase health issues, mortality and potentially political conflicts. The increase in

frequency of perils, such as hail and tornado, will affect revenue earnings. Melting of glaciers and ice caps will result in sea level rise and storm surge, changing the magnitude of disasters and increasing the potential for epidemics.

Innovative products that support natural ecosystems and maintain biodiversity are important to preventing natural disasters. Biodiversity is also an important component in preserving the plants our medicines are made from and nature-based tourism. The flood protection gap is estimated to be \$36 billion, with 40–60% of businesses never reopening after a natural disaster. Mangroves provide flood protection benefits exceeding \$65 billion per year. Research from The Nature Conservancy (TNC) shows coastal wetlands can save communities hundreds of millions of dollars and reduce flood damage by up to 29%.

Swiss Re's public-private partnership with the California DOI is aimed at concreting a solution that will build resiliency for hospitals and health care settings by addressing the scarcity of care capacity for vulnerable people. The pilot concept is to test if access to timely care for uninsured and underinsured vulnerable populations can be increased by offering an influx of cash during an extreme heat event.

5. Heard a Presentation on Allianz's Approach to Climate Change and Sustainable Insurance Products

Nico Ahn (Allianz) said Allianz co-chairs the United Nations (UN)-convened initiative, Global Investors for Sustainable Development (GISD) Alliance, which scales up finance and investment in sustainable development. It is a leading insurer in the Dow Jones Sustainability Indices. It also co-led the Principles for Sustainable Insurance (PSI) initiative to develop the first global guidance on environmental, social and governance (ESG) in property and casualty underwriting. Allianz's ESG strategy is based on the 17 UN Sustainable Development Goals, which affect its role as insurer, investor, employer and corporate citizen.

A group-wide climate change strategy has been in place since 2005. The strategy is governed by its Group ESG Board, which regularly reports to its Board of Management and Supervisory Board. It has a dedicated climate change center as part of its Corporate Responsibility department. Climate change as risk driver is managed as part of an overarching risk governance architecture, with emerging elements being dealt with separately. The climate change focus is on decarbonization of assets and climate analysis and disclosure. Allianz is committed to net-zero emissions in proprietary investments by 2050. Its Board of Management remuneration is tied to emission targets. It has joined forces with 26 asset owners in the UN-Convened Net-Zero Asset Owner Alliance. It has been reporting against the TCFD framework since 2017. It is working with the UNEP Finance Initiative (FI) to improve its scenario analysis and disclosure for property and casualty underwriting.

Thomas Liesch (Allianz) said Allianz has identified six criteria to identify products with a specific environmental and social added value. Sustainable solutions must: 1) support the development of sustainable technology; 2) conserve natural resources and biodiversity or mitigate climate change; 3) protect from environmental risks and adapt to climate change impacts; 4) support people tackling social challenges; 5) provide for socially disadvantaged groups; and 6) raise awareness via donations or communications campaigns. Allianz's sustainable solutions fall into three main categories and form part of its action towards the UN Sustainable Development Goals: sustainable insurance, emerging consumers, and sustainable asset management. Its sustainable solutions include agriculture, mobility, environmental liability, sustainable lifestyle, renewables and energy efficiency.

Commissioner Hayashida said it was evident after Hurricane Maria that Puerto Rico had a high percentage of uninsured people. Based on Medicaid, about 47% of the population is at the poverty level. Puerto Rico responded by passing legislation to incorporate catastrophe microinsurance parametric products into the local market. Microinsurance products provide affordable private insurance for Puerto Rico's low-income population to assist in recovering from catastrophic events. The maximum premium currently allowed is \$250 a year. The microinsurance will be sold through places like credit unions to avoid the added expense of producer fees.

Ms. Dunn said Swiss Re's products frequently have a parametric trigger on an indemnity base. In an ideal world, consumers would have parametric insurance in conjunction to traditional indemnity coverage.

6. Heard a Presentation on the APCA's Domestic and International Climate Risk-Related Activities

David F. Snyder (American Property Casualty Insurance Association—APCIA) said the APCA engages on climate risk in many domestic and international forums. Its domestic-focused advocacy activities include a July 1 letter to the chairman and ranking member of the U.S. Senate (Senate) Committee on Environment and Public Works. The letter encourages states and communities to adopt land use measures, including optimizing natural infrastructure. It recommends that climate risk models and resilience standards be used in all public infrastructure projects. It also suggests committing additional funds for resilient

infrastructure and retrofitting for resilience, and it supports research and incentives for mitigation. The APCIA regularly engages at the state level on improving building codes and supporting other mitigation proposals, including the work of the Insurance Institute for Business & Home Safety (IBHS). The APCIA's website regularly provides information to the public on climate risk mitigation and response. Recent examples include information on preparedness for Tropical Storm Hanna in July and Tropical Storm Cristobal in June and recovery after dam collapses in May. The APCIA annually sponsors the National Flood Conference. It also participates in multi-sector coalitions to improve resiliency efforts. For example, its SmarterSafer policy recommendations include: 1) encouraging efforts and funding for mitigation to reduce damage before disasters; 2) requiring federal standards and a focus on earthquake and wildfire risk; 3) reforming the National Flood Insurance Program (NFIP) to improve modeling and mapping; 4) moving toward risk-based rates with help for low income communities and individuals; 5) allowing private insurance and support mitigation; and 6) encouraging greater coordination among federal agencies. Its international activities are focused on industry coordination. It is a member of the Global Federation of Insurance Associations (GFIA) and an active participant in all climate risk-related activities. It leads the effort to draft positions and key points on climate risk mitigation and adaptation with the Insurance Bureau of Canada (IBC). The APCIA provides stakeholder input to international bodies such as the International Association of Insurance Supervisors (IAIS) and the Organization for Economic Co-operation and Development (OECD). It was a team member in a UN and Allianz sponsored project that created an ESG in non-life insurance guide.

Ms. Ratchford said the *Ceres Addressing Climate as a Systemic Risk: A Call to Action for U.S. Financial Regulators* report suggests that banks should consider reducing their investments and lending to carbon emitters with a target date of 2050. Climate scientists have said we have 10 years to address the problems. She asked what the NAIC and the various insurance departments can do regarding messaging on this issue. She also asked if the NAIC or APCIA could consider working with legislature and administrative agencies to author public policies to discourage development in high-risk zones. Ken Klein (California Western School of Law) said he echoes these ideas; the timeline necessitates very aggressive responses. Commissioner Kreidler said the speakers that the Working Group has heard from during the meeting are part of its efforts to address these concerns. One of the challenges that states insurance regulators have is to not allow major economic sectors to be ignored to the extent that there are no insurance products available to insure investments. It is important that state insurance regulators and insurers advocate for better land use practices and building codes. The creation of a climate task force at the NAIC's Executive level is an important step in encouraging more state insurance regulators to take up these issues. State insurance regulators need to become much more aggressive at providing guidance to insurers on their investments. There is a lot of concern that certain investments could become stranded in the future, particularly those tied to carbon. State insurance regulators should also be evaluating the potential for stranded assets at the industry level and incorporating stress testing. They should work to make sure insurers do not incur any unnecessary barriers when investing in appropriate green investments.

Mr. Snyder said insurers work directly and indirectly to prevent building in geographically vulnerable areas. This is a great area for state insurance regulators and industry to work jointly. The APCIA believes that there is a large appetite for green investments, and it would like to see those markets grow rapidly.

John M. Huff (Association of Bermuda Insurers and Reinsurers—ABIR) said he encourages state insurance regulators to consider receiving a presentation by the SmarterSafer Coalition. It is a very broad-based coalition with practical approaches to climate risk solutions at the federal and state level.

Having no further business, the Climate Risk and Resilience (C) Working Group adjourned.

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Draft: 7/7/20

Climate Risk and Resilience (C) Working Group
Conference Call
June 18, 2020

The Climate Risk and Resilience Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met via conference call June 18, 2020. The following Working Group members participated: Mike Kreidler, Chair, and Jay Bruns; Ricardo Lara, Vice Chair, represented by Michael Peterson (CA); Austin Childs and Alex Romero (AK); Peg Brown (CO); George Bradner (CT); Colin M. Hayashida (HI); Judy Mottar (IL); Travis Grassel (IA); Robert Baron (MD); Peter Brickwedde (MN); Nina Chen (NY); and Tom Botsko (OH).

1. Received an Update on the Drafting of the *Insurance Regulatory Discussion Points on Catastrophic Events* Document

Mr. Peterson stated the Working Group decided on its Oct. 2, 2019, conference call to develop a product that can assist insurance departments in fielding frequently asked questions (FAQ) related to resilience and catastrophe events. The product was referred to as the *Insurance Regulatory Frequently Asked Questions* at the time. It was in part inspired by California's Wildfire Resilience Summit in April after the ferocious fires of the last couple of years in California. The document was designed to be a compilation of questions state insurance regulators find they are frequently being asked. Each insurance department could then voluntarily answer the questions as they relate to its specific state. The original intent was for the responses to be available for dissemination by each insurance department to inform the public and provide guidance to state and local efforts related to resilience and insurance. The Working Group also supported the compilation of each state's responses for sharing purposes, so states can learn from each other's efforts. It was decided questions should apply to all states, with the option to develop a more peril-specific version in the future. This makes sense considering the differences one can visualize almost immediately between states such as California and Connecticut.

Further development of the product occurred during informal drafting calls on May 22 and March 11. Summaries of those conference calls were provided in the materials (Attachment Three-A1 and Attachment Three-A2). The March 11 conference call expanded the questions in many of the existing sections and added new sections for adjuster licensure, department-stakeholder interactions and post-catastrophe regulatory response. During the May conference call, the product was converted from public to regulator-only and renamed *Insurance Regulatory Discussion Points on Catastrophic Events* (CAT Discussion Points). The change was to allow for more robust sharing among states, which is deemed to be the document's strongest value. However, states can still choose to leverage their response information for public use as they deem appropriate. The Purpose section was revised to specify the questions are meant to be a list of potential discussion points for states to consider in crafting their unique response. States are not expected to answer every question. The May 22 conference call also added sections for technology and the idea of overlapping or sequential crises that occur in the same time period.

The informal drafting group has progressed substantially in its drafting. The next conference call will focus on reviewing the draft to ensure it is not peril-specific and adding questions to the Overlapping Crises section. The informal drafting group will also review catastrophe-related material shared by Minnesota to see if anything additional should be added to the draft.

Jeff Klein (McIntyre & Lemon) stated the CAT Discussion Points document is interesting and recommended it should include the need for states with natural disaster statutes to revisit these to ensure they take pandemic issues into account. He stated his company encountered a similar issue in North Carolina, which has a natural disaster statute affecting premium finance companies. Even with a three- or four-day hurricane occurring with the onset of a pandemic, such as the current one, the time period is a lot more elongated, especially when states had to extend their orders and moratorium. He expressed his willingness to discuss the implications of a prolonged disaster (such as on cancellation nonrenewal moratoriums) further during an informal drafting call.

Commissioner Kreidler agreed with Mr. Klein's point. He stated the compounding implications of an event such as a pandemic does not necessarily fit the same mold of what state insurance regulators have historically dealt with and will irrevocably change our role as regulators. He also stated it is important to learn from our current circumstances so we can be better prepared for a second virus wave or future pandemic. The additional complications climate change brings to a pandemic are debated by some, but it is not unreasonable to assume climate change is bringing population mobility and thereby increasing transmission of the virus.

Dave Snyder (American Property Casualty Insurance Association—APCIA) asked if there would be an opportunity for interested parties to weigh in on the CAT Discussion Points. Commissioner Kreidler stated there would be an opportunity for anyone to provide comments on the document when it is exposed after the informal drafting group completes the draft.

2. Heard an Update on California’s Development of a Sustainable Insurance Roadmap

Mr. Peterson stated the California Department of Insurance (DOI) announced in July 2019 that it had partnered with the United Nations Environment Program (UNEP) to develop a Sustainable Insurance Roadmap. The goal is to provide a comprehensive and cohesive set of policies related to climate change and insurance that can serve as a guide. The Roadmap will enable California to use risk reduction measures, insurance solutions and insurer investments to reduce the magnitude of future events and insurance losses, stabilize rates and increase insurance availability. For example, new insurance products could be developed to promote cooler streets and renewable energy. There could also be insurance solutions designed to protect California’s natural infrastructure—such as wetlands and forests—to reduce climate and disaster risk. Mr. Peterson stated that as recommended by the Ceres report on the agenda today, California is currently developing a database and search tool to allow users to identify insurers offering insurance products that offer climate risk solutions.

3. Heard a High-Level Summary of Ceres’ Recently Released *Addressing Climate as a Systemic Risk: A Call to Action for U.S. Financial Regulators* Report

Steven Rothstein (Ceres) commended the six states that are administering the *NAIC Climate Risk Disclosure Survey* (Climate Survey) for supporting the option for insurers to submit a Task Force for Climate-Risk Financial Disclosure (TCFD) report in lieu of the Climate Survey. He stated Ceres recommends taking additional disclosure initiatives in its *Addressing Climate as a Systemic Risk: A Call to Action for U.S. Financial Regulators* report. The report outlines why and how key U.S. financial regulators can and should take action to protect the financial system and economy from potentially devastating climate-related shocks. The report makes a series of recommendations that build on the existing mandates of the relevant regulatory agencies. It also identifies similar actions being taken by global regulators that could serve as important models for U.S. agencies to consider.

The report’s key recommendations for state and federal insurance regulators include:

- Acknowledging and coordinating action to address the material risks of climate change.
- Assessing the adequacy of current insurer actions for addressing climate risks.
- Joining the Sustainable Insurance Forum.
- Requiring insurers to conduct climate-risk stress tests and scenario analyses.
- Requiring insurers to integrate climate change into their Enterprise Risk Management (ERM) and Own Risk and Solvency Assessments (ORSA) processes.
- State regulators requiring insurers to assess and manage their climate-risk exposure through their investments, and examining how climate trends affect company holdings and long-term solvency.
- State regulators encouraging insurers to develop products for the new technologies, practices and business models that will emerge in response to climate-risk that are responsive to both risks and opportunities.
- State regulators mandating insurer climate-risk disclosure using the TCFD recommendations.
- Assessing the sector’s vulnerabilities to climate change and reporting findings to the Financial Stability Oversight Council (FSOC).

4. Discussed its Work Plan for 2020

Mr. Bruns stated the proposed work plan for 2020 included finishing the drafting of the CAT Discussion Points document with adoption hopefully by the Spring National Meeting. It also included a proposal to review the *Financial Condition Examiners Handbook* for potential climate risk and resilience related revisions. Proposed revisions would then be referred to the Financial Examiners Handbook (E) Technical Group for consideration. The Working Group proposed similar revisions to the Technical Group in 2012 that were adopted into the 2013 Exam Handbook. The changes provided guidance, if needed, to examiners to ask questions about the impact of climate risk on solvency. There is also a proposal that came out of conversations with New York to gain a better understanding of how to effectively communicate climate-risk and the role of insurance, resilience and mitigation to elicit behavior change in consumers through presentations. This includes hearing from experts such as the Yale Program on Climate Change Communication, which performs research on how to identify and understand different audiences to more effectively educate and communicate on issues related to climate change. Presentations from insurers, modelers and climate research organizations on the use of products, incentives and technologies that support resilience in the insurance

industry is also proposed. Hearing from the American Academy of Actuaries (Academy) and Center for Insurance and Policy Research (CIPR) on research being done on the NAIC Climate Risk Disclosure Survey responses is also proposed. The final proposal is to better understand through presentations and dialogues how Moody's and others, including other jurisdictions and the NAIC, incorporate climate risk into analysis and governance practices.

Commissioner Kreidler asked Mr. Rothstein to share his thoughts on the draft work plan. Mr. Rothstein stated he thinks the draft work plan is thoughtful and comprehensive and focuses on gathering information from lots of people. He stated he supports the Working Group gaining more insight on transparency and welcomes the opportunity to support the Working Group going forward.

Commissioner Kreidler stated he thinks webinars on rating agency actions will be important. He stated he has concerns on the reticence of rating agencies to become more engaged on the vulnerabilities associated with climate change.

Mr. Brickwedde noted the NAIC member call on June 25 included discussing the NAIC Climate Risk and Resilience Key Initiative and asked how that may affect the work plan.

Anne Obersteadt (NAIC) stated she was not sure what the agenda item pertained to, but that it was her understanding it would not include Property and Casualty Insurance (C) Committee activities.

Mr. Peterson stated he thinks the draft work plan included good components but considered climate change communication to be particularly important. The connection insurance regulators have with consumers does not often get mentioned, making the proposal to better communicate climate risk to the client very important. Insurance regulators tend to view risk as specific to perils, such as risk by fire zone or flood zone. It makes sense that the Working Group should investigate the potential of communicating broader shifting risks beyond this binary perspective. Commissioner Kreidler agreed on the importance of communicating climate change risk to consumers.

Mr. Snyder asked if there was a way to focus on climate resilience in post-pandemic rebuilding. Mr. Bradner stated the Working Group has discussed the need to work with industry and states on more aggressively adopting building codes and standards. It would be beneficial to get more states to recognize the advantages of the Insurance Institute for Business & Home Safety (IBHS) FORTIFIED program that helps homeowners protect their properties against weather events. The FORTIFIED program is more developed towards hurricane-prone jurisdictions, such as those in the Southeast, but there are still standards in the program that would benefit other regions of the country. State insurance regulators need to become more involved in their sister agencies' meetings and advocate for industry to join these meetings as well. There is also a need to find data that illustrates the loss prevention savings of building-resilience measures, such as roof taping. This would be helpful in responding to pushback from builders on the additional costs they incur from such practices.

Commissioner Kreidler agreed building resilience should be added to the Working Group work plan. Mr. Bruns instructed NAIC staff to add "supporting insurance regulators resiliency efforts by holding dialogues with industry and other stakeholders on the importance of incorporating IBHS standards and adopting building codes" to the work plan.

Commissioner Kreidler stated Director Range recently discussed Nebraska's activities in this area with him. Several bills have been introduced related to flooding or climate mitigation in response to Nebraska's flood losses last year. Additionally, cities such as Lincoln, NE, are establishing Climate Resiliency Task Forces focused on mitigating flood and drought impact on agriculture and exploring renewable energy sources. There is also a bipartisan coalition of governors committed to upholding the provisions of the Paris Climate Agreement.

Commissioner Kreidler asked if any member had a concern on the draft work plan. Hearing none, he deemed a consensus on the work plan.

Having no further business, the Climate Risk and Resilience (C) Working Group adjourned.

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Date: 5/22/20

Informal Drafting Call of the

CLIMATE RISK AND RESILIENCE (C) WORKING GROUP
Friday, May 22, 2020
2-3 p.m. CT

Meeting Summary

The informal drafting group of the Climate Risk and Resilience (C) Working Group met by conference call on Friday, May 22, 2020. The following states participated: Washington, Chair; California, Vice Chair; Alaska; Colorado; Illinois; Maryland; Minnesota; Montana; New York; New Mexico; Ohio; Pennsylvania; Puerto Rico; Vermont. The call was led by California.

During the call, the informal drafting group:

1. Discussed revisions to the Insurance Regulatory Frequently Asked Questions (FAQ) that had been implemented based on the Working Group's March 11, 2020 conference call. (See 3/11/20 summary for specifics.)
2. Discussed additional revisions, including:
 - a. Converting the document from public to regulator-only to allow for more robust sharing among states. States would still be able to leverage information from the FAQ for public use, as deemed appropriate.
 - b. Revising the "Purpose" language to specify the questions are meant to be a list of potential discussion points for states to consider in crafting their state's unique response. States are not expected to answer every question.
 - c. Move technology related questions (III.F., IV.D., V.G.) to a newly created Technology section.
 - d. Create a new section for Managing Overlapping Crises in a Time of Unknow.
3. Discussed post-call revisions
 - a. Drafting members are asked to contemplate if additional revisions are needed to ensure the questions are not peril specific.
 - b. Drafting members are asked to contemplate what additional questions are needed in the Overlapping Crises section.
 - c. Revisions and additions are to be sent to NAIC staff (aobersteadt@naic.org)
4. Discussed information to be shared by drafting members post-call
 - a. MN will share material they send to legislators and other public offices on tornadoes, hail and flood risks in their state.
 - b. Getting input from TN on the impact of recent tornadoes in a time of COVID would be helpful.
5. Discussed state-specific disaster management activities.
 - a. MN works to make consumers in higher risk areas more aware of proactive steps through sharing tools, such as home inventory lists, at community events and through social media, such as sending out consumer awareness tips on spring flooding in the winter.

- b. CO partners with PCIAA, emergency managers and others on mitigation actions and standards. They are also developing a webpage devoted to disasters that can be easily shared with others, such as the Red Cross.
- c. CO said responding to disasters in rural areas during the pandemic has had a negative impact on how effectively they can respond. Rural evacuations must be made to disaster centers further out, causing substantial dislocation to victims.
- d. They have experienced an increase in concurrent and cascading events. Currently, they are contemplating the implications of fire risk and shelter in a time of COVID-19.
- e. MD holds a webinar with the P&C industry to discuss regulatory expectations and company actions (like use of new claims technology) during/post catastrophe.

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Date: 3/17/20

Informal Drafting Call of the

CLIMATE RISK AND RESILIENCE (C) WORKING GROUP
Wednesday, March 11, 2020
11 a.m. – 12 p.m.

Meeting Summary

The informal drafting group of the Climate Risk and Resilience (C) Working Group met by conference call on Wednesday, March 11, 2020. The following states participated: Washington, Chair; California, Vice Chair; Colorado; Maryland; Nevada; New Mexico; Oregon; Pennsylvania; Puerto Rico; Vermont. The call was led by California.

During the call, the informal drafting group:

1. Discussed revisions to the Insurance Regulatory Frequently Asked Questions (FAQ) that had been implemented based on the Working Group's prior conference call. The FAQ aims to be a compilation of questions state insurance regulators find they are frequently being asked related to resiliency efforts and pre/post catastrophe activities.
 - a. To address the suggestion the FAQ should be all-peril, rather than wildfire specific:
 - i. Reference to the wildland urban interface was deleted from Section I
 - ii. Reference to or questions specific to wildfire were deleted from Section III
 - b. To address the suggestion questions on insurance coverages and exclusions be added
 - i. The title of Section IV was changed to "Insurance Coverage Adequacy and Exclusions"
 - ii. A question was added to Section IV asking if post-disaster studies were required to understand the adequacy of insurance coverages
 - c. To address the suggestion a residual market section be added
 - i. Section VII titled "Residual Market Questions" was added, with further questions to be drafted by the drafting group
 - ii. Two questions were added to Section IV asking how recent building code upgrades are and how they are enforced
2. Discussed adding the following revisions:
 - a. Add an introduction to describe the perils the FAQ could apply to.
 - b. Add a question related to what data is needed to support mitigation incentives and how this data can be obtained.
 - c. Add questions for how much is included in the state's residual market and if there are any exclusions/inclusions to what is covered.
 - d. Amend the question under "Insurance Coverage Adequacy and Exclusions" related to insurers' requirements to provide estimates of replacement cost to include "and the corresponding change in premium resulting from it."
 - e. Add a question for how states work with building departments to adopt required standards for resiliency, such as taped roofs in Connecticut and updated maps in California. Add a question asking how successful or receptive building departments were when approached.

- f. Add an Adjuster Licensure category. Add a question requesting the state's licensure process. Add a question for steps taken to expedite adjuster's ability to enter catastrophic areas.
 - g. Add questions asking if states are required to upgrade to the newest building code and what state regulations trigger a retrofit of a home.
 - h. Add a question on how the insurance department works with sister agencies to promote resilience and building standards.
 - i. Add a question related to where consumers go if they can't get coverage in the admitted market.
 - j. Add questions related to proximate or concurrent cause issues.
 - i. California noted difficulties related to determining if a mudslide was caused by a wildfire or occurred independently. Colorado noted the rule of if a flood or water caused a mud slide are unintelligible.
 - ii. Storm surge or flood (wind vs. water) was an issue in Maryland after Hurricane Sandy (likely FL, SC, LA and TX too).
 - iii. Colorado noted cancelations due to a second hail claim within a year from two different hail events.
 - iv. Colorado, Iowa and New Mexico commented on the lengthy time it can take for damage to show.
 - v. Colorado noted issues after the 2017 hail event included vehicle damage estimates taking a year, supply chain issues, issues with contracted adjusters and reliability of hail proof roofs by some manufactures.
 - vi. Vermont noted identification of damage from a 2015 hail event was delayed by out-of-town rental property owners.
3. General discussion
 - a. Discussed the importance of the question related to safeguards against abrupt premium increases. Insurers tend to increase rates after a catastrophe and keep them high in good years. Shareholders benefit through high dividends in the good years, but policyholders do not benefit.
 4. Post-call revisions:
 - a. Expanded "Purpose" section to function like an introduction
 5. Mitigation section changes:
 - a. Added:
 - i. Has the insurance department advocated and/or required insurers to offer incentives in the pricing of insurance policies?
 - ii. What data is needed to help support resiliency incentives being built into insurance policies?
 - iii. What mitigation tactics do insurers employ most frequently?
 - iv. What state regulations trigger a retrofit of a home?
 - b. Moved to the Insurance Coverage Adequacy and Exclusions section:
 - i. Is there any scenario under which a consumer is "guaranteed" offer/renewal of insurance?
 6. Insurance Premiums section changes:
 - a. Reordered from V. to IV. for spacing reasons
 7. Insurance Coverage Adequacy and Exclusions section changes:
 - a. Reordered from IV. to V. for spacing reasons
 - b. Modified to include highlighted:

- i. Are insurers required to provide any regularly updated estimate of replacement cost and the corresponding change in premium to consumers?
 - c. Added:
 - i. Why do some homeowners policies require separate deductibles?
 - ii. Is there parametric coverage available in your state for catastrophes? If so, for what coverages?
 - d. Moved from the Mitigation section:
 - i. Is there any scenario under which a consumer is “guaranteed” offer/renewal of insurance?
8. Rebuilding Restrictions and Requirements section
 - a. Expanded the section name to include “and Requirements”
 - b. Added:
 - i. Are states required to upgrade to the newest building code?
9. Residual Markets section
 - a. Added:
 - i. Where do consumers go if they are not able to get coverage in the admitted market?
 - ii. How much of the insurance coverage provided in your state comes from your residual market?
 - iii. Are there exclusions or specified inclusions to what is covered in your residual market?
10. Adjuster Licensure section (new section)
 - a. Added:
 - i. What is the state licensure process?
 - ii. What steps have you taken to expedite adjusters’ abilities to respond to catastrophic events?
11. Insurance Department Interactions with Stakeholders section (new section)
 - a. Added:
 - i. How does the insurance department help drive resilience efforts across state and local agencies and departments? This includes any work done with: i. Building departments to adopt more resilient standards requirements (such as roof taping); ii. Land use/development departments to implement resiliency into their planning; iii. Emergency management, natural resources, economic development and health agencies
 - ii. What successes and challenges did you encounter in these efforts? How did you address the challenges?
 - iii. What data is needed to help support adoption of more resilient standards?
 - iv. How does the insurance department liaise with regional entities/organizations on resilience?
 - v. How does the insurance department leverage outside research and data (such as from educational institutions, federal scientific agencies, etc.) to gather resilience data, upgrade hazard maps, etc.?
 - vi. How do insurance departments help consumers and communities address their at-risk assets? What tools are available to help identify risk, estimate the costs and understand the benefits of protection?
 - vii. What risk-disclosures do regulators require or request from insurers? What is the most common metric used to disclose severity of impact?
12. Post-Catastrophe Regulatory Response section (new section)
 - a. Added:

- i. Where there any post-catastrophe regulatory restrictions (such as on claims or underwriting) placed on the business practices of insurers?
- ii. Where there any post-catastrophe regulations that expanded requirements on insurers (such as mandated or retroactive expansion of benefits)?
- iii. Where there any post-catastrophe regulatory fines or actions taken related to compliance violations?
- iv. What proximate cause or concurrent event issues arose from the catastrophe? How did your insurance department handle them?

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Draft: 7/29/20

Pet Insurance (C) Working Group
Conference Call
July 16, 2020

The Pet Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met via conference call July 16, 2020. The following Working Group members participated: Don Beatty, Chair, and Jessica Baggarley (VA); Kendra Zoller, Vice Chair, and Risa Salat-Kolm (CA); George Bradner and Kristin Fabian (CT); Angela King (DC); Warren Byrd and Tom Travis (LA); Sheri Cullen (MA); Linas Glemza and Rasheda Chairs (MD); LeAnn Cox (MO); Michael McKenney (PA); Matt Gendron (RI); Kathy Stajduhar (UT); Anna Van Fleet and Jamie Gile (VT); and David Forte and Eric Slavich (WA). Also participating were: Ken Williamson (AL); Michele Mackenzie (ID); Brenda Johnson, Heather Droge and Tate Flott (KS); Chris Aufenthie (ND); Tracy Burns (NE); Rick Campbell and Rodney Beetch (OH); Brian Ryder, J'ne Byckovski and Laura Machado (TX); Jody Ullman (WI); and D'Anna Feurt (WY).

1. Adopted its March 5 Minutes

Mr. Byrd made a motion, seconded by Mr. Forte, to adopt the Working Group's March 5 minutes (Attachment Four-A). The motion passed unanimously.

2. Discussed Section 4 of the Draft Pet Insurance Model Law

Mr. Beatty said in Section 4—Disclosures of the draft model, there was a suggestion to add a disclosure regarding brand names. He asked if any Working Group member has any suggested language for this disclosure. Mr. Forte said the concern is to make sure the consumer is aware of who the brand name is and who the direct underwriter is. Mr. Byrd agreed with this concern. Mr. Beatty said NAIC staff will work on language for the proposed disclosure.

Mr. Beatty said in Section 4 of the draft model, there was a suggestion to add a disclosure regarding premium rate increases based on the age of the pet and the geographic location of the policyholder. Mr. Forte said this topic has been highly discussed in Washington, and it can be confusing to consumers. Mr. McKenney asked if this disclosure would include the actual rate changes. Mr. Forte said it would just be a general disclosure; the rate could change based on the age of pet or a change in location of the policyholder. Mr. McKenney said these issues are true over many lines of property and casualty insurance; they are not just characteristic of pet insurance. Lisa Brown (American Property Casualty Insurance Association—APCIA) said this disclosure would fit under the existing disclosure A(4). Brendan Bridgeland (Center for Insurance Research—CIR) agreed that this is a cause of confusion for consumers. He said rate changes may not be easily understood by those that do not often purchase insurance; therefore, he agreed with the proposed disclosure. Kate Jensen (North American Pet Health Insurance Association—NAPHIA) said this is an important issue for consumers and state insurance regulators, and it was highlighted in NAPHIA's consumer document. Mr. Beatty said NAIC staff will work to draft language for the proposed disclosure.

Mr. Beatty said there was a suggestion to change references to the insurer's website. Ms. Cox said there should be a link on the main page of the insurer's website that shows disclosures and policy forms for the insured to review prior to purchasing a policy. Mr. Byrd asked if it would link different policy forms and endorsements, and he asked if that would be confusing to the consumer. Ms. Cox said during discussions, some carriers have said they would provide sample policies for each different policy option they offer. Ms. Salat-Kolm said she agreed that it would be helpful to have a visual of the sample policy. Mr. Bridgeland supported Ms. Cox's proposal to give access to policy documents before purchase. Ms. Jensen asked if these documents would be in addition to the disclosures provided with the policy and available on the insurer's website. Ms. Cox said it would be a policy or sample policy form before making payment for a policy. She said it would provide consumers the opportunity to compare policy coverages from different companies. Mr. McKenney said he agrees that it is a good idea to provide the opportunity to review a policy before purchase, but requiring insurers to put the documents on their websites may be too much of a burden, especially for companies that write in all 50 states. Ms. Cox said many websites ask for the consumer's state, and the website should be able to pull policy forms for that specific state. She said there could be a disclosure that policy forms could change depending on state of residence. Mr. McKenney said there are many requirements in this model that do not exist in other lines of property and casualty insurance. He said he did not want to create requirements that keep smaller insurers out of the market. Mr. Bridgeland said since pet insurance is a relatively new product, it would be easier to require it to be more integrated into websites and technology than more established lines of insurance.

Ms. Brown said if a disclosure is added regarding the insurer's website, then it should read "insurer or insurer's program administrator's website." Mr. Beatty asked if any Working Group members oppose adding "insurer's program administrator" to references to "insurer" throughout the draft model law. There was no opposition.

Mr. Beatty said in Section 4(D), there was a suggestion to change "usual and customary" to "reasonable and necessary." Ms. Van Fleet said this change will occur in Vermont no matter what language passes in the model. Mr. Beatty said "reasonable and necessary" might be easier for companies to administer at this time. Ms. Jensen said NAPHIA has not had an opportunity to evaluate this suggestion.

Mr. Beatty said there was a suggestion to change the term "owner" to "insured." Ms. Salat-Kolm asked to clarify if the insured is the pet or the owner. Mr. McKenney said "named insured" would be the correct term to use. Mr. Forte and Ms. Brown agreed. Mr. Bridgeland asked if the Working Group would consider adding the term "insured" to the definition section (Section 3). Ms. Salat-Kolm asked who would be defined as the insured in that definition. Mr. Forte said it would be the person named on the declaration page.

Mr. Beatty said on previous calls, there was discussion on the inclusion of the free look period in the draft model law. Mr. McKenney said he does not understand the need for a free look period since the consumer can cancel the policy and get a pro-rata refund and the underwriting company does not lose money for the expenses they incurred to write the policy. Mr. Beatty said the model law is requiring a lot of disclosures, so the consumer should be aware of what they are purchasing. Mr. Forte said there is a question of actuarial soundness for the free look period, and he would suggest not including the free look period. Ms. Salat-Kolm said California has a 30-day free look period. She said these are not typical policies, and the consumer does not have the opportunity to talk to an agent. Mr. Bradner said consumers are now able to buy auto and homeowners policies online without talking to an agent. Ms. Salat-Kolm said this is a newer product, and the consumer should have the opportunity to look over the policy. Mr. McKenney said any length of free look period allows the consumer to get back all their money, and that leads to other consumers paying higher premiums for the lost underwriting expenses of the free look period. Ms. Zoller said the free look period already exists in California, and the free look period was proposed by the industry. Mr. Bradner said this section may need to be left to the individual states to decide how to handle. He said he agrees that the free look period contributes to higher premiums for other consumers. Mr. Byrd said there is a concern from the actuarial perspective. He said having access to the policy, as suggested earlier in Section 4, would be a better option than a free look period. Ms. Jensen said a pre-sale evaluation tool will help consumers understand what they are purchasing, and it may help address common concerns that state insurance regulators are hearing.

Mr. Beatty said there was a suggestion to remove Section 4(H)(3). He said he would not want to discourage consumers from contacting state insurance regulators for any reason. Mr. Forte agreed. Mr. Beatty asked if any Working Group members oppose removing this item. There was no opposition.

Mr. Beatty asked for comments on Section 5 and Section 6 of the draft model law to be submitted prior to the Working Group's next conference call.

Having no further business, the Pet Insurance (C) Working Group adjourned.

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Draft: 3/13/20

Pet Insurance (C) Working Group
Conference Call
March 5, 2020

The Pet Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met via conference call Feb. 19, 2020. The following Working Group members participated: Don Beatty, Chair, Jessica Baggarley, and Phyllis Oates (VA); Kendra Zoller, Vice Chair, and Risa Salat-Kolm (CA); Angela King (DC); Warren Byrd (LA); Sheri Cullen (MA); Linas Glemza and Rasheda Chairs (MD); LeAnn Cox (MO); Michael McKenney (PA); Matt Gendron (RI); Kathy Stajduhar (UT); Anna Van Fleet (VT); and David Forte, Eric Slavich and John Haworth (WA). Also participating were: Ken Williamson (AL); Tom Zuppan (AZ); Brenda Johnson and Tate Flott (KS); Troy Smith (MT); Chris Aufenthie (ND); Rodney Beetch (OH); Cuc Nguyen (OK); and Jody Ullman (WI).

1. Adopted its Feb. 19 Minutes

Mr. Byrd made a motion, seconded by Mr. Forte, to adopt the Working Group's Feb. 19 minutes (Attachment Four-A1). The motion passed unanimously.

2. Discussed Draft Referrals for Data Collection

Mr. Beatty said the Working Group has previously discussed referrals to other working groups to collect data related to pet insurance. He said NAIC staff has drafted a referral to the Market Conduct Annual Statement (D) Working Group to create a line of business for pet insurance in the Market Conduct Annual Statement (MCAS) and a referral to the Market Information Systems Research and Development (D) Working Group to collect complaints data related to pet insurance. Mr. Forte noted that the MCAS referral should go through the Market Analysis Procedures (D) Working Group. Mr. Byrd said the recommendation of the need for data collection was pointed out in the *A Regulator's Guide to Pet Insurance* white paper. Mr. Gendron made a motion, seconded by Mr. Byrd, to adopt the referral memorandums and move them on to the appropriate working groups. The motion passed unanimously. Birny Birnbaum (Center for Economic Justice—CEJ) said there is a process for adding a line of business to the MCAS, and there would need to be a full proposal developed to present to the Market Analysis Procedures (D) Working Group.

3. Discussed a Draft Supplement to the NAIC Financial Annual Statement

Mr. Beatty said the Working Group has discussed collecting data related to pet insurance through the NAIC Financial Annual Statement. He said NAIC staff has drafted a preliminary supplement to the Annual Statement to collect that data. Mr. Beatty asked for comments to be submitted regarding the supplement, and those comments will be discussed during the next Working Group conference call.

4. Discussed Sections 2 and 3 of the Draft Pet Insurance Model Law

Mr. Beatty said in Section 2, Scope and Purpose, of the draft model there was a suggestion to clarify the term "resident." He said the Travel Insurance Model Act states, "covers any resident of this state." Mr. Byrd said the language in the Travel Insurance Model Act makes sense for this model as well. Mr. Gendron said some of the words would need to be changed since it deals with property owned rather than a person. Mr. Forte suggested using the language, "policy issued to any resident of this state."

Mr. Beatty said in Section 3, Definitions, there was a question about whether definitions in the model should be prescribed or if the language could be broadened to use definitions that are substantially similar but not less favorable. Ms. Zoller asked if that language is common in other model laws. Mr. Beatty said similar language exists with regard to the Interstate Insurance Product Regulation Commission (Compact), that any standards adopted by the Compact be at least as good as NAIC models, and they could not be any less favorable. Mr. Byrd clarified that the definitions would be no less favorable to the insured. John Fielding (North American Pet Health Insurance Association—NAPHIA) said that NAPHIA members do like the idea of flexibility with the definitions.

Mr. Forte said the requirement for the information on pet insurance to be on the "main page" of an insurer's website may be too stringent, and he suggested instead to say, "product site." Lisa Brown (American Property Casualty Insurance

Association—ACPIA) said in a different section of the model, the language had been changed to include both the insurer and insurer's program administrator's site. Mr. Fielding asked for time to speak with NAPHIA members about where that information would be best found on their web pages so that consumers can easily find the information.

Mr. Beatty said there was a request for a clearer definition for "Chronic condition." He asked if the American Veterinary Medical Association (AVMA) had thoughts or suggested language for the definition. Isham Jones (AVMA) asked for time to submit written comments on the "Chronic condition" definition. Mr. Haworth said the definition should be clear enough to distinguish from acute conditions that also cannot be cured. Mr. Fielding said this definition is currently in place in California law, and it does not currently cause any problems.

Mr. Beatty said after receiving comments, it has been determined that pet insurance policies are not written as true group policies, but they are written similar to affinity policies. Mr. Fielding said the policies may evolve into group policies, so they do not want to remove language from the model that refers to group policies. Mr. Byrd asked if it would be better to remove the references to both individual and group, so as not to limit the language. Mr. Fielding and Mr. Forte agreed with that suggestion.

Mr. Beatty said there is a suggestion to replace "veterinary expenses" with "eligible expenses" in the definition of pet insurance. Mr. Fielding said the definition of veterinary expenses is both too broad and too narrow. He said veterinary expenses are not necessarily the only expenses covered under a pet insurance policy. He said there could also be veterinary expenses that are not covered under the policy. He said the term "eligible expenses" better describes what is covered by the policy. Mr. Fielding suggested that the definition of pet insurance read as, "an individual or group insurance policy that primarily provides coverage for eligible medical expenses arising from (1) the covered pet's sickness or (2) an accident involving the covered pet." Ms. Zoller asked for an example of an ineligible expense. Gavin Friedman (Trupanion) said a veterinarian may sell food or toys at the front desk that would not be eligible under the policy. Mr. Gendron said things like dental cleanings and organ transplants could be excluded as eligible expenses. Mr. Fielding said there may be exclusions under medical expenses, but there are other expenses that are not medical expenses that are not covered by the policy but not specifically excluded. Mr. Forte and Mr. McKenney agreed with using the term "eligible expenses." Mr. McKenney said the term "veterinary expenses" is too broad. Ms. Zoller said the language in the current definition does not preclude an insurer from excluding certain expenses. Ms. Oates asked if some of the policies include wellness programs. Mr. Gendron said in Rhode Island, they refer to these policies as indemnity policies. Mr. Beatty asked for those that do not agree with the proposed definition to submit alternative language.

Mr. Beatty said the AVMA had suggested using the term "clinical signs" instead of "signs or symptoms." He said the Working Group should work to make the policy language clear so that the insured is not surprised that a pre-existing clinical sign is not covered by the policy. Mr. Fielding said the phrase clinical signs needs to be clearly understood and defined. Mr. Byrd asked if clinical signs is more veterinarian based and signs or symptoms is more owner based. Mr. Fielding said it is important to make clear that the clinical sign of an injury or illness, even if not seen by a veterinarian, would not be covered under a policy that is purchased after that clinical sign has been observed. Mr. Fielding said claim denials based on pre-existing conditions are a very low percentage of claim denials.

Mr. Forte asked if industry would be open to the suggestion by the AVMA to change language in the definition of pre-existing condition from "consistent with" to "related to." He said that an upset stomach in a dog due to eating something unagreeable could be seen as consistent with signs of a later diagnosis of stomach cancer, even though the two instances are not related. Mr. Byrd suggested the language, "related to and contemporaneous with the stated condition." Mr. Forte agreed with that suggestion. Mr. Fielding said he will ask NAPHIA members whether they would agree with that language and if the current language has led to issues with claim denials.

Mr. Byrd said the term "affiliation period" does not need to be included, as the term "waiting period" covers the meaning of the time period. Ms. Salat-Kolm said she agreed that it did not need to be included.

The Working Group will continue discussion on the first four sections of the model draft during future conference calls.

Having no further business, the Pet Insurance (C) Working Group adjourned.

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Draft: 2/27/20

Pet Insurance (C) Working Group
Conference Call
February 19, 2020

The Pet Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met via conference call Feb. 19, 2020. The following Working Group members participated: Don Beatty, Chair, and Phyllis Oates (VA); Kendra Zoller, Vice Chair, and Risa Salat-Kolm (CA); George Bradner and Kristin Fabian (CT); Angela King (DC); Warren Byrd and Tom Travis (LA); Sheri Cullen (MA); Shirley Corbin and Rasheda Chairs (MD); Carrie Couch and Lockey Travis (MO); Michael McKenney (PA); Elizabeth Kelleher Dwyer, Matt Gendron, and Beth Vollucci (RI); Anna Van Fleet (VT); and David Forte, Eric Slavich and John Haworth (WA). Also participating were: Erick Wright (AL); Vincent Gosz (AZ); Heather Droge (KS); Troy Smith (MT); Chris Aufenthic (ND); Rodney Beetch (OH); Jody Ullman (WI); and Donna Stewart (WY).

1. Adopted its Dec. 19, 2019, Minutes

Mr. Byrd made a motion, seconded by Mr. Forte, to adopt the Working Group's Dec. 19, 2019, minutes (Attachment Four-A1a). The motion passed unanimously.

2. Discussed Section 4 of the Draft Pet Insurance Model Law

Mr. Beatty asked for those who submitted comments on Section 4—Disclosures to speak to those comments. Ms. Zoller said California law requires policies to disclose the actual insurer name and contact information for that insurer if the policy is sold under a brand name. Mr. McKenney asked if this should be on the declarations page or if it needs to be in a separate disclosure. Ms. Zoller said requiring a separate disclosure page makes the information more visible to the consumer. Mr. McKenney said brand names are commonly used in other lines of business. Ms. Salat-Kolm said the Working Group cares about adequate disclosure. Ms. Zoller said the disclosure needs to be large and clear enough for the consumer to read and understand. Mr. Byrd said there needs to be clear disclosure of who the underwriting entity is and whether it is in the policy or through an endorsement. Mr. Forte said the disclosure allows the consumer to make a proper complaint against the correct company. John Fielding (North American Pet Health Insurance Association—NAPHIA) said any additional disclosures to what is currently in the model law should be included in the “Insurer Disclosure of Important Policy Provisions,” which is provided to the consumer purchasing a new pet insurance policy and posted on the insurer website.

Mr. Forte said it is important to add a disclosure that premiums will increase as the pet ages and that rates are affected based on where the consumer lives. Mr. McKenney said the wording for a disclosure about premium increases should state: “[i]f the premium increases as your pet ages,” because not all pet insurance products currently offered increase the premium due to age. Mr. Fielding said the specificity of the premium increase would change with the type of policy and animal.

Mr. Forte said Washington's position on free look periods is that it is free insurance and the cost of offering that is absorbed by other policyholders; therefore, he said mention of the free look period should be removed from this model. Mr. Byrd said free look periods are not actuarially sound. Mr. McKenney agreed that the free look period should be removed. Mr. Fielding said NAPHIA has supported the free look period because it is a good way for consumers to look at and understand the policy to the extent that they have not done that at the time of purchasing the policy. Mr. Gendron said the free look period is a common practice in life and annuity insurance, and it acts as consumer protection. Mr. Forte said the cost of the free look policies must be accounted for in the rates of those that do not have free look policies. He also said in the property and casualty lines of business they would commonly be able to cancel the policy and have their unearned premiums returned on a pro-rata basis. Ms. Salat-Kolm asked how much of an increase the free look period would cause to other policy's rates, and she said if it is negligible, then the free look period should still be included in the model law. Ms. Zoller said the free look period will help consumers that may not know exactly what they are buying, but having strong disclosures will help this problem as well. Mr. Fielding said as soon as a policyholder makes a claim under a policy, then the free look period is ended. Mr. Byrd asked if the free look period is being used in place of correctly marketing the product. Mr. Forte said if a consumer cannot make a claim, then the consumer does not have insurance. Mr. Fielding said the free look period is standard practice on a nationwide basis, apart from one or two states. Mr. McKenney said Pennsylvania does not allow the free look, and this is not comparable to the use of free look in other lines business. Mr. Gendron asked if there is data on whether people have utilized the free look period. Mr. Beatty asked for industry representatives to investigate the experience on the free look period. Ms. Zoller said the requirement to get the policyholder's signature on the disclosures was too burdensome, which is what led to the free look period.

Mr. Byrd asked for a clarification about the premium payment within the free look period. Mr. Fielding explained that the premium would be fully paid, but if at the end of the free look period the consumer decides they do not want the policy, they would receive a full refund of the premium. Ms. King asked if there was a concern about the administrative costs during the free look period being refunded to the consumer. Mr. Fielding said the industry believes that the free look period is a good idea. Mr. McKenney said there would be expenses associated with issuing the policy, and loss portion would be based on expected value. Ms. King said issues with free look periods have been resolved by requiring pro-rate refunds to cover the expenses. Mr. McKenney said all other lines in property and casualty are handled this way.

Ms. Van Fleet asked if the disclosure requirement regarding premium increases allowed for increases mid-policy or if it applied only at renewal. Mr. Beatty said there would be no intent to permit mid-term increases. Mr. Byrd agreed that this applies only at renewal.

Lisa Brown (American Property Casualty Insurance Association—ACPIA) said she has heard from members that they use program administrators for the pet insurance program, and the language in the model should reflect both insurers and insurer's program administrators. Mr. Forte agreed with this change.

Mr. Fielding said NAPHIA suggests that the disclosure section should be adjusted so that all the disclosures are listed together, the free look period is discussed in its own section, and the complaints are discussed in their own section. He said under subsection H(2) the language should be changed from "delivering or mailing" to "notifying in writing." He said in subsection H(2)(a), the second sentence should be deleted, as it is redundant.

Mr. Forte said the Working Group's submitted comments about group insurance have been previously discussed. Mr. Beatty asked for clarification on the offering of group pet insurance as an employee benefit. Mr. Fielding said he is not aware of group policies that are underwritten on an individual basis. Ms. Brown said as an employee benefit, the policies are offered for purchase to all employees, with a flat rate and no individual underwriting. Mr. Forte said in Washington, policies are labeled as employee benefit group policies, but they are individual policies with a discount for being an employee.

Ms. Zoller said the language in subsection H(2) should be clarified regarding the owner and the insured. She said the language in subsection I(3) may no longer be necessary in the model and could be removed.

The Working Group will continue discussion on the first four sections of the model draft during future conference calls.

Having no further business, the Pet Insurance (C) Working Group adjourned.

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Draft: 1/2/19

Pet Insurance (C) Working Group
Conference Call
December 19, 2019

The Pet Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met via conference call Nov. 7, 2019. The following Working Group members participated: Don Beatty, Chair, and Jessica Baggarley (VA); Kendra Zoller, Vice Chair, and Risa Salat-Kolm (CA); Kristin Fabian (CT); Warren Byrd (LA); Sheri Cullen (MA); Shirley Corbin (MD); LeAnn Cox (MO); Elizabeth Kelleher Dwyer, Matt Gendron and Beth Vollucci (RI); Anna Van Fleet and Jessica Sherpa (VT); and David Forte and Eric Slavich (WA). Also participating were: Heather Droge (KS); Chris Aufenthie (ND); Anna Krylova (NM); Rodney Beetch (OH); Brian Fordham (OR); Kathy Stajduhar (UT); Jody Ullman (WI); and Donna Stewart (WY).

1. Discussed Section 3 of the Draft Pet Insurance Model Law

Mr. Beatty asked for those who submitted comments on Section 3—Definitions to speak to those comments. Ms. Sherpa said in reference to Section 3E—Preexisting Condition, it would be more objective to have a preexisting condition be something that somebody received care for by a veterinarian as opposed to putting the onus on the owner to recognize signs or symptoms they are not trained to recognize. John Fielding (North American Pet Health Insurance Association—NAPHIA) said NAPHIA supports the current definition, but the end of the definition needs to change from “waiting period” to “waiting or affiliation period.” He said the current definition has worked in California, and there is a concern that tightening down the definition would increase the cost of the pet insurance policy. Lynne Hennessey (Nationwide Insurance) said the proposed change by Ms. Sherpa could increase the chance for policyholder fraud. Mr. Byrd said those instances of fraud would decrease the carrier’s rate of return and, therefore, increase the price for the consumer. He said there had been mention of a baseline medical exam required at policy inception. Ms. Baggarley said Virginia is seeing a growing number of policies that require an exam soon after policy inception. Ms. Sherpa said the carrier could require a recent examination of the animal for consideration of writing the policy. Mr. Fielding said the requirement of an exam prior to underwriting could be a disincentive for buying insurance. He said there is a robust disclosure requirement in the model to require that policy purchasers know what the preexisting conditions are. Superintendent Dwyer asked how often there are denials based on preexisting conditions that have not been treated by a veterinarian. Mr. Beatty said it would be helpful to know that answer before the Working Group decides on the changes to this definition. Isham Jones (American Veterinary Medical Association—AVMA) said multiple conditions can result in the same clinical signs, which should be considered when talking about preexisting conditions. Gail Golab (AVMA) said this could be a concern for those looking to purchase pet insurance that their claim may be denied because clinical signs due to a preexisting condition can reappear due to another condition. She said that the references to symptoms should be changed to “clinical signs.”

Lisa Brown (American Property Casualty Insurance Association—ACPIA) said ACPIA has at least one member company that writes pet insurance on a group basis as an employee benefit. Ms. Zoller said MetLife is doing group pet insurance policies through an employer. Mr. Forte said that just because industry already writes group policies does not mean it should be included in the model. He said as a Working Group, they should discuss what would happen if a customer leaves his or her employer but still needed the pet insurance product. He said many states have adopted inland marine definitions, and group coverage would conflict with that definition. Mr. Beatty said he believes they have group policy in property/casualty (P/C) lines. Mr. Fielding confirmed at least eight states have group policy filings in P/C lines. Mr. Beatty said the Working Group could consider a drafting note for including group policies.

Mr. Fielding suggested taking out the California-specific legislation language in Section 3F—Veterinarian. Mr. Beatty said the Working Group would make that change to the model.

Ms. Sherpa said the definition in Section 3G—Veterinary Expenses should include fees, as currently many policies exclude fees that the policyholder would not be able to control. Mr. Gendron asked if that could be addressed in the balance billing section of the model. Ms. Brown said the comment from Ms. Sherpa could be addressed by using the suggestion from Mr. Fielding and NAPHIA that the model should use the term “eligible expenses” instead of “veterinary expenses.” Ms. Zoller asked for examples of other expenses. Ms. Brown said member companies reported expenses from services that may not be provided by the veterinarian but was suggested by the veterinarian, such as behavioral therapies and specialized dog foods. Ms. Sherpa said she does not believe the definition of veterinary expenses precluded a company from offering more benefits. Ms. Brown said the definition currently covers only expenses associated with treatment provided by a veterinarian. Ms. Brown

suggested changing the language to “provided, prescribed or suggested by a veterinarian.” Ms. Zoller asked how the insured would prove an expense that was not specifically prescribed. Gavin Friedman (Trupanion) said the recommendation would be included in the medical records. Ms. Golab suggested changing “provided” to “recommended.” Mr. Gendron asked if the file would identify recommendations from veterinarians. Ms. Golab said the AVMA would encourage veterinarians to put all treatment suggestions into the patient file.

Mr. Fielding said the current definition may be limiting what expenses are covered by pet insurance. He recommended using the term “eligible expenses” and then disclose what is and is not covered in the policy. Superintendent Dwyer said they are currently addressing an issue with a company providing a wellness plan that the company does not believe is an insurance policy. She said that by not defining the expenses, it may leave open the interpretation of what pet insurance is. Ms. Brown suggested adding “which shall include treatment provided, prescribed or suggested by a veterinarian” to Section 3D—Pet Insurance.

The Working Group will continue discussion on these sections during future conference calls.

Having no further business, the Pet Insurance (C) Working Group adjourned.

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Draft: 8/19/20

Terrorism Insurance Implementation (C) Working Group
Virtual Summer National Meeting
July 31, 2020

The Terrorism Insurance Implementation (C) Working Group of the Property and Casualty Insurance (C) Committee met virtually July 31, 2020. The following Working Group members participated: Martha Lees, Chair (NY); Joanne Bennett (AK); Ken Allen (CA); Rolf Kaumann (CO); George Bradner (CT); Angela King (DC); Virginia Christy (FL); Judy Mottar (IL); Heather Droge (KS); Matthew Mancini (MA); Cynthia Amann and Jeana Thomas (MO); Fred Fuller (NC); Carl Sornson (NJ); Cuc Nguyen (OK); Jan Vitus (OR); Beth Vollucci (RI); J'ne Byckovski (TX); David Provost (VT); and Rebecca Nichols (VA).

1. Adopted its March 12 Minutes

The Working Group March 12 to adopt its Feb. 11 minutes, model bulleting and policyholder disclosures.

Mr. Bradner made a motion, seconded by Ms. Nguyen, to adopt the Working Group's March 12 minutes (Attachment Five-A). The motion passed unanimously.

2. Heard an Update on the 2020 State Regulator Terrorism Risk Insurance Data Call

Ms. Lees provided an update on the 2020 state regulator terrorism risk insurance data call. She said as in prior years, state regulators issued a joint data call with the U.S. Department of the Treasury (Treasury Department) with data due May 15. She said there were minor changes to the data call, including collecting some information about terrorism insurance for places of worship. Ms. Lees said the NAIC is reviewing the data filed before conducting analysis.

Ms. Lees said the State Supplement was revised in 2019 to greatly simplify the data requested. She said no changes were made for the 2020 State Supplement. She said the letter requesting data for the State Supplement was sent to all insurers on July 1, and data is due Sept. 30.

3. Received an Overview of Data Related to Workers' Compensation Terrorism Risk

Aaron Brandenburg (NAIC) reported on terrorism risk insurance data concerning workers' compensation. He said data for the workers' compensation portion of the data call was received from the National Council on Compensation Insurance (NCCI) and independent bureaus for the 47 non-monopolistic states. Data for 2017 was due to state insurance regulators by March 1, 2020.

The percentage of workers' compensation policies that have an explicit terrorism charge has fallen slightly, from a little more than 84% in 2011 to about 82.4% in 2017. This means about 17% to 18% of policies cover workers' compensation terrorism coverage for no charge. The Northeast Zone had the highest percentage of workers' compensation policies with an explicit charge for terrorism risk.

The analysis next looked at the percentage of the terrorism premium as compared to the total earned premium for policies indicating an explicit terrorism charge. This percentage fell slightly, from about 1.4% in 2011 to 1.3% in 2017, although this percentage rose in the most recent year. The District of Columbia had the highest percentage, with more than 9% of the premium being a terrorism charge. This percentage has fallen slightly since 2015. The Northeast Zone had the highest percentage of terrorism premium compared to the total earned premium for policies indicating an explicit terrorism charge.

The average terrorism premium per policy has risen slightly, from \$171 in 2011 to \$187 in 2017. The average terrorism premium when there is an explicit charge rose from \$210 in 2011 to \$227 in 2017. The Northeast Zone had the highest average terrorism premium in the period 2011–2017.

When looking at payroll categories, only the lowest payroll category had fewer than 89% of policies with an explicit terrorism charge. The terrorism premium moved up substantially as the payroll category grew higher. Terrorism premium for

insureds with a payroll category greater than \$5 million experienced a drop in average premium of nearly 10% from 2011 to 2017.

4. Received an Overview of Terrorism Data from the 2019 State Supplement

Mr. Brandenburg said the State Supplement portion of the state regulator terrorism risk insurance data call collects ZIP code level data and has had data quality issues in the past. He said the granularity of the data requested was reduced in 2019 and let to better quality data, although some insurers did still struggle with submitting exposure data.

Analysis was presented showing key metrics for several states. The take-up rate across all business lines for New York was 78% for 2018. This is a slight reduction from the prior year. The percent of premium paid was about 7.4%. Most terrorism premium shows up in commercial multi-peril followed by commercial fire and allied lines for New York. Most insurers do show a very high take-up rate, with most insurers above 90%. For California, the take-up rate was 69% and fell slightly from the prior year, with 6.6% of premium being for terrorism risk. Texas showed a take-up rate of 61%, which was a large increase from the prior year. The percent of premium for terrorism coverage was 3.6% for Texas. Missouri had a take-up rate of 71%, which was a large increase from the prior year. The percent of premium for terrorism coverage was about 5% for Missouri.

Mr. Brandenburg also presented an analysis tool that was created for state insurance regulators. He said it will soon be available on iSite. He said it will allow state insurance regulators to access the raw data so comparisons can be made more easily at a ZIP code level for several metrics.

Mr. Brandenburg showed that numerous metrics can be shown at a ZIP code level on a colored map. Those metrics include take-up rate, exposures at risk, average terrorism premium per \$1000 of exposure and percent of terrorism exposures covered. Differences in these metrics were shown throughout the state of New York.

Having no further business, the Terrorism Insurance Implementation (C) Working Group adjourned.

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Draft: 3/19/20

Terrorism Insurance Implementation (C) Working Group
Conference Call
March 12, 2020

The Terrorism Insurance Implementation (C) Working Group of the Property and Casualty Insurance (C) Committee met via conference call March 12, 2020. The following Working Group members participated: Martha Lees, Chair (NY); Joanne Bennett (AK); Susan Stapp (CA); Rolf Kaumann (CO); Angela King (DC); Heather Droge (KS); Matthew Mancini (MA); Jeana Thomas (MO); Timothy Johnson (NC); Jan Vitus (OR); Mark Worman and J'ne Byckovski (TX); and David Provost (VT).

1. Adopted its Feb. 11 Minutes

Ms. Vitus made a motion, seconded by Ms. Bennett, to adopt the Working Group's Feb. 11 minutes. The motion passed unanimously.

2. Adopted the Model Bulletin and Policyholder Disclosures

Ms. Lees explained that the changes agreed to during the Feb. 11 conference call were made to the most recent draft of the Model Bulletin and Policyholder Disclosures. She said the Background section: 1) changed the description of the reauthorized acts to include 2019; 2) eliminated the 2015 changes in the bullets; and 3) described the few changes in the Terrorism Risk Insurance Program Reauthorization Act of 2019 (TRIPRA).

Ms. Lees noted that under "Submission of Rates, Policy Form Language and Disclosure Notices," two paragraphs were eliminated describing the lapse in the previous act and the expedited System for Electronic Rate and Form Filing (SERFF) filing transmittal documents. An edit was made to say that SERFF can be used for revised terrorism product filings in support of speed to market initiatives, rather than for expedited review.

Ms. Lees said the Policyholder Disclosures were edited to eliminate references to dates prior to 2020. Ms. Vitus noted that the Policyholder Disclosures inadvertently eliminated the reference to when the current federal share came into effect. She also said the Model Bulletin should note that the 80% federal share is now fixed. Aaron Brandenburg (NAIC) said the Working Group had originally decided to only note the changes that occurred in TRIPRA 2019. Robert Woody (American Property Casualty Insurance Association—APCIA) said that since there is no longer a sliding scale for the federal compensation portion, the Model Bulletin should note that this 80% figure is now fixed. The Working Group agreed to add a bullet indicating that the U.S. government reimbursement level of covered terrorism losses exceeding the statutorily established deductible is now, as of Jan. 1, 2020, a fixed 80%.

Ms. Vitus said she sent in written comments regarding insurers that file in standard fire states. She said if the cause of loss is fire, then limits will be paid up to the limits. She was wondering if there should be a policyholder notice as an example with consistent language for the industry to use. Ms. Lees noted that the Model Bulletin mentions an optional provision for standard fire states.

Stephen C. Clarke (Insurance Services Office—ISO) cautioned against adding a policyholder notice related to standard fire policy states. He said the standard fire policy does present unique issues to consider. He said the ISO has built into its forms with terrorism exclusions policy provisions that deal with the fact that standard fire policies may affect losses caused by fire. He said exceptions do not apply across the entire policy. For example, if the policy covers extra expenses or business income, even under the commercial policy, the standard fire policy does not traditionally extend to those coverages at all. Out of states with standard fire policies, there are many ways it applies. Mr. Clarke said some states have standard fire policies that do not apply to commercial coverage in marine policies.

Mr. Clarke said a notice may delay release of the Model Bulletin and a notice that does not include all the state differences may add to confusion. He noted that the policyholder notice satisfies the requirement that insurers advise policyholders of government participation and the cost. Ms. Vitus agreed, and she said Oregon will address its specific details in its own Model Bulletin.

Ms. Byckovski noted a grammatical correction noting, “this Annual Report” should be changed to, “the Secretary’s Annual Report.”

Mr. Kaumann made a motion, seconded by Mr. Mancini, to adopt the Model Bulletin and Policyholder Disclosures with the edits agreed to during the meeting.

Having no further business, the Terrorism Insurance Implementation (C) Working Group adjourned.

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Draft: 8/6/20

Transparency and Readability of Consumer Information (C) Working Group
Virtual Summer National Meeting Meeting
July 30, 2020

The Transparency and Readability of Consumer Information (C) Working Group of the Property and Casualty Insurance (C) Committee met via conference call July 30, 2020. The following Working Group members participated: Joy Hatchette, Chair, Rashida Chairs, Cheryl Kouns, James Mobley, Joanna Noppenberger, Jocelyn Strand, Kejuana Walton and Gia Wilkerson (MD); Daniel Gates, Yada Horace and Jerry Workman (AL); Brooke Lovallo (AZ); Ken Allen and Joel Laucher (CA); Bobbie Baca and Peg Brown (CO); George Bradner and Doris Schirmacher (CT); Cheryl Wade, Angela King, Arthur Slade and Debra Wadley (DC); Patrice Dziire, Keith Fanning, Litza Mavrothalasitis, Laura Peters, KC Stralka, Andi VanderKolk and Erica Weyhenmeyer (IL); Heather Droge and Shannon Lloyd (KS); Ron Henderson (LA); Rick Cruz, Jonathan Kelly, Jacqueline Olson, Matthew Vatter and Megan Verdeja (MN); Jeana Thomas (MO); Tracy Biehn, Kathy Shortt and Lisa Volpe (NC); Chris Aufenthie, Chrystal Bartuska and John Arnold (ND); Matthew Harmon and Cuc Nguyen (OK); Tricia Goldsmith (OR); David Buono, David Kelly and Shannen Logue (PA); and Marianne Baker, J'ne Byckovski, Allison Eberhart, Regan Ellmer, Randall Evans, Shawn Martin, Kenisha Schuster and Amy Wills (TX). Also participating were: Katie Hegland, Katrina Kelly and Michael Ricker (AK); William Lacy and Taryn Lewis (AR); Vanessa Darrah (AZ); Robin David (DE); Sandra Starnes and Alison Sterett (FL); Tiffany Chang (HI); Sonya Sellmeyer (IA); Ronda Ankney, Jenifer Groth, Kate Kixmiller, Karl Knable and Claire Szpara (IN); Matthew Mancini and Michael Powers (MA); Renee Campbell (MI); Andy Case and Mike Chaney (MS); Laura Arp and Martin Swanson (NE); Ellen Walsh (NH); Carl Sornson (NJ); Erin Summers (NV); Leigh Solomon (NY); Tynesia Dorsey and Jana Jarrett (OH); Joe Cregan and Katie Greer (SC); Jill Kruger (SD); David Combs, Shelli Isiminger, Joy Little, Jennifer Ramcharan and Vickie Trice (TN); Tracey Klausmeier (UT); Vicki Ayers and Rebecca Nichols (VA); Katie Humphrey, Isabelle Turpin Keiser, Christine Menard-O'Neil, Jessica Sherpa, Anna Van Fleet and Marcia Violette (VT); Lisa Brandt and Lynn Welsh (WI); and Bill Cole, D'Anna Feurt, Kristi Alma Jose, Donna Stewart and Amanda Tarr (WY).

1. Adopted its July 16 and June 16 Minutes

Ms. Shortt made a motion, seconded by Mr. Bradner, to adopt the Working Group's July 16 (Attachment Six-A) and June 16 (Attachment Six-B) minutes. The motion passed unanimously.

2. Discussed the Need for Consumer Disclosures Regarding Significant Premium Increases on P/C Insurance Products

Ms. Hatchette said the Working Group received permission from the Property and Casualty Insurance (C) Committee to discuss premium increase disclosures in an effort to determine if there is something the Working Group can do to help consumers understand premium increase notices. Consumers do not always understand why their premiums are increasing and departments of insurance (DOIs) oftentimes receive questions from consumers regarding premium increases. Consumers need to be able to make informed decisions regarding whether notices correctly reflect the premium increases. Ms. Hatchette said the discussion today should allow the Working Group to inform the Committee regarding next steps.

Mr. Bradner said state insurance regulators receive inquiries from consumers regarding premium increases. Oftentimes, the consumer does not have a lot of information regarding the reason for the premium increase or the factors involved in causing the premium increase. Mr. Bradner said consumers might see significant premium increases, which further complicates consumer understanding. He said DOIs have seen rate changes from various insurers that have exceeded 50% at times. Oftentimes, consumers affected by these rate changes do not know what precipitated this change or the degree of the change.

Mr. Bradner said as insurers are increasingly using big data, state insurance regulators are seeing larger rate increases that are impacting the individual policyholder. He said it is important for consumers to have a better understanding of the key elements causing insurers to increase rates, which in turn cause a consumer's premium to increase. He said it would be optimal to provide a consumer with the top five characteristics contributing to their premium increase. This would provide consumers with a more transparent understanding, help consumers to identify risky behavior and the potential for incorrect or incomplete information that the consumer may be able to address with the insurer, and educate consumers.

Mr. Bradner said many states allow an insurer the flexibility to transition a rate over a period of time if they are moving a book of business to one of their other companies. The period of time a state allows an insurer to transition a rate varies by state; some states may allow a three-year period, while another state may allow a five-year period. Mr. Bradner said a consumer should understand that over the next three to five years, their premium will increase on average a certain percentage each year as the

insurer transitions the policyholder to a new rating plan. He said consumers also need to understand that the premium may increase more due to other factors during this transition period. It would be helpful for consumers to receive information broken down by transition increases, as well as other increases. In this way, there is transparency and consumers understand what is guiding increases.

Mr. Bradner said the Working Group is not looking for a recommendation to create a model law; instead, the idea is to try to provide better disclosure to consumers so they understand what is driving their overall premium.

Mr. Allen said California's consumer services department gets numerous questions from consumers regarding why their premium increased. He said consumers research the increase online and see that there was actually a decrease filing, and they want to know why they received a premium increase. He said he believes there needs to be better disclosures regarding these types of issues and a threshold regarding what triggers explanation needs to be set. He said he believes this is something the Working Group needs to pursue. Mr. Bradner agreed, and he said the Working Group will need to have discussions regarding where the threshold is set.

Ms. Ramcharan said Tennessee gets a lot of questions from consumers regarding premium increase as well. She said she believes this is a topic worth pursuing. Mr. Henderson said Louisiana gets these questions as well. He said the feedback received in Louisiana from consumers is that the state insurance regulators allow the insurers to increase premiums for unknown reasons.

Ms. Baca said Colorado encounters these same issues. She said one thing that is unique to Colorado is that they do have a disclosure requirement for a premium that has increased as a result to adverse activity, such as a motor vehicle violation, an at-fault accident, or a credit-based insurance score going up. She said the insurer has to notify the consumer that the amount of the premium increase is a result of the adverse activity. She said she does not oppose disclosures regarding general rate increases, but she is unsure of how state insurance regulators would be able to enforce them without some type of a model regulation.

Ms. Sherpa said Vermont does not require giving a policyholder a specific breakdown regarding premium increases; however, it does have a statutory requirement stating that if an insurer is renewing a policy, they have to provide notice regarding premium increases. She said she does not believe Vermont has any requirements that state that the insurer has to specify the reason if the premium is increasing. She said she is also unsure how they would enforce a requirement regarding disclosures.

Mr. Bradner said he believes it would be of interest to the Working Group for states to provide specific statutes regarding the notification process of premium increases if they have them in place. He asked states on the call to share this information with NAIC staff so the Working Group can review what other states are doing. He said Washington may have something in place, and NAIC staff will reach out following this call. Ms. Baca said she would send information regarding the process used in Colorado.

Mr. Mancini said prior to making changes to regulation, it might be prudent to provide some overall education to the consumer regarding the difference between "rate" and "premium." He said most consumers do not understand the correlation between rate and premium. Mr. Bradner agreed. Ms. Hachette asked the states to provide copies of any frequently asked questions (FAQ) or educational materials they are currently using to inform consumers about the difference between rate increases and premium increases or anything else they are doing to educate consumers regarding this topic.

Ms. Droge said Kansas has the top 30 writers of automobile and homeowners insurance in the state submit what they call an extraordinary memo. She said they provide this memo to their consumer assistance division. She said these memos reduce the questions they receive from consumers. She said they require the insurer to provide detailed information about their maximum increase and what is driving the increase. The insurer has to provide talking points to the consumer for the DOI to use to pass the information on to the consumer to specifically explain the cause of a premium increase. Ms. Droge said this has helped the DOI address consumer complaints regarding premium increases. She said she will share this information with NAIC staff to disseminate to the Working Group. Ms. Sherpa said she is interested in receiving this information, as she believes the consumer division in her DOI could benefit from this model.

Ms. Droge said Kansas also requires each insurer to submit a rate rule checklist, which provides an explanation of the maximum and minimum increase, the maximum dollar change, a histogram, etc. She said it requires a lot of detail from the insurer, and the rating division also provides rating information to the consumer assistance division. Mr. Bradner said this type of supplement would be helpful to a DOI.

Mr. Bradner said an insurer may change its tiering structure. A policyholder may have been in tier A, and due to a rating element or risk factor that has changed, this moves the policyholder to tier C. This can cause a significant premium increase, and it is important for the policyholder to understand what happened. Ms. Droge said it has been helpful to educate the consumer assistance division regarding the factors involved in approving a rate increase. Mr. Bradner asked if the market conduct division uses the tools as well. Ms. Droge said the market conduct division also uses the tools. She said the information is distributed to the financial surveillance, consumer assistance and market conduct divisions. She said if any of these divisions have any questions, they can reach out with questions. She said she would send this information to NAIC staff for distribution.

Ms. Sherpa asked Ms. Droge if the insurers provide them with the rate changes based on the filings that were filed and either approved or marked use and file, so that if a consumer contacts the consumer services division, the consumer services division can look back to the filings for more information. Ms. Droge said they do keep all this information, as well as the System for Electronic Rate and Form Filing (SERFF) numbers. She said they often go back and refer to older filings. For example, there was an insurer for which the state of Kansas received a lot of complaints. It was helpful to go back and look at the historical information.

Lisa Brown (American Property Casualty Insurance Association—APCIA) said she would contact her state filing subcommittee and ask about states that are asking for insurers to report additional information.

Brenda J. Cude (University of Georgia) said it is important for consumers to get notices that they can read and understand in a timely fashion. She volunteered to help with this effort.

Kimberly Donovan (Consumer Representative) said she has received some calls from consumers in which the consumers have called their insurer regarding rate increases. Consumers have reported that insurer representatives are oftentimes unable to explain why their premiums increased. Ms. Donovan said she believes this conversation is important.

Ms. Hatchette asked the states that have information regarding this topic to send in by Sept. 1. NAIC staff will compile this information to distribute to the Working Group. Ms. Hatchette asked the Working Group members to reach out to other states if they have heard of anything they have been doing regarding this topic.

Having no further business, the Transparency and Readability of Consumer Information (C) Working Group adjourned.

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Draft: 7/24/20

Transparency and Readability of Consumer Information (C) Working Group
Conference Call
July 16, 2020

The Transparency and Readability of Consumer Information (C) Working Group of the Property and Casualty Insurance (C) Committee met via conference call July 16, 2020. The following Working Group members participated: Joy Hatchette, Chair (MD); Bobbie Baca (CO); George Bradner (CT); Ron Henderson (LA); Carrie Couch (MO); Kathy Shortt (NC); Chris Aufenthie (ND); Sarah Graves (OR); and Marianne Baker (TX). Also participating were: Jennifer Ramcharan (TN); and Manabu Mizushima (WA).

1. Heard a Presentation from the APCIA

Ms. Hatchette said the purpose of this call is to hear some presentations to help the Working Group determine some best practices regarding ways to enhance a department of insurance's (DOI's) communication to consumers.

Lisa Brown (American Property Casualty Insurance Association—APCIA) said consumers may not follow their state DOI on social media, but they may follow their insurer on social media. She said many people are currently working from home during the COVID-19 pandemic, which makes consumers and businesses more dependent upon social media. She said insurers have recently done a lot of work to expand their social media reach.

Lauren Pavluk (APCIA) said social media focuses on a business's individual brand, and the social media page needs to identify the organization's brand and top public priorities and positions. Insurers are primarily using social media as a central hub to define their brand and tell their story through messages geared toward consumer education and preparedness, industry and talent promotion, diversity and inclusion, and societal good and philanthropy. Associations also provide information regarding advocacy.

Ms. Pavluk said each social media platform has its own niche. For example, Twitter's platform is used to promote advocacy and relay news; Facebook's platform encompasses more consumer-based family and personal content; and LinkedIn's platform embodies the business community. When tailoring communication that an organization drafts, it should do so based on the platform it is using.

Ms. Pavluk said the APCIA and its member companies are running various campaigns to promote consumer education and preparedness throughout the year. Currently, the APCIA is running campaigns regarding wildfire safety and preparation, hurricane preparedness, and auto safety; it is also providing information regarding general insurance policy tips. The APCIA also uses social media to promote events it hosts, such as the National Flood Conference held in June.

Ms. Pavluk said the challenge is for insurers and associations to get the content in front of the appropriate audience. She said it is important to be creative about how the message is relayed to the target audience.

Ms. Pavluk said associations, such as the NAIC and the APCIA, generally use social media for advocacy reasons; however, you do not generally see insurers weighing in on advocacy issues. She said Twitter is a good platform to use when advocating because it is a very news heavy platform. It is important to put position statements on social media platforms when promoting advocacy.

Ms. Pavluk said the APCIA also uses social media for industry and talent promotion. She said the APCIA discusses talent recruitment and retention issues via social media. The APCIA is promoting the insurance industry as an exciting place to work, and insurers are involved in this space. Insurers promote the benefits of being a part of their organizations. Ms. Pavluk said the APCIA is currently running a campaign called "Insurance Keeping Us Connected." She said this campaign discusses how to stay connected in the new virtual environment, as well as how to get to know your coworkers.

Ms. Pavluk said diversity and inclusion has been a priority for the insurance industry for a long time, but due to the current social environment, the APCIA and insurers are stepping up and speaking out regarding this topic. She said she believes the insurance industry will make strides in this area over the upcoming months. She said earlier this year, the APCIA hosted a "Women & Diversity" conference. She said overall, she believes insurers are making positive strides in this area.

Ms. Pavluk said societal good and philanthropy is the area where the APCIA sees some thought leadership from the insurance industry. She said Hartford's chief executive officer (CEO) is holding conversations around things such as addiction and ways to combat the opioid epidemic. This conversation started around openness and a discussion around its own staff and their families who might be struggling. Ms. Pavluk said the CSAA Insurance Group held conversations regarding mental health during mental health awareness month. These conversations were started to help reduce the stigma regarding mental health. Ms. Pavluk said there are many stories regarding how insurance companies have given back during the COVID-19 pandemic. Social media is becoming the place for insurance companies to make these types of statements and hold these conversations.

Ms. Pavluk said the DOIs are doing a great job putting content together for consumers. She said the content is well put together and tailored to the state doing the education. She said she believes the challenge is that consumers are not actively seeking this information on a day to day basis. She said if a consumer is looking to see what their policy covers, it is due to experiencing some type of loss. She said there are ways to be creative to get these messages in front of consumers. For example, she said she might be more receptive to receiving safety tips if she is already on a website like Angie's List looking for a contractor to waterproof her basement. She said the APCIA is getting ready to launch a wildfire preparedness campaign with Nextdoor, which is a neighborhood app that separates people by zip code. She said they will be able to target precise zip codes. Ms. Pavluk said you do have to advertise on Nextdoor; however, it is much less expensive to advertise on the app than the costs for other types of advertising. She said it is also inexpensive to advertise on Facebook.

Ms. Pavluk said the APCIA would like to collaborate more with other entities. She said if your social media channels look the same at the end of March as they did in January and you are not addressing COVID-19 and the new reality that people find themselves in today, then you should be rethinking your strategy. She said younger consumers are looking for organizations to take a stand on social issues and acknowledge the events people are experiencing.

2. Heard a Presentation from the NAIC Communications Department

Laura Kane (NAIC) said the NAIC Communications Department uses an integrated approach when building a communications campaign. This enables the Communications Department to leverage its assets and build an audience. Ms. Kane said the Communications Department also partners with like-minded organizations to help the NAIC broaden its reach, and it is a cost-effective way to gain greater visibility for its messages. Partnering with like-minded organizations also expands the NAIC's media coverage, reinforces the key messages, and improves the search results. NAIC staff will be sending an example of an NAIC Communications Department toolkit following the call.

Ms. Kane said the elements of the NAIC "Your Risk is Real" campaign included infographics, social media posts, Twitter chats, videos, story ideas, draft public service announcement (PSA) audio/news releases, consumer insights, satellite media tours, and web pages. The Communications Department created some interactive items for consumers to use. One item it created was a quiz for consumers called "What the Flood." This interactive piece includes education regarding flood followed by quiz questions with explanations about the answers.

Ms. Kane said another interactive piece created by the Communications Department includes putting together a "go bag." This interactive piece allows the consumer to drop items into a bag that they believe they would need to take with them if they needed to evacuate their home due to a disaster. The website reminds the consumer about the NAIC Home Inventory App for consumers to use to inventory their home prior to a disaster. The web page includes a link to the app. Ms. Kane said the NAIC is in the process of updating this app to improve the look and feel.

Ms. Kane said the Communications Department created a set of key messages, as well as sub-messages, to fit into each of the key message categories. Many people still believe that their homeowners insurance policy will cover a flood event, which is a misnomer. Ms. Kane said a survey the Communications Department conducted revealed that approximately 50% of the consumers surveyed believed their homeowners policy covered a flood event. She said when a person is insured, they will recover faster than a person that is not insured.

Ms. Kane said the Communications Department sent out a toolkit to the DOIs to let them know when various events are going to occur and when it is going to send out press releases. She said the Communications Department created information both graphically and photographically. She said people need to see a message at least seven times before they notice the message. She said it may need to even be more than seven times with social media; repetition is a strong learning tool. She said consumers need to see messages on multiple platforms.

Ms. Kane said the Communications Departments also uses Twitter chats as part of the way it communicates. The NAIC conducted these Twitter chats in conjunction with other groups, such as the Federal Emergency Management Agency (FEMA), the Insurance Institute for Business & Home Safety (IBHS), Nextdoor, and the APCA. This helps to increase the number of NAIC Twitter followers.

Ms. Kane said the Communications Department released written press releases as well as audio news releases. It also organized two satellite media tours. Superintendent Eric A. Cioppa (ME) participated in one of the satellite media tours, and Director Raymond G. Farmer (SC) participated in the other satellite media tour. The reach on these satellite media tours was in the neighborhood of 10,000,000 people. The “Risk is Real” campaign has also brought new reporters to the NAIC asking for information.

David Dunston (NAIC) demonstrated some of the tools created by the Communications Department. He also demonstrated where the NAIC website houses the flood information. Currently, the NAIC Communications Department is working on a campaign regarding health insurance education. Mr. Dunston also outlined the current health care campaign the Communications Department is working on.

3. Heard a Presentation from Brenda J. Cude

Brenda J. Cude (University of Georgia) asked the Working Group members to realize that it is a normal human reaction to rationalize decisions, as well as believe these decisions are good. She said she calls this smoothing out our deficiencies, as no one wants to say they have made a poor decision.

Ms. Cude said there are certainly people who do believe that their homeowners insurance covers a flood event. However, it is useful to also consider why someone might think their homeowners insurance covers such an event. She said it is important to think about things people have heard that might reinforce false beliefs regarding what their homeowners policy covers.

Ms. Cude said some homeowners made insurance decisions years ago and do not remember the thought process behind their decisions, while others may just not believe that their home is ever going to flood. She said if a person has never experienced a flood, it might be difficult to imagine that one would ever occur. She said managing the risk of flood is another topic the Working Group might want to consider conveying to homeowners or renters.

Ms. Cude said another category of consumers may hold the belief that the federal government will bail them out in the event of a flood. Consumers often hear about government programs, and they may assume that these programs will take care of the damage they might experience due to flooding. Ms. Cude said this might justify educating the consumer regarding the true economic fallout they would experience in the case that they do not have flood insurance coverage.

Ms. Cude said other homeowners may have thought about purchasing flood insurance, but thought it was too expensive to purchase even if they are unaware of the cost. She suggested that it might be important to educate consumers regarding some information around the cost of flood insurance.

Ms. Cude said many times when people are making insurance decisions, they are also making many other decisions. She said in this case, flood insurance may not get the person’s attention. She said there may also be those homeowners that know they may need flood insurance but decide to take the risk and not purchase flood insurance.

Ms. Cude suggested an app that hits the high points of distinct types of insurance decisions consumers are making that would be beneficial. For example, she said when purchasing a home, a consumer might be thinking of more than one type of insurance (TOI) purchase during that time, so an opportunity for education exists.

Karrol Kitt (Consumer Advocates) said she and Ms. Cude gave a report last summer during the NAIC/Consumer Liaison Committee meeting last summer. She said it is important to do consumer testing for materials that are written for consumers; however, the drawback is the cost of such testing. She said she and Ms. Cude realize that informal testing, where consumers provide their thoughts about materials that are developed by state DOIs, can also be a valuable resource.

Ms. Kitt said the report focused on 20 members of the NAIC. Each of the members were asked to comment on how they engaged consumers when designing their consumer educational and disclosure materials. There were five states in the western

zone, five states in the southern zone, five states in the midwestern zone, and five states in the northeastern zone. Ms. Kitt said 17 of the 20 states provided information.

Ms. Kitt said some of these states directly involved consumers in the design of consumer educational and disclosure materials. She said other states indirectly involved consumers or have plans to involve consumers in the future. She said she and Ms. Cude learned that the states are getting some direct feedback, but not necessarily from individual consumers. Some of those they received feedback from were experts in an area or groups the states partner with on various projects. Ms. Kitt said the states also had some testing done regarding the usefulness and usability of their websites. She said the states learned about consumer attitudes, what consumers are interested in learning about, various organizations' styles, and the content itself. She said it is important for the states to use informal testing when they do not have the resources to perform formal testing.

Ken Klein (California Western School of Law) said he would encourage state insurance regulators to consider another issue with flood insurance. He said the National Flood Insurance Program (NFIP) coverage is capped at a level that is significantly below the actual reconstruction cost of many homes. For homeowners who do not have access to enough money to cover the shortfall, flood insurance will look like a bad buy. This in turn, will drive up the percentage of people in the insurance pool who only buy flood insurance because they are required by their mortgage to do so. This will make the pricing function like high risk pools; therefore, it all becomes a rigorous cycle.

Having no further business, the Transparency and Readability of Consumer Information (C) Working Group adjourned.

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Draft: 7/20/20

Transparency and Readability of Consumer Information (C) Working Group
Conference Call
June 16, 2019

The Transparency and Readability of Consumer Information (C) Working Group of the Property and Casualty Insurance (C) Committee met via conference call June 26, 2020. The following Working Group members participated: Joy Hatchette, Chair (MD); Bobbie Baca (CO); George Bradner (CT); Angela King (DC); Heather Droge and Tate Flott (KS); Ron Henderson (LA); Jeana Thomas (MO); Kathy Shortt (NC); Chris Aufenthie (ND); Landon Hubbard, Ron Kreiter and Cuc Nguyen (OK); Tricia Goldsmith (OR); Marianne Baker (TX); and Dena Wildman (WV). Also participating were: Kate Kixmiller (IN); Renee Campbell (MI); Troy Smith (MT); Tynesia Dorsey and Jana Jarrett (OH); Manabu Mizushima (WA); and Jody Ullman (WI).

1. Discussed Creating Social Media Content and the Best Formats to Use to Communicate With Consumers

Ms. Hatchette said there is a need to help consumers better understand their insurance policies and the things that affect the insurance policy. The latest project that the Working Group completed is the *NAIC Consumer Claims Guide*. Some of the departments of insurance (DOIs) have already used this claims guide following a disaster. Ms. Hatchette said the claims guide helps answer some of the day-to-day questions that consumers have following a disaster. She said the Working Group will want to discuss other avenues to distribute the information contained in the consumer claims guide to the consumer.

Ms. Hatchette said the consumer claims guide is available to DOIs in both portable document format (pdf) and Microsoft Word format. State DOIs may want to make some changes in the consumer claims guide to meet the needs in their state and can do so easily using the Microsoft Word version of the document.

Ms. Hatchette said one of the items discussed regarding the consumer claims guide was that many consumers, especially younger consumers, are using social media more and more to obtain information. She said one of the Working Group's previous discussions included considering ways to take the information presented in the consumer claims guide and using chunks of the information to create social media posts. Ms. Thomas said if the Working Group took this approach, their communications team would post this information on their social media communications. Ms. Baca said Colorado would take advantage of this opportunity as well. Lisa Brown (American Property Casualty Insurance Association—APCIA) said the APCIA would also be willing to post this information on its social media pages too. She said she would also suggest encouraging insurers to use any information the Working Group created in their social media campaigns. Ms. Brown said this would increase the outreach to consumers, as many of them might follow their insurer on social media.

Mr. Bradner said the Working Group needs to consider discussing how to reach younger consumers, as well as identifying the various vehicles for reaching that audience. He said it is unlikely that younger consumers are looking at a DOI's social media communication. Ms. Baker said the Texas DOI is using social media and YouTube videos to inform consumers and believes it would be beneficial to explore these vehicles as well, as there will likely be a number of vehicles that state DOIs will need to use to reach the largest number of consumers.

Ken Klein (California Western School of Law) said the vehicle used today may change tomorrow. He said once the Working Group creates the social media snippets, the DOI can use whatever platform is applicable at the time. Mr. Klein said the state DOIs need to track where their audience goes to obtain information at any one moment in time.

Ms. Hatchette asked the Working Group if it is the will of the group to discuss and explore social media platforms before working on putting the information into a format to be used on social media. The Working Group agreed. Mr. Bradner said once the Working Group determines the platforms that need to be used and the audience the DOIs want to reach, then the Working Group can look at the message the Working Group wants to get out and make it interesting for the audience.

Lisa Groshong (Center for Insurance Policy and Research—CIPR) said the CIPR is interested in being more involved in this Working Group. She said she would like to know more about the priorities of the Working Group and to help with various projects.

Ms. Hatchette asked NAIC staff to see if the NAIC Communications Department would be willing to join the next Working Group conference call to discuss options regarding messaging. She said she would also be interested in hearing the insurer's viewpoint regarding the communications strategies they have found to be successful. Ms. Brown said she would be happy to reach out to APCIA's members and present some information to the Working Group during the next conference call. She said many of its members are active on social media and reach a significant percentage of their policyholders through social media.

Ms. Shortt said one of the things North Carolina does is to "like" the Facebook pages of other sources, such as the towns they visit and the fire departments they visit, and then "tag" them in their posts so it will show up on all of the pages they "like" too. She said this allows them to build partnerships with others.

Mr. Henderson said the Louisiana DOI communications team is active with social media. He said Louisiana also has a high school-based program and a college-based program, so its DOI has a lot of younger people following the DOI. Mr. Henderson said these people are interested in insurance as a career path or wanting the DOI to speak at a school. He said the DOI also has a newsletter that it sends out monthly.

Karrol Kitt (The University of Texas at Austin) reminded the Working Group that she and Brenda J. Cude (University of Georgia) presented at the NAIC/Consumer Liaison Group last June regarding a research study they did about what states do engage consumers when designing consumer information education and disclosure. She said they would be willing to send the Working Group presentations for distribution by NAIC staff. Ms. Cude said it is important to keep in mind the teachable moment when communicating to consumers. She said, for example, people want to know about flood insurance during and after a flood event, which we know is not the right time, but a reality. It is important to think about other times when it might be possible to get people's interest about flood insurance.

Ms. Hatchette asked NAIC staff to line up some presentations for the next conference call to present the Working Group with information regarding social media outlets and to help the Working Group determine the types of outreach the Working Group should consider. Once the Working Group has decided on the types of outreach, it will begin working on the message. Ms. King said the District of Columbia does some podcasting, which has been working for its DOI. She added that a podcast can be inserted into a document. Ms. Hatchette said it is up to individual states to choose what works for their state.

2. Discussed Flood Insurance Disclosures

Ms. Hatchette said the Property and Casualty Insurance (C) Committee asked the Working Group to consider creating a disclosure regarding flood insurance. She asked the Working Group for its thoughts, as there are consumers who still believe their homeowners insurance policy will cover a flood event. Even if the consumer does know about flood insurance, he or she may still have questions regarding the limitations of the flood insurance product.

Ms. Bach said the private flood insurance market has been developing relatively slowly, but there is some private flood insurance available. She suggested the Working Group consider taking on the task of preparing a comparison between an National Flood Insurance Program (NFIP) flood policy and a private flood insurance policy. Mr. Bradner said he would caution the Working Group on taking on too much right now, as the Federal Emergency Management Agency (FEMA) is in the process of working on Risk Rating 2.0. This means there are going to be some changes regarding flood insurance policies. He said he is under the impression that FEMA will also possibly be making significant changes to the flood insurance contract and may possibly include coverage for loss of use, items in finished basements, etc. Mr. Bradner said if the Working Group wants to take on this project, it might be a good idea to do so in parallel with changes put into place by FEMA. Ms. Vollucci said FEMA has deferred Risk Rating 2.0 until October 2021.

The Working Group discussed the idea of creating a disclosure for a policyholder's standard homeowners policy stating that the policy does not cover flood events. Ms. Baker said during the last legislative session in Texas, the legislature adopted a statute requiring homeowners policies that do not include flood insurance to have a disclosure that says, "You may also need to consider the purchase of flood insurance. Your insurance policy does not include coverage for damage resulting from a flood, even if hurricane winds and rain cause the flood to occur. Without separate flood insurance coverage, you may have uncovered losses covered by a flood. Please discuss the need to purchase separate flood insurance coverage with your insurance agent or insurance company or visit www.floodsmart.gov." Ms. Baker said the legislation requires any residential insurance policy or commercial insurance policy that does not include flood insurance to include this disclosure.

Mr. Bradner said that while he thinks the disclosure is a great one, one of the problems regarding disclosures is that many people receive their insurance policy in the mail and never even open the mail or read disclosures. He said after every flood event, a certain number of consumers continue to voice that they did not realize flood insurance is not covered by their homeowners insurance policy. Mr. Bradner said this is a frustrating experience for state insurance regulators.

Ms. Brown said she agrees that many consumers do not read their insurance policies. She said that one of APCIA's members received kudos from state insurance regulators years ago for putting a piece of paper in the policy's envelope that would fall out; it read something like, "Water, water, everywhere and you are not covered." Ms. Brown said she believes that for this particular issue, the message is going to have to be extremely simple and that is readily noticeable; otherwise, consumers are not going to be truly aware.

Ms. Hatchette asked Ms. Brown if she believes using the social media the Working Group will gain from its next discussion will aid in consumer understanding. Ms. Brown said she believes it is a great start and also suggested state DOIs follow local news apps and social media and tag them in posts as well. She said simple posts, such as, "By the way, did you know your homeowners insurance does not cover you for flood risk, regardless of the cause of your flood?" and tagging the various outlets will spread the message to more consumers. Ms. Brown said if you were looking at a disclosure from an insurer, she would not suggest putting this disclosure on a declarations page or somewhere in the insurance policy because consumers often times do not read their policy.

Ms. Cude said consumers are more likely to read their billing information than their insurance policy. She said messages sent to a consumer need to be put on all communications they receive. Ms. Cude said consumers also believe that if they incur damage and do not have insurance, government funds will bail them out. She said we all know this is not true and need to be sure consumers receive this message. Peter Kochenburger (University of Connecticut School of Law) agreed and said the Working Group needs to find ways to make the disclosures more obvious.

Ms. Brown said the Working Group will also need to consider how to get information to consumers that receive all of their communications regarding their insurance policy digitally. She suggested something on the payment page. Mr. Bradner said it would also be an innovative idea if a policyholder had an idea how much flood insurance would cost if he or she were to want to consider purchasing flood insurance. If insurers were able to provide this information, it might help consumers make the decision to purchase flood insurance. Mr. Bradner said the statement could say, "Your insurance policy does not cover flood damage, but if you were to purchase flood insurance, it might cost \$X per year. Contact your agent." Ms. Brown said even if an insurer was not a Write Your Own (WYO) company, it could provide a link to more information.

Ms. King said in the District of Columbia, they received some complaints in the DOI regarding an issue with consumers thinking they might have coverage for sewer backup and overflow. She said this might also need addressing at some point. Ms. King also said in terms of reaching the consumer, there are some avenues the Working Group could consider for first-time home buyers. She said there are real estate companies and groups that hold home-buying classes. This information could possibly be emphasized and disseminated in these classes.

Having no further business, the Transparency and Readability of Consumer Information (C) Working Group adjourned.

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Workers' Compensation Policy and the Changing Workforce

ABSTRACT

This paper explores how changes in work and the evolving landscape of legal employment are shifting responsibility for coverage and benefits for occupational injuries, illnesses, and fatalities. Policymakers and regulators need to understand how these changes may create gaps in coverage for workers and leave employers vulnerable to uncertain liability for injuries and deaths on the job. The paper also explores alternative policy solutions to ensure workers have access to benefits if they suffer workplace injury.

INTRODUCTION

Today's workforce and workplace look very different from the workforce and workplace when the first workers' compensation laws were passed. The cumulative impact of these changes has made it important to consider the role public policy plays in protecting workers from the health and economic consequences of an occupational injury, illness, or fatality. For most of the past century, a significant portion of workers in the U.S. labor force were protected against economic strain and physical harm through state workers' compensation laws. As work relationships have grown increasingly complex, there is uncertainty in workers' compensation protections for some in the labor force. The changes and discussions in this paper are a part of broader discussions on how employment benefits and protections might be revised, redesigned, or reimagined to reflect the contemporary work environment more accurately.

The twenty-first century workforce is more diverse, more de-centralized and more mobile than ever before. This is often at odds with employment classification laws, which were adopted when workers were predominately male and work was conducted in centralized facilities with a rigidly defined management hierarchy. Increasing work fluidity and the application of often conflicting state and federal law are resulting in business uncertainty and legislative proposals across the country. This paper presents an overview of the existing employment classification models and describes the latest legislation aimed at clarifying employment status.

Finally, the paper raises important policy questions that must be considered in light of the new work environment. Policymakers, in addition to business and labor leaders, will also appreciate the description of models and pilot programs that seek to deliver health and economic benefits to injured workers beyond the traditional workers' compensation system. Discussion and development of solutions is essential for continued economic prosperity and social stability.

Part I: Changing Relationships with Work

Background

An individual's connection to work shapes his or her life in visible and invisible ways – from lifestyle habits to self-esteem to social benefits. Throughout the last two centuries, those connections to work have become more formal and enshrined in local, state, and federal law. This work, or employment relationship, is important to individuals and their families as benefits and social protections are frequently gained through employment.¹

The first workers' compensation laws in the United States arose out of changes in the nature and connection to work. The Industrial Revolution saw workers move from farms and villages to cities, transitioning from farm and community-based work to manufacturing and industrial jobs. These changes resulted in more workers in employee/employer relationships with defined wages, hours, and job requirements.

Workers' compensation insurance prevents employees from taking legal action against their employers for workplace injuries, illnesses and deaths. In return, employees get defined benefits for covered injuries, illnesses and deaths regardless of fault or liability.²

Industrial work was dangerous, and work injuries and fatalities rose, reaching more than 61,000 deaths at work in the U.S. in 1914.³ Recognizing the economic and social cost of these injuries and deaths, state policymakers successfully passed workers' compensation laws in the majority of states by 1920. Workers' compensation was no-fault, providing guaranteed wage replacement and medical benefits for employees injured or killed at work.

A Century of Change

The past century has witnessed a transformation across the workforce and the workplace. The number of women in the labor force has steadily increased since 1948. Women represented 57.1% of the U.S. labor force in 2018.⁴ The labor force has increased in ethnic diversity. Hispanics represented 17% of the U.S. labor force in 2016 and all minorities (African-Americans, Asian-Americans, Hispanics/Latinos, and Native Americans) are projected to make up 37% of the working-age population by 2020.⁵ The labor force is steadily getting older. Workers 55 and older are projected to be close to 25% of the labor force by 2024. Union participation has been in decline; 10.7% of wage and salary workers were union members in 2017 (Figure 1).⁶ Higher education has also played a part in the labor force. Between 1992 and 2016, workers with college degrees, including advanced degrees, has increased steadily.⁷

¹ Employment benefits can include health, disability, and/or life insurance, retirement contributions, paid time off, flexible spending accounts, and/or tuition reimbursement. Social protections can include unemployment, workers' compensation, accommodations, equal opportunity, etc.

² Workers' Compensation: Overview and Issues, <https://fas.org/sgp/crs/misc/R44580.pdf>

³ Bureau of Labor Statistics.

⁴ <https://www.bls.gov/opub/reports/womens-databook/2019/home.htm#:~:text=Women's%20labor%20force%20participation%20was%2057.1%20percent%20in%202018%2C%20little,unchanged%20from%20the%20previous%20year.>

⁵ The National Center for Public Policy and Higher Education, figure 1. See:

https://www.google.com/url?sa=i&source=images&cd=&ved=2ahUKewi7iJymr9jlAhWOqp4KHcycDgUQjRx6BAGBEAQ&url=http%3A%2F%2Fwww.highereducation.org%2Freports%2Fpa_decline%2Fdecline-fl.shtml&psig=AOvVaw3uOJhMnZZkdRllmJCFoRP_&ust=1573225338643184

⁶ Union Rates: <https://www.bls.gov/news.release/union2.nr0.htm>

⁷ <https://www.bls.gov/spotlight/2017/educational-attainment-of-the-labor-force/pdf/educational-attainment-of-the-labor-force.pdf>

Figure 1. Union Membership Rates Began Falling in Mid-1950s



Sources: Data for 1930-1980: U.S. Department of Labor, assorted labor union reports/Haver Analytics. Note these figures exclude employee associations. Data for 1977-2014: Barry T. Hirsch and David A. Macpherson, "Union Membership and Coverage Database from the Current Population Survey," Unionstats.com, <http://www.unionstats.com> (accessed February 23, 2015), and U.S. Department of Labor, Bureau of Labor Statistics. Data was interpolated for 1982.

The workplace is physically different. Offices that had rows of desks with telephones and typewriters have been replaced by flex workstations and collaboration rooms. It is estimated that 4.3 million employees, close to 3% of the U.S. labor force, worked at home at least half the time in 2016. Additionally, regular work-at-home by employees have grown 140% over the last decade.⁸ Manufacturing facilities have moved from manually operated heavy equipment to technology-run, highly automated processing. <https://globalworkplaceanalytics.com/telecommuting-statistics>

<https://qz.com/work/1392302/more-than-5-of-americans-now-work-from-home-new-statistics-show/>

The kind of work is changing. The last century saw steady decline in agricultural work, manufacturing has remained steady, and service work has dramatically increased. The U.S. Bureau of Labor Statistics (BLS) projects that nine out of 10 new jobs in the next decade will be in the service-providing sector.⁹ Healthcare, personal care, community and social services, and computer and mathematical employment are some of the expected fastest-growing occupations.

These changes have dramatically impacted the way people work and live across the U.S. The cumulative impact of these changes is an expansion of the U.S. economy. Real gross domestic product (GDP) has grown from approximately \$3 trillion in 1957 to \$19 trillion in 2019.¹⁰ Labor productivity was 3.8 times higher in 2016 than in 1950 (Figure 2).¹¹

⁸ Work at home: <http://globalworkplaceanalytics.com/telecommuting-statistics>

⁹ <https://www.bls.gov/news.release/pdf/ecopro.pdf>

¹⁰ Data source found at: <https://www.thebalance.com/us-gdp-by-year-3305543>

¹¹ Data source found at: <https://research.stlouisfed.org/publications/economic-synopses/2016/08/12/labor-compensation-and-labor-productivity-recent-recoveries-and-the-long-term-trend/>

Figure 2. Compensation and Productivity: Long-Term Trend



NOTE: Both lines are normalized to 1 at 1950:Q1. Labor productivity equals real total output divided by total hours worked. Labor compensation equals real total labor compensation divided by total hours worked.
 SOURCE: BLS Labor Productivity and Costs dataset for the nonfarm business sector.

Over the century, work has also gotten safer. Workplace injuries and fatalities have declined dramatically. The workplace fatality rate was 3.5 workers per 100,000 in 2018¹² contrasted with 61 workers per 100,000 in 1914¹³. The rate of injuries/illnesses requiring time away from work was 2.8 per 100 workers in 2018 contrasted with five per 100 workers in 1914.¹⁴

The decrease in occupational injuries, illnesses, and fatalities is especially good for workers' compensation. These declines are keeping more employees engaged in the labor force and making it more affordable for businesses to obtain coverage. However, demographic and work changes have raised other challenges for the workers' compensation system. The kinds of injuries and illnesses are different, compensability questions are different, and treatment options are different. These, taken with the evolving employment relationship landscape, raise important questions about the central principles of workers' compensation and if and how they should evolve in the future.

Connections to Work

Another significant change happening within the U.S. labor force is how individuals are connected to work. From the legal perspective, there are two classifications of workers - employees and independent contractors. The common picture of an independent contractor is a person with specialized skills, talents, or expertise who works on a project basis. Independent contractors would typically have multiple clients and conduct their work with a fair degree of autonomy. Businesses would use independent contractors to supplement knowledge or experience of their existing workforce on a temporary basis to meet demand or deadlines.

Employee or Independent Contractor

Workers' compensation is generally compulsory for employers,¹⁵ and each state has rules that define employees for the purpose of workers' compensation coverage. Securing workers' compensation coverage for each of its employees is a direct business cost. In contrast, independent contractors are generally not required to have workers' compensation coverage.

¹² <https://www.bls.gov/news.release/pdf/cfoi.pdf>

¹³ <https://www.bls.gov/opub/mlr/2016/article/the-life-of-american-workers-in-1915.htm>

¹⁴ Bureau of Labor Statistics.

¹⁵ All states, except Texas and South Dakota, have compulsory workers' compensation requirements for employers. Exclusions for certain employers or kinds of employees exist in most states. The IAIABC/WCRI Inventory of Workers' Compensation laws describes coverage exclusions for each of the states.

Defining an employee or independent contractor has been a challenge within state workers' compensation systems, but classification has become more difficult as employment relationships have increased in complexity. These changes have important implications for workers' compensation, including which workers should be covered under workers' compensation and who should bear the costs of coverage. Additionally, policymakers are needed to explore how coverage requirements align incentives for businesses and workers.

While many businesses use independent contractors for highly specialized or project-based work, many organizations have made contract labor a more permanent part of their workforce. July 2018 headlines noted that the number of contractors now exceeds the number of employees at Google.¹⁶ Countless large businesses, including Apple, Facebook, and Amazon, have noted the same trend. Contract labor is used by businesses for everything from security and food service to coding and sales.

The decision by a business in how to classify its workers is significant as many protections and benefits for workers are tied to employment, including workers' compensation coverage requirements. Businesses weigh many factors when considering utilizing employees or independent contractors, but the direct cost to businesses for employees is estimated at 20-30% higher than independent contractors.

Table 1. Employee vs. Independent Contractor Status

	Business Considerations		Worker Considerations	
	Pros	Consequences	Pros	Consequences
Employees	<ul style="list-style-type: none"> Control over how, when, and where work is conducted. Less turnover Reduced litigation from employment classification disputes 	<ul style="list-style-type: none"> Higher cost (contributions to Medicare, SS, UI, WC, other payroll contributions) Compliance and enforcement with employment protections (ADA, minimum wage, FMLA, anti-discrimination, etc.) 	<ul style="list-style-type: none"> Employer contributions to Medicare, SS, UI, WC, other payroll contributions Employment protections (ADA, minimum wage, FMLA, anti-discrimination, etc.) Stability and security 	<ul style="list-style-type: none"> Diminished flexibility in how, when, and where work is conducted Limited ability to work for multiple businesses
Independent Contractors	<ul style="list-style-type: none"> Reduced cost More flexibility (on-demand labor) Gain specialized skills or experience 	<ul style="list-style-type: none"> Less control over how, when, and where work is conducted. Increased turnover Potential liability for injuries/illnesses/deaths by contractor Increased exposure to employment classification lawsuits 	<ul style="list-style-type: none"> Flexibility in how, when, and where work is conducted Ability to work with multiple businesses/clients 	<ul style="list-style-type: none"> Responsible for all required payroll contributions Not covered by many employment protections

¹⁶ <https://www.bloomberg.com/news/articles/2018-07-25/inside-google-s-shadow-workforce>

Alternative Work Arrangements

Whether a worker benefits from the protection of a workers’ compensation policy depends on whether he or she is classified as an employee or an independent contractor. However, several alternative work relationships exist that fall along the spectrum of employee and independent contractor. These alternative work relationships create additional complexity in determining employment classification. The following alternative work arrangements are defined and tracked by the BLS:

- Independent contractors:** Workers identified as independent contractors, independent consultants, or freelance workers, regardless of whether they are self-employed or wage and salary workers.
- On-call workers:** Workers called to work only as needed, although they can be scheduled to work for several days or weeks in a row.
- Temporary help agency workers:** Workers paid by a temporary help agency, whether or not their job is temporary.
- Workers provided by contract firms:** Workers employed by a company that provides them or their services to others under contract, are usually assigned to only one customer, and usually work at the customer’s work site.

For the purposes of this paper, alternative work arrangements refer to any work performed by anyone not legally defined as an “employee.” Alternative work arrangements raise important questions about coverage for injuries, illnesses, or fatalities occurred while working.

Platform Work

Alternative work arrangements are not new; however, expanded internet connectivity has created new ways to connect to work. Companies allowing workers or service providers to connect to clients or customers via the internet are often described as online platforms. Online platforms have created additional complexity in defining the legal work relationship. The rise of online platforms is often seen as being synonymous with the sharing or “gig” economy; however, these platforms reflect an example of a way to facilitate an alternative work arrangement.

Some platform workers may use this type of work as supplemental income while having a full-time job. Others work for multiple platforms at one time, piecing together a living wage.¹⁷ Platform work has expanded broadly across industries, with many types of work and services offered.

Table 2. Examples of Online Platforms

Industry	Companies
Human Intelligence Tasks	Amazon Mechanical Turk
Service (cleaning, installation, etc.)	Taskrabbit, Handy, Shiftgig
Transportation	Uber, Lyft, Sidecar
Shipping/Logistics	Postmates, Airmule
Legal	UpCounsel, PowerUp Legal,
Design/Communications	Upwork, 99designs, freelancer

By the Numbers

Quantifying the number of individuals within these various work arrangements is important in understanding how many workers are not covered if they have an occupational injury, illness or fatality. A rising number of individuals in alternative work arrangements could necessitate the need for new private or public solutions to address coverage gaps. Design and implementation of new programs will be influenced by who and how many workers they will serve.

Numerous public and private research efforts have attempted to quantify individuals in various work arrangements. Estimates range from less than 3% to more than 40% of the workforce. There are many

¹⁷ It is estimated that 40% of platform workers work for multiple platforms at one time. *2015 1099 Economy Report* by Requests for Startups published May 2015.

reasons for the significant difference in estimates, including data sources, survey methodology, definitions of work arrangements, and counting primary or supplemental income.¹⁸

Estimates of Alternative Work Arrangements

Date	Publication	Description	Estimate
May 2019	MBO Partners: The State of Independence in America	Report by MBO Partners measures independent workers in the U.S. economy.	12.3% of workforce engages in “full-time independent work.”
June 2018	BLS Contingent Worker Supplement	Published by the Bureau of Labor Statistics, the supplement measures workers in contingent (short-term or temporary) or alternative arrangements (independent contractors, temporary, on-call, or contract) as their primary source of income.	10.1% workforce in alternative arrangements for “primary income source”
May 2018	Report on Economic Well-Being of U.S. Households in 2017	Released by the Federal Reserve System, the survey measures adults engaged in “gig work” including both offline and online services and sales. ¹⁹	31% adults engaged in “gig work”
2018	State of Independence in America 2018	Longitudinal study by MBO Income that quantifies workers with independent work arrangements, including consultants, freelancers, contractors, temporary and on-call workers.	26.9% of employed population in independent work
October 2017	Freelancing in America, 2017	Published by the Freelancers Union and Upwork, the publication estimates the number of workers in supplemental, temporary, project or contract-based work.	36% of the workforce in alternative work

This broad range and lack of research consensus has resulted in inconsistent focus and no clear mandate for policy change.

Beyond measuring the number of individuals in different types of work arrangements, it is also useful to examine multi-year trends. Besides the 2017 BLS Contingent Workforce Supplement, most studies have charted an increase over the last decade in the percentage of individuals engaged in independent or alternative work for primary or supplemental income. If this trend continues it may have important implications for labor and employment policy, including workers’ compensation programs.

Impact of Change

These changes and continued technological advancement will influence the U.S. workforce and workplace in the years to come.

Some of these changes have a direct impact on workers’ compensation systems. The long-term trend of declining injuries and illnesses has translated to stable or reduced premiums for employers and robust private insurance markets in most states. Other changes have influenced how care is delivered and return-to-work opportunities for those displaced from work.

Other changes, including labor force demographics and new work environments, could influence workers’ compensation both directly and indirectly. Demographic changes are influencing who, how, and where individuals are connecting to work. The differing needs (flexibility, portability, supplemental income, debt repayment, etc.) of these diverse workers may result in accelerating growth in alternative work arrangements. The ability to engage and perform services in new ways, virtual and remote, blurs lines between control and the direction of work.

Taken in whole, these changes are increasing the need to examine existing labor law and how social benefits and protections are delivered in the future. The workers’ compensation system does not exist in a vacuum. Coverage for an occupational injury, illness, or fatality must be considered in the context of the large-scale changes within the

¹⁸ Cornell University’s School of Industrial and Labor Relations and the Aspen Institute’s Future of Work Initiative maintain the Gig Economy Data Hub which catalogues public and private research efforts to quantify various alternative work arrangements.

¹⁹ Offline services could include caregiving or house-cleaning and offline sales could include flea markets or thrift sales; online services could include platform or app work and online sales could include selling items online.

economy. At the heart of this discussion is how workers are connecting to work and who will bear responsibility for any occupational injury, illness, or fatality that occurs.

Part II: Determining Employment Status

Employment status is essential for understanding the benefits and protections to which a worker is entitled and the financial obligations a business must pay. The rules for this determination are found in federal and state statute. This is a complex and nuanced area of the law, with determinations of employment status dependent on the application of various tests and characteristics.²⁰ There is no coordination of employment determination between federal and state law.

Federal Standard

Federal statutes define “employee” in many different ways. Employment related tests are considered by the Internal Revenue Service (IRS), U.S. Social Security system, Federal Insurance Contributions Act (FICA), federal Fair Labor Standards Act (FLSA), federal Civil Rights Act, federal Age Discrimination in Employment Act (ADEA), Americans with Disabilities Act (ADA), Federal Unemployment Tax Act (FUTA), and many others.

Three tests have been used in employment determination under federal law. Depending on the law, test used, and case-specific facts, a worker could be considered an employee under one law and an independent contractor under another. Employee determination under federal law does not influence workers’ compensation coverage obligations under state law. However, there are similarities in the many characteristics considered at the state and federal level. In addition, continued changes in how workers connect to work may result in pressure to clarify and/or align employment under various areas of the law.

Tests for Employment Determination under Federal Law²¹

Common law (control): The common law test hinges on control of the means and methods of work. This can include a variety of different factors including direction and supervision of work activities, tools and materials, payment, and intent of the relationship. The IRS uses the common law test and advises three broad categories of consideration: 1) behavioral control; 2) financial control; and 3) relationship of the parties.²²

Economic realities: The economic realities test looks at the financial dependence of a worker on services performed for a specific business. This can include a variety of different factors, including the level of financial risk, whether services are integral to the business operation, and investment in facilities and equipment. The economic realities test is commonly applied under the FLSA which governs minimum wage and overtime requirements. The economic realities test is broader than the control test and generally favors employee status.

Hybrid: The hybrid test looks at both economic and common law factors. Under the hybrid test, economic realities are more heavily weighted than common law characteristics. The hybrid test has been applied in employment determinations under Title VII of the Civil Rights Act. (*see* <https://www.bls.gov/opub/mlr/2002/01/art1full.pdf>)

Numerous cases have tested the interpretation of federal law in determining employment status. A series of FedEx cases across 20 states²³ found the company improperly classified ground delivery drivers as independent contractors. The decisions hinged largely on the direction and control of drivers. Factors considered included requirements by FedEx drivers to wear uniforms, adhere to appearance standards, drive approved vehicles, and deliver packages on specific days and within certain times.

Decisions of the National Labor Relations Board (NLRB) have also been influential in the interpretation of federal law in this area. Most recently, a January 2019 ruling overturned a 2014 decision²⁴ in favor of employee status based on the application of factors related to entrepreneurial opportunity. The NLRB decision in SuperShuttle DFW noted the independence of drivers in setting hours, ownership/lease of vans, and control of payment methods results in

²⁰ Even the courts have expressed frustration in the lack of clarity in employment determinations. The Supreme Court, for example, has referred to the definition of an employee under the Americans with Disabilities Act as a “mere ‘nominal definition,’” *Clackamas Gastroenterology Assocs. v. Wells*, 538 U.S. 440, 444 (2003), and has stated that the definition of an employee under the Employee Retirement Income Security Act is “completely circular and explains nothing,” *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 323 (1992)

²¹ See [https://www.law.upenn.edu/journals/jbl/articles/volume14/issue3/Rubinstein14U.Pa.J.Bus.L.605\(2012\).pdf](https://www.law.upenn.edu/journals/jbl/articles/volume14/issue3/Rubinstein14U.Pa.J.Bus.L.605(2012).pdf)

²² See IRS at <https://www.irs.gov/newsroom/understanding-employee-vs-contractor-designation>

²³ Numerous lawsuits against FedEx were filed beginning in 2004. Two class action lawsuits were heard and decided by the Seventh Circuit Court of Appeals and the Ninth Circuit Court. The decisions resulted in mediated settlements with FedEx of more than \$400 million.

²⁴ NLRB in a 2014 FedEx case found in favor of employee status for drivers based on application of the common law test emphasizing direction and control.

significant entrepreneurial opportunity. The greater the entrepreneurial opportunity the more likely it is an independent business which would favor independent contractor status. (*see SuperShuttle DFW, Inc. and Amalgamated Transit Union Local 1338.*)

This decision was influential in shaping the NLRB Advice Memorandum related to Uber and Uber drivers' ability to unionize. The memo finds drivers for Uber are independent contractors based on the factors discussed in SuperShuttle DFW, with significance placed on control over manner and means and how the driver is compensated. Both decisions cite entrepreneurial independence as a key consideration in independent contractor status.

The NLRB notes, "Whether to take advantage of these opportunities were among the many entrepreneurial judgments UberX drivers made due to their freedom to set their work schedules, choose log-in locations, and pursue earnings opportunities outside the Uber system." The ability to work for competitors beyond Uber outweighed other factors of control asserted by the platform, including baseline fares, inability to subcontract work or repeated rejection of trips. Additionally, they noted that minimum service standards and driver ratings had little impact on the driver's earning potential. (*see Uber Technologies, Inc. Cases 13-CA-163062, 14-CA-158833, and 29-CA-177483.*)

In considering platform workers, the U.S. Department of Labor (DOL) issued an opinion letter in April 2019 which designated service providers of one platform as independent contractors under the FLSA. In applying the "economic realities" test, the U.S. DOL considered six factors²⁵ of service providers who secured jobs through the virtual platform. The opinion letter described the platform as a referral service not an employer.

These recent opinions have been interpreted by many as a signal of the current administration's leaning toward liberal application of independent contractor status. It is noted again these interpretations have no bearing in employment classification status under state workers' compensation laws. It remains to be seen if state courts will evaluate control or economic realities tests in similar ways.

State Standards

In 2017, more than 140 million U.S. jobs were covered under state workers' compensation systems (NASI, Workers' Compensation Benefits, Cost, and Coverage, 2019). State law defines workers' compensation coverage requirements across the U.S. In all states but Texas and South Dakota,²⁶ coverage is compulsory for employers. However, coverage exemptions are common. Many states do not require that workers' compensation coverage be purchased for domestic and agricultural workers²⁷ and small employers.²⁸

The general trend over the past century has been expansion of coverage to increase the number of workers protected under the workers' compensation system. The rise of alternative employment relationships may signal a reversal of this trend. The more workers that find themselves in alternative work arrangements, the more likely they will fall outside the protection of workers' compensation.

Much like federal law, there may be multiple definitions of "employee" within a state that apply to different areas of the law. This can include intra-state variation across the department of revenue, unemployment insurance, and/or workers' compensation.

In an effort to simplify and reduce confusion from differing "employment" determinations across state agencies, some states have sought to develop a statewide definition of "employee." One such effort was in Maine, when the governor created a cross-agency task force comprised of the Maine DOL, Maine Workers' Compensation Board, and the Maine Attorney General's Office, to develop a single definition of "employee." The result was the following:

Services performed by an individual for remuneration are considered to be employment subject to this chapter unless it is shown to the satisfaction of the bureau, that the individual is free from the essential direction and control of the employing unit, both under the individual's contract of service and in fact, the employing unit proves that the individual meets all of the criteria in Number 1 and three (3) of the criteria in Number 2 as listed below. (See https://www.maine.gov/labor/misclass/employment_standard.shtml)

²⁵ The six factors included control; permanency of relation; investment in facilities, equipment, and helpers; skill, initiative, judgment, or foresight required; opportunity for profit and loss; and integrality.

²⁶ Workers' compensation is voluntary in both Texas and South Dakota. In both states, employers lose the right to the exclusive remedy if they fail to purchase coverage.

²⁷ Recently, exemptions for agricultural workers have been challenged. The New Mexico Supreme Court ruled in 2016 that the agricultural exemption was unconstitutional

²⁸ A list of state-by-state exemptions can be found in Table 2 of the WCRI/IAIABC Workers' Compensation Laws as of January 1, 2019.

A similar effort is underway in Alaska, which is in response to the adoption of a new eight-part independent contractor test passed in 2018. (See HB 79).

State Employment Classification

Classification of a worker as an employee or independent contractor is essential for the workers' compensation system as it determines the coverage obligation²⁹. From the legal perspective, states are varied in their approach to employment classification. In general, states fall into the following categories:

“Employee” Presumption: Twenty-five states presume a worker is an employee unless they meet the requirements of an independent contractor. A worker may be found to be an independent contractor by meeting certain criteria as defined by law (i.e. they meet all nine provisions set forth in statute) or as determined by an opinion of a judicial body (i.e., determination by a commissioner or judge based on case specific facts).

“Independent Contractor” Presumption: Two states presume independent contractor status for those workers who have completed necessary requirements before beginning work. These requirements generally include a written contract/form filed with the state confirming independent contractor status. The presumption of independent contractor status can be overcome.

Silent: Twenty-three states have no presumption of status for a worker. The criteria for determining employment status may be described but are applied to cases individually.

Appendix A compiles the state standards used to determine employment classification status for purposes of workers' compensation coverage.

State Employment Tests

Similar to federal law, states have developed a variety of tests and/or criteria that are used in the decision of employment status. There are numerous factors considered in state law but generally states evaluate based on:

Control of the means, manner, and methods of work: Rooted in common-law, decisions about *what work must be accomplished* and *how it should be done* are central to considering control in the employment relationship. Factors of control vary across states but include who sets days/hours of work, manner in how work is conducted, service standards, appearance requirements, quality specifications or other factors interpreted as giving direction to a worker.

Relative nature of work: Considers the type of work and how it relates to core business functions. Examines how fundamental the work is to what the business does or how it operates.

Hybrid: Weighs factors of both control and the relative nature of work.

Each state has a body of case law that interprets statutes and rules based on case-specific facts. A single decision may be precedential, resulting in more or less workers considered employees for purposes of workers' compensation coverage. The opinion of the California Supreme Court in *Dynamex* demonstrates the time, cost, complexities and impact a case can have with respect to employment classification.

In 2004, *Dynamex* converted its delivery drivers to independent contractors. The company was sued, and the final ruling was issued in 2018, which found the delivery drivers were in fact employees of the company. In the decision, the California Supreme Court applied the ABC test, which requires **all** three factors be met to be considered an independent contractor. The three factors include:

- (1) Freedom from control or direction in the performance of work under the contract or engagement.
- (2) Work is outside the work of the hiring entities normal business.
- (3) Worker is engaged in an independently established trade, occupation or business of which they are performing the work.

Many have interpreted the application of the ABC test as significantly expanding those workers considered employees³⁰ in California.

²⁹ Employment status may also affect the funding mechanism of state worker' compensation agencies. In many states, the agency is funded through a maintenance tax or surcharge of gross workers' compensation insurance premiums. Typically, workers' compensation premium is calculated based on an employer's payroll. The lower the payroll, the lower the premium, which results in less maintenance tax collected to support the workers' compensation system administration in the state.

³⁰ The ABC test standard for employment classification in California took effect on January 1, 2020 as a result of the passage of House Bill 5.

In contrast, courts in other states did not find an employer-employee relationship based on similar factors. In 2018, the New York Appellate Division held there was no employer-employee relationship in *Vega vs. Postmates Inc.* because couriers failed to provide sufficient proof of Postmates' control over the way work was performed. *Sebago vs. Boston Cab Dispatch* in 2015 found that taxicab drivers were independent contractors because they were free from control and direction of the cab companies.

Marketplace Contractors

The state-by-state nature of employment law, uncertainty, cost and time to confirm employment status creates a volatile business environment. In the past several years, platform companies have worked to change laws to clarify the status of platform service providers as independent contractors. A new term of art, marketplace contractors, was defined, which applies to service providers who are connecting to work through a virtual platform.

Between 2016 and 2018, eight states successfully passed legislation or rule related to marketplace contractors. The eight states are: Arizona, Florida, Indiana, Iowa, Kentucky, Tennessee, Texas,³¹ and Utah. Under these new laws, platform service providers are independent contractors if they meet certain requirements. Common marketplace contractor criteria include:

- Written agreement between the platform and the marketplace contractor that says the marketplace contractor is providing services as an independent contractor and not an employee. Most of the legislation granted retroactive status if these agreements were in place previously.
- The platform must be virtual: a web, mobile application or software program. Some legislative language specifically excludes phone or fax services or prohibits services being carried out in a physical location within the state.
- Payment for services performed must be paid on a contract or rate basis. The marketplace contractor is responsible for all tax obligations.
- The marketplace contractor is responsible for providing their own tools or materials to complete the work.
- The marketplace contractor can set his or her own hours.

Some states may have exclusions include transportation networking companies (TNCs), freight transportation, political subdivisions, religious/charitable/educational organizations, and American Indian tribes.

Impact of Legal Uncertainty of Employment Classification

Changes in the workforce noted in Part I raise questions about the application and applicability of current methods of determining employment status, especially as related to control of means and methods of work. Work is being organized and performed in ways that allow both independence and oversight in ways that does not fit neatly within current legal frameworks described in Part II. The continued evolution of workers connecting and performing work in new ways may require revision³² or a redesigned framework for employment classification.

Part III: Alternative Coverage Models

Changes in work relationships raise important public policy questions about the protections and benefits currently linked to employment. A continued increase in alternative work arrangements may necessitate new models and programs for social protections, including wage replacement and medical care for occupational injuries, illnesses and fatalities. New programs might exist within the current workers' compensation system or outside of it. Regardless, consideration of the human, economic and social costs of injuries, illnesses and fatalities at work is an important element to be included in future policy conversations.

Several ideas have emerged that consider benefits and protections in new forms. The following are strategies considered for protecting workers and businesses from the health and economic costs of a work injury:

Independent Contractor Coverage

One way to extend coverage is to amend the state workers' compensation statute to allow a business to optionally provide workers' compensation coverage to designated independent contractors. Elective coverage for an independent contractor would extend exclusive remedy for the business and be considered

³¹ The Texas Workforce Commission adopted a rule (40 T.A.C. § 815.134) which defines a "Marketplace Contractor" as an independent contractor and makes those individuals ineligible for unemployment benefits. Since workers' compensation is optional in Texas it has no impact on workers' compensation coverage.

³² There have been discussion papers on alternative options for employment classification. Some have argued for dependent contractor and others have lobbied for independent workers. Any new direction would clearly need to identify which benefits and protections, including workers' compensation, would be conferred by that status.

a benefit for the contractor. If properly structured, this would not affect the individual's independent contractor status for unemployment insurance and wage purposes. Texas allows this option for hiring contractors in Texas Labor Code, Section 406.144.

Black Car Fund

The **Black Car Fund** is a mechanism that provides workers' compensation coverage for more than 70,000 black car drivers in New York. The Fund was created in 1999 and is funded by a surcharge paid by the customer on each ride provided by an eligible driver.³³ Drivers obtain coverage through their dispatch organizations, which are members of the Fund. The unique statutory nature of the Black Car Fund designates drivers as "employees," so they are eligible for workers' compensation benefits under New York state law. They retain independent contractor status for all other purposes.

More generically, this concept could be considered a "guild model" where workers providing services in a specific industry (transportation, hairdressing, engineering, etc.) could access workers' compensation coverage collectively. This could be an attractive alternative for platform companies because the statutory nature of the fund gets around paying "benefits" that could be interpreted as "employee status."

Occupational Accident Insurance

The private insurance market offers **occupational accident insurance** policies for those workers not eligible for workers' compensation. These policies are often associated with high-risk industries with a significant number of independent operators/contractors (i.e. long-haul trucking). An occupational accident insurance policy offers defined coverage for a work-related injury or fatality by the policyholder. Coverage can be purchased directly by an operator/independent contractor or offered by a platform/contracting company.

As a general matter, occupational accident insurance typically includes coverages and benefits associated with workers' compensation insurance including medical, wage replacement and death benefits. However, there are important differences in a workers' compensation policy and an occupational accident policy. Occupational accident policies generally have a total benefits cap: a cap on medical benefits, and a cap on wage replacement. In addition, there may be no compensation for permanent impairment or consideration of vocational rehabilitation. There are often exclusions for kinds of injuries/illnesses covered, and abbreviated injury or claim reporting requirements. While there is limited access to an external dispute resolution system, occupational accident insurance is subject to the standard insurance claim dispute processes (e.g., a claimant is permitted to file a complaint with his/her state insurance department, and the insurer is subject to fair claims handling and bad faith laws).

One example is the **driver injury protection** policy offered to Uber drivers by Aon and Atlantic Specialty Insurance. Uber drivers pay \$0.03 per mile, and coverage includes medical benefits, wage replacement benefits and death benefits if they suffer a covered injury while on the app is on. Likewise, as of June 2019, DoorDash now maintains occupational accident insurance on behalf of all U.S. "Dashers" while on a delivery.

Occupational accident insurance is regulated under a different line of insurance than workers' compensation. This may create a disconnect or confusion for both businesses and workers regarding benefits across the two types of coverage.

Disability Insurance

Another mechanism for providing coverage is expanded use of disability insurance. Disability insurance provides wage replacement benefits for an individual who suffers a sickness or injury. Disability insurance has both private and public insurance options, and five states³⁴ have mandatory disability insurance programs.

There are key differences between disability insurance and workers' compensation: Disability insurance does not pay medical benefits, wage replacement is capped, and there is no consideration of either permanent partial or total disability or fatalities.

Portable Benefits

³³ The current surcharge is 2.5%, <https://www.nybcf.org/faqs>

³⁴ California, Hawaii, New Jersey, New York, and Rhode Island

Portable Benefit accounts de-couple social protections from the employer and offer coverages to an individual worker. An account is funded, and can then be used to obtain various coverages including healthcare, disability or occupational accident insurance, and/or workers' compensation. Funding of the account could be designed in many ways but could include contributions from an employer(s), platform(s), contract organization(s), client(s), and/ or the worker.

Portable benefit accounts have been conceptually supported by policymakers, businesses, labor leaders, and think tank organizations but have not been widely piloted. Important policy, design, and administrative questions must be defined in order to understand if portable accounts would be effective in deliver benefits for work-related injuries, illnesses, and fatalities.

Each of these mechanisms could serve as a model for extending work-related injury, illness and fatality coverage for workers in alternative work arrangements.

Policy Questions and Considerations

Exclusive remedy: One of the central principles of workers' compensation is exclusive remedy. Employees who have a work-related injury, illness or fatality receive the medical and wage replacement benefits afforded to them by state law. Once those have been received, employers have no further liabilities. If alternative coverage mechanisms are developed, should exclusive remedy be afforded to those businesses? What provisions or standards must be met to have exclusive remedy?

Universal coverage: Workers' compensation started off as a voluntary program but trended toward universal coverage (with some exceptions). Coverage had clear benefit for both employers and employees. If universal coverage is desirable, you must decouple the mandate from the employment relationship (i.e., employee only) and determine how coverage can be delivered in different environments (i.e., Do independent contractors have to purchase a workers' compensation policy?).

Standard benefits: Workers' compensation benefits (wage replacement and medical) are defined in state statute and applied in the same way for all employees in a state. The advantage of a statutory benefit scheme is that it creates equity across all employees/employers and promotes societal stability (given adequacy of benefits). The disadvantage of this scheme is that benefits may not always be "fair" (i.e., account for pain/suffering; maximums penalize high income earners, etc.).

Funding/Delivery: Workers' compensation policies are funded by employers who pay premiums or self-fund. In nonstandard work arrangements, the financial responsibility for an occupational injury is ambiguous and, therefore, who funds coverage bears discussion. Is it the contracting firm's responsibility (i.e. for all workers regardless of employment status), or is there a cost-sharing obligation by classification or work type?

Market Access: Workers' compensation has developed market solutions for businesses who are unable to purchase coverage in the voluntary market (residual market or insurer of last resort). Is a solution like this required or desired for workers in alternative work arrangements? Should the cost of coverage be a consideration in developing or determining solutions (i.e., if you are making \$1,000 a year in additional income should you have to buy a policy that costs you some fraction of that?).

Safe Harbor: Should safe harbor provisions exist for businesses who purchase or offer some coverages (health, workers' compensations, etc.) to ensure they are not interpreted as employment status? What provisions would need to be met for safe harbor? What liabilities would the business and worker face in these situations?

Conclusions

Workers' compensation is an essential element of the protections and benefits businesses and workers have had in the last century. Employers gain certainty and limit their liability to injuries, illnesses, or fatalities that occur at work. Employees receive healthcare and wage replacement to heal and recover with lessened financial burden. This fragile balance has resulted in sustained stability and equity for most American businesses and their workers.

The employee-employer framework on which the U.S. workers' compensation system is built has become increasingly complex. Businesses are relying more and more on a labor force that does not neatly fit within legally defined employees and independent contractors. These external changes have the potential for significantly changing employment related protections and benefits.

This presents real questions for the workers' compensation system. Policymakers, labor, management, and other system stakeholders need to begin considering and preparing for these impacts. 100 years ago, workers' compensation was adopted after countless lives were lost or seriously damaged by a work injury. Proactively

addressing new changes in work and the workplace are the key to responding without more lives lost by American workers.

Appendix A: State Standards Used to Determine Independent Contractor Status (2019)

State	Presumption employee status	Special Rules Specific Occupations	General Description of Criteria
AL	No provision	ALA. CODE § 25-5-50 (2017)	<p>If the employer’s right of control over the individual extends no further than directing what is to be ultimately accomplished, the individual is an independent contractor. The employer must not retain the right to dictate the manner of operation or how the work should be done. The factors to be considered in determining whether an individual or an entity has retained the right of control include:</p> <ol style="list-style-type: none"> (1) Direct evidence demonstrating a right or an exercise of control. (2) The method of payment for services. (3) Whether equipment is furnished. (4) Whether the other party has the right to terminate the employment. <p>ALA. CODE § 25-5-1 (2017); <i>Atchison v. Boone Newspapers, Inc.</i>, 981 So.2d 427 (Ala. Civ. App. 2007).</p>
AK	<p>No</p> <p><i>Alaska Pulp Corp. v. United Paperworkers Int’l Union</i>, 791 P.2d 1008 (Alaska 1990)</p>	ALASKA STAT. § 23.30.230 (2017)	<p>The Alaska Supreme Court has adopted the “relative nature of the work” test for distinguishing between employees and independent contractors. The test first considers the character of the individual’s work or business, which is determined by considering three factors:</p> <ol style="list-style-type: none"> (1) The degree of skill involved. (2) Whether the individual holds himself out to the public as a separate business. (3) Whether the individual bears the accident burden. <p>The test then considers the relationship of the individual’s work or business to the purported employer’s business, which is also broken into three factors:</p> <ol style="list-style-type: none"> (1) The extent to which the individual’s work is a regular part of the employer’s regular work. (2) Whether the individual’s work is continuous or intermittent. (3) Whether the duration of the work is such that it amounts to hiring of continuous services rather than a contract for a specific job. <p><i>Odsather v. Richardson</i>, 96 P.3d 521 (Alaska 2004).; ALASKA STAT. § 23.30.055 (2017).</p> <p>The Alaska Workers’ Compensation Board applies a similar “relative nature of the work” test. The test weighs six factors, the first two being the most important; at least one of these two factors must be resolved in favor of an “employee” status for the board to find that a person is an employee. The six factors are whether the work:</p> <ol style="list-style-type: none"> (1) Is a separate calling or business. If the person performing the services has the right to hire or terminate others to assist in the performance of the service for which the person was hired, there is an inference that the person is not an employee. If the employer: <ol style="list-style-type: none"> (a) Has the right to exercise control of the manner and means to accomplish the desired results, there is a strong inference of employee status. (b) And the person performing the services has the right to terminate the relationship at will, without cause, there is a strong inference of employee status. (c) Has the right to extensive supervision of the work, then there is a strong inference of employee status. (d) Provides the tools, instruments and facilities to accomplish the work and they are of substantial value, there is an inference of employee status; if the tools, instruments and facilities to accomplish the work are not significant, no inference is created regarding the employment status. (e) Pays for the work on an hourly or piece rate wage rather than by the job, there is an inference of employee status.

			<p>(f) And person performing the services entered into either a written or oral contract, the employment status the parties believed they were creating in the contract will be given deference. However, the contract will be construed in view of the circumstances under which it was made and the conduct of the parties while the job is being performed.</p> <p>(2) Is a regular part of the employer’s business or service. If it is a regular part of the employer’s business, there is an inference of employee status.</p> <p>(3) Can be expected to carry its own accident burden. This element is more important than factors (4)-(6). If the person performing the services is unlikely to be able to meet the costs of industrial accidents out of the payment for the services, there is a strong inference of employee status.</p> <p>(4) Involves little or no skill or experience. If so, there is an inference of employee status.</p> <p>(5) Is sufficient to amount to the hiring of continuous services, as distinguished from contracting for the completion of a particular job. If the work amounts to hiring of continuous services, there is an inference of employee status.</p> <p>(6) Is intermittent, as opposed to continuous. If the work is intermittent, there is a weak inference of no employee status.</p> <p>ALASKA ADMIN. CODE tit. 8, § 45.890 (2017); ALASKA STAT. § 23.30.395 (2017).</p>
AZ	<p>Rebuttable presumption of independent contractor status created upon the execution of a written agreement compliant with ARIZ. REV. STAT. ANN. § 23-902 (2017).</p>	<p>ARIZ. REV. STAT. ANN. § 23-909-910 (2017)</p>	<p>An independent contractor is a person engaged in work for a business who is:</p> <p>(1) Independent of that business in the execution of the work and not subject to the rule or control of the business for which the work is done.</p> <p>(2) Engaged only in the performance of a definite job or piece of work.</p> <p>(3) Subordinate to that business only in effecting a result in accordance with that business design.</p> <p>As for the first element, Arizona courts have adopted the “right to control” test, which examines the following factors:</p> <p>(1) The duration of the employment.</p> <p>(2) The method of payment.</p> <p>(3) Who furnishes necessary equipment.</p> <p>(4) The right to hire and fire.</p> <p>(5) The extent to which the employer may exercise control over the details of the work.</p> <p>(6) Whether the work was performed in the usual and regular course of the employer’s business.</p> <p>Home Ins. Co. v. Indus. Comm’n, 599 P.2d 801 (Ariz. 1979).</p> <p>A business or independent contractor may prove the existence of an independent contractor relationship by executing a written agreement stating that the business:</p> <p>(1) Does not require the independent contractor to perform work exclusively for the business.</p> <p>(2) Does not provide the independent contractor with any business registrations or licenses required to perform the specific services set forth in the contract.</p> <p>(3) Does not pay the independent contractor a salary or hourly rate instead of an amount fixed by contract.</p> <p>(4) Will not terminate the independent contractor before the expiration of the contract period, unless the independent contractor breaches the contract or violates the Arizona law.</p> <p>(5) Does not provide tools for the independent contractor.</p> <p>(6) Does not dictate the time of performance.</p> <p>(7) Pays the independent contractor in the name appearing on the written agreement.</p> <p>(8) Will not combine business operations with the person performing the services rather than maintaining these operations separately.</p> <p>ARIZ. REV. STAT. ANN. § 23-902 (2017).</p>

AR	<p>Yes</p> <p><i>Silvicraft, Inc. v. Lambert</i>, 661 S.W.2d 403 (Ark. Ct. App. 1983)</p>	<p>ARK. CODE ANN. § 11-9-102 (2017)</p>	<p>Various factors are considered to determine the status of a worker:</p> <ol style="list-style-type: none"> (1) The right to control the means and the method by which the work is done. (2) The right to terminate the employment without liability. (3) The method of payment. (4) The furnishing, or the obligation to furnish, the necessary tools, equipment, and materials. (5) Whether the person employed is engaged in a distinct occupation or business. (6) The skill required in a particular occupation. (7) Whether the employer is a business. (8) Whether the work is an integral part of the regular business of the employer. (9) The length of time for which the person is employed. <p>However, the “right to control” test is usually sufficient to decide most disputes. The ultimate question in these cases is whether the employer has the right to control over the doing of the work, not whether the employer actually exercises such control.</p> <p>ARK. CODE ANN. § 11-9-102 (2017); <i>Riddell Flying Service v. Callahan</i>, 206 S.W.3d 284 (Ark. Ct. App. 2005).</p>
CA	<p>Yes</p> <p>CAL. LAB. CODE § 2750.5 (2017)</p>	<p>CAL. LAB. CODE § 3352 (2017)</p>	<p>California adopted Assembly Bill No. 5, effective Jan. 1, 2020.</p> <p>This bill addresses employment status when a hiring entity claims that the person it hired is an independent contractor. AB 5 requires the application of the “ABC test” to determine if workers are employees or independent contractors.</p> <p>Under the ABC test, a worker is considered an employee and not an independent contractor, unless the hiring entity satisfies all three of the following conditions:</p> <ol style="list-style-type: none"> (1) The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact. (2) The worker performs work that is outside the usual course of the hiring entity’s business. (3) The worker is customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed. <p>Cal. Labor Code § 2750.3 (West 2019)</p>
CO	<p>Yes</p> <p>COLO. REV. STAT. ANN. § 8-40-202 (West 2017)</p>	<p>COLO. REV. STAT. ANN. § 8-40-202 (West 2017)</p>	<p>Colorado courts have adopted both the “control” test and the “relative nature of the work” test for purposes for determining a worker’s status. If either test is met, the worker is considered an employee for workers’ compensation purposes.</p> <p>The “control” test primarily considers whether the alleged employer exercises control over the means and methods of accomplishing the contracted service. Other factors include:</p> <ol style="list-style-type: none"> (1) Whether compensation is measured by time or lump sum. (2) Which party furnishes the necessary tools and equipment to perform the work. <p>The “relative nature of the work” test considers the following factors:</p> <ol style="list-style-type: none"> (1) The character of the individual’s work. (2) The relationship of the individual’s work to the alleged employer’s business. <p>COLO. REV. STAT. ANN. § 8-40-202 (West 2017); <i>Brighton Sch. Dist. v. Lyons</i>, 873 P.2d 26 (Colo. App. 1993); <i>Frank C. Klein & Co. v. Colo. Comp. Ins. Auth.</i>, 859 P.2d 323 (Colo. App. 1993).</p>

CT	No provision	CONN. GEN. STAT. § 31-275 (2017)	<p>Connecticut courts have adopted the “right to control” test to determine a worker’s status. The test asks whether the employer has “the right to control the means and methods” used by the worker in the performance of his or her job. As such, an independent contractor is defined as one who, exercising an independent employment, contracts to do a piece of work according to his or her own methods and without being subject to the control of his employer, except as to the result of his work.</p> <p>Hanson v. Transp. Gen. Inc., 716 A.2d 857 (Conn. 1998); Chute v. Mobil Shipping & Transportation Co., 627 A.2d 956 (Conn. App. Ct. 1993); CONN. GEN. STAT. § 31-275 (2017).</p>
DE	No provision	DEL. CODE ANN. tit. 19, §§ 2301; 2307; 2308; 2316 (2017)	<p>Delaware courts have adopted § 220 of the Restatement (Second) of Agency in determining a worker’s status. The Restatement requires consideration of the following factors:</p> <ol style="list-style-type: none"> (1) The extent of control, which, by the agreement, the master may exercise over the details of the work. (2) Whether or not the one employed is engaged in a distinct occupation or business. (3) The kind of occupation, with reference to whether, in the locality, the work is usually done under the discretion of the employer or by a specialist without supervision. (4) The skill required in the particular occupation. (5) Whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work. (6) The length of time for which the person is employed. (7) The method of payment, whether by the time or by the job. (8) Whether or not the work is a part of the regular business of the employer. (9) Whether or not the parties believe they are creating the relation of master and servant. (10) Whether the principal is or is not in business. <p>Falconi v. Coombs & Coombs, Inc., 902 A.2d 1094 (Del. 2006); Restatement (Second) of Agency § 220 (1958); DEL. CODE ANN. tit. 19, § 2301 (2017).</p>
DC	No provision	D.C. CODE § 32-1501 (2017)	<p>The Department of Employment Services (DOES) applies the “relative nature of the work” test to determine a worker’s status, which focuses on whether the individual is hired to do work in which the company specializes. There are two prongs to the test. First, the nature and character of the individual’s work or business is considered by analyzing three factors:</p> <ol style="list-style-type: none"> (1) The degree of skill involved. (2) The degree to which it is a separate calling or business. (3) The extent to which it can be expected to carry its own accident burden. <p>The second prong analyzes the relationship of the individual’s work to the purported employer’s business. 3 factors are considered:</p> <ol style="list-style-type: none"> (1) The extent to which the individual’s work is a regular part of the employer’s regular work. (2) Whether individual’s work is continuous or intermittent. (3) Whether the duration is sufficient to amount to the hiring of continuous services, as distinguished from contracting for the completion of a particular job. <p>D.C. CODE § 32-1501 (2017); Gross v. D.C. Dept. of Emp’t Serv., 826 A.2d 393 (D.C. 2003).</p>
FL	No provision	FLA. STAT. § 440.02 (2017)	<p>A worker is considered an independent contractor provided at least 4 of the following criteria are met:</p> <ol style="list-style-type: none"> (1) The independent contractor maintains a separate business with his or her own work facility, truck, equipment, materials, or similar accommodations. (2) The independent contractor holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal regulations. (3) The independent contractor receives compensation for services rendered or work performed, and such compensation is paid to a business rather than to an individual.

			<p>(4) The independent contractor holds one or more bank accounts in the name of the business entity for purposes of paying business expenses or other expenses related to services rendered or work performed for compensation.</p> <p>(5) The independent contractor performs work or is able to perform work for any entity in addition to or besides the employer at his or her own election without the necessity of completing an employment application or process.</p> <p>(6) The independent contractor receives compensation for work or services rendered on a competitive-bid basis or completion of a task or a set of tasks as defined by a contractual agreement, unless such contractual agreement expressly states that an employment relationship exists.</p> <p>If four of the criteria above do not exist, an individual may still be presumed to be an independent contractor and not an employee based on full consideration of the nature of the individual situation with regard to satisfying any of the following conditions:</p> <ol style="list-style-type: none"> (1) The independent contractor performs or agrees to perform specific services or work for a specific amount of money and controls the means of performing the services or work. (2) The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform. (3) The independent contractor is responsible for the satisfactory completion of the work or services that he or she performs or agrees to perform. (4) The independent contractor receives compensation for work or services performed for a commission or on a per-job basis and not on any other basis. (5) The independent contractor may realize a profit or suffer a loss in connection with performing work or services. (6) The independent contractor has continuing or recurring business liabilities or obligations. (7) The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures. <p>FLA. STAT. § 440.02 (2017).</p>
GA	No provision	GA. CODE ANN. § 34-9-2 (2017)	<p>An individual is an independent contractor if such person meets all of the following criteria:</p> <ol style="list-style-type: none"> (1) Is a party to a contract which intends to create an independent contractor relationship. (2) Has the right to exercise control over the time, manner, and method of the work to be performed. (3) Is paid on a set price per job or a per unit basis, rather than on a salary or hourly basis. <p>GA. CODE ANN. § 34-9-2 (2017).</p>
HI	No provision	HAW. REV. STAT. § 386-1 (2017)	<p>Both the "control" and "relative nature of the work" tests are used to determine an individual's status.</p> <p>Under the "control" test, an employment relationship exists when the person in whose behalf the work is done has the power to dictate the means and methods by which the work is to be accomplished. Conversely, "[o]ne who contracts with another to do a specific piece of work for him [or her], and who furnishes and has the absolute control of his [or her] assistants, and who executes the work entirely in accord with his [or her] ideas, or with a plan previously given him [or her] by the person for whom the work is done, without being subject to the latter's orders in respect of the details of the work, with absolute control thereof...is an independent contractor."</p> <p>The "relative nature of the work test" involves a balancing of factors regarding the general relationships which the employee has with regard to the work performed for each of his employers. Relevant factors include:</p> <ol style="list-style-type: none"> (1) Whether the work done is an integral part of the employer's regular business. (2) Whether the worker, in relation to the employer's business, is in a business or profession of his own.

			HAW. REV. STAT. §§ 386-73.5; 386-1 (2017); Locations, Inc. v. Haw. Dept. of Labor, 900 P.2d 784 (Haw. 1995).
ID	Yes Moore v. Moore, 269 P.3d 802 (Idaho 2011)	IDAHO CODE ANN. §§ 72-102; 72-212 (2017)	The test to determine an individual's status is whether the contract gives, or the employer assumes, the right to control the time, manner and method of executing the work, as distinguished from the right merely to require certain definite results. The Idaho courts use a four-factor test to determine an individual's status: <ol style="list-style-type: none"> (1) There must be evidence of the employer's right to control the employee. (2) The method of payment. (3) Whether the employer or individual furnishes major items of equipment. (4) Whether either party has the right to terminate the relationship at will, or whether one is liable to the other in the event of a preemptory termination. IDAHO CODE ANN. § 72-102 (2017); Shriner v. Rausch, 108 P.3d 375 (Idaho 2005); Kiele v. Steve Henderson Logging, 905 P.2d 82 (Idaho 1995).
IL	No provision	820 ILL. COMP. STAT. 305/1 (2017)	A number of factors are considered in determining an individual's status. The most important factor is whether the purported employer has a right to control the actions of the individual, followed by the nature of the work performed by the individual in relation to the general business of the employer. Additional relevant, albeit less important, factors include: <ol style="list-style-type: none"> (1) The method of payment. (2) The right to discharge. (3) The skill the work requires. (4) Which party provides the needed instrumentalities. (5) Whether income tax has been withheld. (6) The label the parties place upon their relationship. 820 ILL. COMP. STAT. 305/1 (2017); Esquinca v. Ill. Workers' Comp. Comm'n, 51 N.E.3d 5 (Ill. App. Ct. 2016).
IN	Yes Walker v. State, 694 N.E.2d 258 (Ind. 1998)	IND. CODE §§ 22-3-2-9; 22-3-6-1 (2017)	The Indiana Supreme Court has adopted the test articulated in § 220 of the Restatement (Second) of Agency in determining a worker's status. The Restatement requires consideration of the following factors: <ol style="list-style-type: none"> (1) The extent of control which, by the agreement, the master may exercise over the details of the work. (2) Whether or not the one employed is engaged in a distinct occupation or business. (3) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision. (4) The skill required in the particular occupation. (5) Whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work. (6) The length of time for which the person is employed. (7) The method of payment, whether by the time or by the job. (8) Whether the work is a part of the regular business of the employer. (9) Whether the parties believe they are creating the relation of master and servant. (10) Whether the principal is or is not in business. Moberly v. Day, 757 N.E.2d 1007 (Ind. 2001); Restatement (Second) of Agency § 220 (1958); IND. CODE § 22-3-6-1 (2015).
IA	Yes Daggett v. Nebraska-Eastern Exp., Inc., 107 N.W.2d 102 (Iowa 1961)	IOWA CODE § 85.61 (2016)	Iowa courts have adopted two tests for determining a worker's status. First, in determining the existence of an employer-employee relationship, the courts analyze the following five factors: <ol style="list-style-type: none"> (1) The right of selection, or to employ at will. (2) Responsibility for payment of wages by the employer. (3) The right to discharge or terminate the relationship. (4) The right to control the work. (5) The identity of the employer as the authority in charge of the work or for whose benefit it is performed. Second, in determining whether a worker qualifies as an independent contractor, the courts consider the following eight factors:

			<ol style="list-style-type: none"> (1) The existence of a contract for the performance by a person of a certain piece or kind of work at a fixed price. (2) The independent nature of the business or of a distinct calling. (3) The employment of assistants, with the right to supervise their activities. (4) The obligation to furnish necessary tools, supplies and materials. (5) The right to control the progress of the work, except as to final result. (6) The time for which the worker is employed. (7) The method of payment, whether by time or by job. (8) Whether the work is part of the regular business of the employer. <p>Above all, the “right to control” is the most important consideration.</p> <p>The parties’ intent may also be considered as a factor in the analysis, although the courts have warned that this analysis should not be determinative and should only be considered if the “right to control” factor is debatable.</p> <p>IOWA CODE § 85.61 (2016); Stark Constr. v. Lauterwasser, 847 N.W.2d 612 (Iowa Ct. App. 2014).</p>
KS	No provision	KAN. STAT. ANN. § 44-508 (2014)	<p>Kansas courts have adopted the Restatement factors in determining a worker’s status. However, the single most important factor is whether the employer controls, or has the right to control, the manner and methods of the worker in doing the particular task. Additional considerations include:</p> <ol style="list-style-type: none"> (1) Whether or not the one employed is engaged in a distinct occupation or business. (2) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision. (3) The skill required in the particular occupation. (4) Whether the employer or the workman supplies the instrumentalities, tools and the place of work for the person doing the work. (5) The length of time for which the person is employed. (6) The method of payment, whether by the time or by the job. (7) Whether the work is part of the regular business of the employer. (8) Whether the parties believe they are creating the relation of master and servant. (9) Whether the principal is or is not in business. <p>Travelers Indem. Co. of Ill. v. Challenger Fence Co., Inc., 119 P.3d 666 (Kan. Ct. App. 2005); Restatement (Second) of Agency § 220 (1958); KAN. STAT. ANN. § 44-508 (2014).</p>
KY	Yes KY. REV. STAT. ANN. § 342.640 (2014)	KY. REV. STAT. ANN. § 342.640 (2014)	<p>Kentucky courts analyze four predominant factors to determine a worker’s status:</p> <ol style="list-style-type: none"> (1) The alleged employer’s right to control the details of the work. (2) The nature of the work as related to the business generally carried on by the alleged employer. (3) The professional skill of the individual. (4) The true intent of the parties. <p>The “right to control” factor is the most important in the analysis, which is determined by analyzing the following factors:</p> <ol style="list-style-type: none"> (1) Method of payment. (2) Which party furnishes the equipment. (3) Whether the alleged employer has the right to discharge the individual performing the work. <p>Steinrock v. Cook, No. 2011-SC-000032-WC (Ky. Aug. 25, 2011); Uninsured Emp’rs’ Fund v. Garland, 805 S.W.2d 116 (Ky. 1991).</p>
LA	Yes LA. REV. STAT. ANN. § 23:1021 (2013)	LA. REV. STAT. ANN. § 23:1021 (2013)	<p>Louisiana courts consider the following factors in determining a worker’s status:</p> <ol style="list-style-type: none"> (1) Whether there is a valid contract between the parties. (2) Whether the work being done is of an independent nature such that the individual may employ non-exclusive means in accomplishing it. (3) Whether the contract calls for specific piecework as a unit to be done according to the individual’s own methods without being subject to the control and direction of the principal, except as to the result of the services to be rendered. (4) Whether there is a specific price for the overall undertaking.

			<p>(5) Whether the specific time or duration is agreed upon and not subject to termination at the will of either side without liability for breach.</p> <p>Steinfelds v. Villarubia, 53 So.3d 1275 (La. Ct. App. 2010); LA. REV. STAT. ANN. § 23:1021 (2013).</p>
ME	<p>Yes</p> <p>ME. REV. STAT. tit. 39-A, § 102 (2013)</p>	<p>ME. REV. STAT. tit. 39-A, § 102 (2013)</p>	<p>An individual is presumed to be an employee unless the employing unit proves that the person is free from the essential direction and control of the employing unit. In order for an individual to be an independent contractor, the following criterial must be met:</p> <ol style="list-style-type: none"> (1) The person has the essential right to control the means and progress of the work except as to final results. (2) The person is customarily engaged in an independently established trade, occupation, profession or business. (3) The person has the opportunity for profit and loss as a result of the services being performed for the other individual or entity. (4) The person hires and pays the person’s assistants, if any, and, to the extent such assistants are employees, supervise the details of the assistants’ work. (5) The person makes the person’s services available to some client or customer community even if the person’s right to do so is voluntary not exercised or is temporarily restricted. <p>Additionally, at least three of the following criteria must be met:</p> <ol style="list-style-type: none"> (1) The person has a substantive investment in the facilities, tools, instruments, materials and knowledge used by the person to complete the work. (2) The person is not required to work exclusively for the other individual or entity. (3) The person is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work. (4) The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work. (5) Payment to the person is based on factors directly related to the work performed and not solely on the amount of time expended by the person. (6) The work is outside the usual course of business for which the service is performed. (7) The person has been determined to be an independent contractor by the federal Internal Revenue Service (IRS). <p>ME. REV. STAT. tit. 39-A, § 102 (2013).</p>
MD	<p>Yes</p> <p>MD. CODE ANN. LAB. & EMP. § 9-202 (2009)</p>	<p>MD. CODE ANN. LAB. & EMP. §§ 9-203 to 9-236 (2009)</p>	<p>Maryland courts consider five criteria in determining a worker’s status. The decisive consideration is the “control” test: whether the employer has the right to control and direct the employee in the performance of the work and in the manner in which the work is done. The following factors are also relevant:</p> <ol style="list-style-type: none"> (1) The power to select and hire the employee. (2) The payment of wages. (3) The power to discharge. (4) Whether the work is part of the regular business of the employer. <p>Injured Workers’ Ins. Fund v. Orient Exp. Delivery Serv., Inc., 988 A.2d 1120 (Md. Ct. Spec. App. 2010); MD. CODE ANN. LAB. & EMP. § 9-202 (2009).</p>
MA	<p>Yes</p> <p>MASS. GEN. LAWS ch. 149, § 148B (2004)</p>	<p>MASS. GEN. LAWS ch. 152, § 1 (2011)</p>	<p>The standard in determining a worker’s status is the same as the common law agency standard, the primary factor being the right to control. Massachusetts courts consider the factors set out in the Restatement (Second) of Agency, which are as follows:</p> <ol style="list-style-type: none"> (1) The extent of control which, by the agreement, the master may exercise over the details of the work. (2) Whether or not the one employed is engaged in a distinct occupation or business. (3) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision. (4) The skill required in the particular occupation.

			<p>(5) Whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work.</p> <p>(6) The length of time for which the person is employed.</p> <p>(7) The method of payment, whether by the time or by the job.</p> <p>(8) Whether or not the work is part of the regular business of the employer.</p> <p>(9) Whether the parties believe they are creating the relation of master and servant.</p> <p>(10) Whether the principal is or is not in business.</p> <p>Travelers Prop. Cas. Co. of Am. v. Universal Drywall, LLC., 10 N.E.3d 178 (Mass. App. Ct. 2014); Restatement (Second) of Agency § 220 (1958); MASS. GEN. LAWS ch. 152, § 1 (2011).</p>
MI	No provision	MICH. COMP. LAWS §§ 418.115 to 418.120; 418.161 (2017)	<p>In order for a worker to be considered an employee, three criteria must be met. The worker must not:</p> <ol style="list-style-type: none"> (1) Maintain a separate business. (2) Hold himself or herself out to and render service to the public. (3) Be an employer subject to the worker’s compensation act. <p>MICH. COMP. LAWS § 418.161 (2012); Auto-Owners Ins. Co. v. All Star Lawn Specialists Plus, Inc., 857 N.W.2d 520 (Mich. 2014).</p>
MN	No provision	<p>Minnesota regulations set forth criteria for 34 specific occupations. Minn. R. 5224.0010 to 5224.0340 (2017).</p> <p>MINN. STAT. § 181.723 (2009) sets forth criteria for construction contractors.</p> <p>MINN. STAT. § 176.043 (2009) sets forth criteria for trucking and messenger/courier industries.</p>	<p>Minnesota courts have adopted a five-factor test to determine the status of workers not specifically engaged in the occupations enumerated in MINN. R. 5224.0010 to 5224.0340 (2017):</p> <ol style="list-style-type: none"> (1) The right to control the means and manner of performance. (2) The mode of payment. (3) The furnishing of tools and materials. (4) Control over the premises where the work was done. (5) The right of discharge. <p>Of the factors, the right to control is the most important. A number of considerations are used to determine whether the employer possesses such a right to control, including:</p> <ol style="list-style-type: none"> (1) Employer’s authority over the individual’s assistants. (2) The individual’s compliance with instructions. (3) Whether oral or written reports are required to be submitted to the employer. (4) Whether the work is performed on the employer’s premises. (5) Whether services must be personally rendered to the employer. (6) Whether there exists a continuing relationship between the parties. (7) Whether the employee has set hours of work. (8) Whether the individual has been trained by the employer. (9) The amount of time the individual dedicates to the work. (10) Whether the individual has simultaneous contracts with different firms. (11) Whether tools and materials have been furnished by the employer. (12) Whether the individual’s expenses are reimbursed. (13) Whether the employer is required to enforce standards or restrictions imposed by regulatory and licensing agencies. <p>Guhlke v. Roberts Truck Lines, 128 N.W.2d 324 (Minn. 1964); Hunter v. Crawford Door Sales, 501 N.W.2d 623 (Minn. 1993); MINN. R. 5224.0330 (2017); Minn. Dept. of Lab. And Indus., Workers’ Compensation – Determining Independent Contractor or Employee Status, https://www.dli.mn.gov/business/workers-compensation/work-comp-independent-contractor-or-employee</p>
MS	No provision	MISS. CODE ANN. §§ 71-3-3; 71-3-5 (West 2017)	<p>Mississippi courts have adopted the “right to control” test to determine a worker’s status. The test consists of the following factors:</p> <ol style="list-style-type: none"> (1) Direct evidence of right or exercise of control. (2) The method of payment. (3) The furnishing of equipment. (4) The employer’s right to fire. <p>Se. Auto Brokers v. Graves, 210 So.3d 1012 (Miss. Ct. App. 2015); MISS. CODE ANN. § 71-3-3 (West 2011).</p>
MO	No	MO. REV. STAT. § 287.020 (2017)	<p>The primary test to determine a worker’s status is the right to control. If an employer has the right to control the means and manner of a worker’s service, the</p>

	<p>McCracken v. Wal-Mart Stores East, LP, 298 S.W.3d 473 (Mo. 2009)</p>		<p>worker is an employee rather than an independent contractor. A number of factors are considered in this analysis:</p> <ol style="list-style-type: none"> (1) The extent of control. (2) The actual exercise of control. (3) The duration of the employment. (4) The right to discharge. (5) The method of payment. (6) The degree to which the alleged employer furnished equipment. (7) The extent to which the work is the regular business of the employer. (8) The employment contract. <p>Where the control analysis does not settle the issue, the “relative nature of the work” test is also applied. This test analyzes the economic and functional relationship between the nature of the work and a business’ operation. The following factors are considered:</p> <ol style="list-style-type: none"> (1) The amount of skill the worker’s job requires. (2) The degree to which the work is a separate calling or enterprise. (3) The extent to which the job might be expected to carry its own accident burden. (4) The relation of the job to the employer’s business. (5) Whether the job being performed is continuous or intermittent. (6) Whether the job’s duration amounts to the hiring of continuous services rather than a contract for the completion of a particular job. <p>Missouri law allows some independent contractors to recover under worker’s compensation law. Individuals having work done under contract on or about their premises that is an operation of the usual business that they carry are considered an employer and are liable to all workers, regardless of status, for worker’s compensation.</p> <p>Leach v. Bd. of Police Comm’rs of Kansas City, 118 S.W.3d 646 (Mo. Ct. App. 2003); MO. REV. STAT. § 287.040 (2017).</p>
<p>MT</p>	<p>Yes</p>	<p>MONT. CODE ANN. § 39-71-118 (2017)</p>	<p>In determining whether an individual is an independent contractor, the court will consider the following factors:</p> <ol style="list-style-type: none"> (1) Direct evidence of right or exercise of control. (2) Method of payment. (3) Furnishing of equipment. (4) Right of employer to fire. <p>Under MONT. CODE ANN. § 39-71-417 (2011), a worker can apply for an “Independent Contractor Certification” if, among other things, the worker swears to and acknowledges:</p> <ol style="list-style-type: none"> (1) That the applicant has been and will continue to be free from control or direction over the performance of the person’s own services, both under contract and in fact. (2) That the applicant is engaged in an independently established trade, occupation, profession or business and will provide sufficient documentation of that fact to the department. <p>Doig v. Graveley, 809 P.2d 12 (Mont. 1991); MONT. CODE ANN. §§ 39-71-118 (2017); 39-71-417 (2011).</p>
<p>NE</p>	<p>Yes</p>	<p>NEB. REV. STAT. § 48-106 (2010) Industry Exceptions</p>	<p>Nebraska’s workers’ compensation law and case law suggest there is no single test for determining whether one is an employee or independent contractor, but instead the following factors will be considered in the determination of status:</p> <ol style="list-style-type: none"> (1) The extent of control that the employer may exercise over the details of the work. (2) Whether the one employed is engaged in a distinct occupation or business. (3) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision. (4) The skill required in the particular occupation. (5) Whether the employer or the one employed supplies the instrumentalities, tools, and the place of work for the person doing the work. (6) The length of time for which the one employed is engaged. (7) The method of payment, whether by time or by the job.

			<p>(8) Whether the work is part of the regular business of the employer.</p> <p>(9) Whether the parties believe they are creating an agency relationship.</p> <p>(10) Whether the employer is or is not in business.</p> <p>NEB. REV. STAT. § 48-101 (2010); Omaha World-Herald v. Dernier, 570 N.W.2d 508 (Neb. 1997).</p>
NV	No	NEV. REV. STAT. §§ 616A.105 to 616A.360 (2013)	<p>Nevada's worker's compensation law defines an independent contractor as any person who renders service for a specified recompense for a specified result, under the control of the person's principal as to the result of the person's work only and not as to the means as to which the result is accomplished.</p> <p>Under Nevada's Industrial Insurance Act, if a worker meets three or more of the following criteria, there is a presumption that the worker is an independent contractor:</p> <ol style="list-style-type: none"> (1) The person has control and discretion over the means and manner of the performance of any work and the result of the work, rather than the means or manner by which the work is performed, and is the primary item bargained for by the principal in the contract. (2) The person generally has control over the time the work is performed. (3) The person is not required to work exclusively for one principal unless a law, regulation or ordinance otherwise prohibits the person from providing services to more than one principal or the person has entered into a written contract to provide services to only one principal. (4) The person is free to hire employees to assist with the work. (5) The person contributes a substantial investment of capital in the business of the person, including without limitation: <ol style="list-style-type: none"> (a) Purchase or lease of ordinary tools, material and equipment. (b) Obtaining of a license or other permission from the principal to access any work space of the principal to perform the work. (c) Lease of any work space from the principal required to perform the work for which the person was engaged. <p>The fact that a person does not satisfy three or more of the listed criteria does not automatically create a presumption that the person is an employee.</p> <p>NEV. REV. STAT. §§ 608.0155 (2015); 616A.255.</p>
NH	Yes	N.H. REV. STAT. ANN. § 281-A:2 (2017)	<p>Under New Hampshire's worker's compensation law, the presumption of employee status can be rebutted if a person meets all of the following criteria:</p> <ol style="list-style-type: none"> (1) The person possesses or has applied for a federal employer identification number or a social security number, or in the alternative, has agreed in writing to carry out the responsibility imposed on employers under this chapter. (2) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer. (3) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer, although the employer may still prescribe a completion schedule, range of work hours and maximum number of work hours to be provided by the person. (4) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work. (5) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations. (6) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work. (7) The person is not required to work exclusively for the employer. <p>N.H. REV. STAT. ANN. § 281-A:2 (2017).</p>

NJ	Yes	N.J. STAT. ANN. § 43:21-19 (2010)	<p>Under New Jersey’s unemployment law, services provided for remuneration shall be deemed to be under an employment relationship unless it is shown that:</p> <ol style="list-style-type: none"> (1) An individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact. (2) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed. (3) Such individual is customarily engaged in an independently established trade, occupation, profession or business. <p>The New Jersey Supreme Court in <i>Hargrove v. Sleepy’s, LLC</i>, 106 A.3d 449 (2015) adopted the above test for worker’s compensation purposes and stated that for determining whether an individual is an employee or an independent contractor, the courts must consider twelve factors:</p> <ol style="list-style-type: none"> (1) The employer’s right to control the means and manner of the worker’s performance. (2) The kind of occupation and whether the work is supervised or unsupervised. (3) The amount of skill involved. (4) Who furnishes the equipment and workplace. (5) The length of time in which the individual has worked. (6) The method of payment. (7) The manner of termination of the work relationship. (8) Whether there is annual leave. (9) Whether the work is an integral part of the business of the employer. (10) Whether the worker accrues retirement benefits. (11) Whether the employer pays social security taxes. (12) The intention of the parties. <p>N.J. STAT. ANN. § 43:21-19 (2010), <i>Hargrove v. Sleepy’s, LLC</i>, 106 A.3d 449 (N.J. 2015).</p>
NM	Yes	No provision	<p>New Mexico courts will first employ a “right-to-control” test to determine whether a worker is an employee or independent contractor. If the right-to-control test points to independence, the court will then apply a “relative-nature of the work” test.</p> <p>Factors that may be considered in determining existence of employment relationship include:</p> <ol style="list-style-type: none"> (1) Direct evidence of exercise of control. (2) The right to terminate employment relationship at will by either party without liability (3) The right to delegate work or to hire and fire assistants. (4) The method of payment whether by time or by job. (5) Whether the party employed engages in distinct operation or business. (6) Whether the work is part of employer’s regular business. (7) Skill required in particular occupation. (8) Whether the employer supplies instrumentalities, tools or place of work. (9) Duration of person’s employment. (10) Whether the person works full-time or part-time of control by one and submission to control by the other. <p>N.M. STAT. ANN. § 52-1-22 (1978); <i>Romero v. Shumate Constructors, Inc.</i>, 888 P.2d 940 (N.M. 1994); <i>Harger v. Structural Services, Inc.</i>, 916 P.2d 1234 (N.M. 1996).</p>
NY	Yes	<p>Presumption for employment for construction workers unless the worker is a “separate business entity”</p> <p>§ 861-c; N.Y. WORKER’S</p>	<p>An independent contractor is one who is:</p> <ol style="list-style-type: none"> (1) Free from control and direction in performing the job, both under his contract and in fact. (2) The service is performed outside the usual course of business for which the service is performed. (3) The individual is customarily engaged in an independently established trade, occupation, profession or business that is similar to the service at issue. <p>When making a determination of whether an employer-employee relationship exists, the New York courts will consider factors such as the right to control the</p>

		COMPENSATION LAW § 21	work, the method of payment, the right to discharge, the furnishing of equipment and supplies, and the relative nature of the work. No single factor is dispositive. N.Y. WORKER'S COMPENSATION LAW §§ 2, 21 (2017); Sang Hwan Park v. Lee, 53 A.D.3d 936 (2008).
NC	Yes	§ 97-5.1 (2013) Presumption that taxicab drivers are independent contractors	North Carolina courts define "independent contractor" as one who exercises an independent employment and contracts to do certain work according to his own judgment and method, without being subject to his employer except as to the result of his work. The determinative factor in North Carolina courts as to whether a person is an employee or independent contractor for purposes of workers' compensation is control. North Carolina courts will use the "right to control" when determining whether a person is an employee or an independent contractor for purposes of the Workers' Compensation Act. Generally, where an employer has the right to control over the means and the methods of an employee's work, there will be an employer-employee relationship. The requirement of control is sufficiently met where its extent is commensurate with that degree of supervision that is necessary and appropriate considering the type of work to be done and the capabilities of the person doing it. The North Carolina courts will also look at eight factors which indicate classification as independent contractor, including if: <ol style="list-style-type: none"> (1) The worker is engaged in independent business, calling, or occupation. (2) The worker has independent use of his or her special skill, knowledge, or training in execution of work. (3) The worker is doing specified piece of work at fixed price or for lump sum or upon quantitative basis. (4) The worker is not subject to discharge because he adopts one method of doing work rather than another. (5) The worker is not in regular employ of other contracting party. (6) The worker is free to use such assistants as he or she may think proper. (7) The worker has full control over such assistants. (8) The worker is able to select his or her own time. N.C. GEN. STAT. § 97-2 (2000); Youngblood v. North State Ford Truck Sales, 364 S.E.2d 433 (N.C. 1988); Alford v. Victory Cab Co., Inc., 228 S.E.2d 43 (N.C. 1976); McCown v. Hines, 537 S.E.2d 242 (N.C. 2000).
ND	Yes	N.D. CENT. CODE § 65-01-03	N.D. ADMIN CODE § 92-01-02-49 (2012) states that 20 factors are to be considered when determining whether a worker is an independent contractor or an employee: <ol style="list-style-type: none"> (1) The amount of instructions given to the employee by the employer. (2) The amount of training given to the employee. (3) The amount of integration of a person's services into the business operations. (4) Services rendered personally. If the services must be rendered personally, the person whom the services are performed for are interested in the methods used, which goes towards employee-employer relationship. (5) The ability to hire, supervise, and pay assistants. (6) The continuing relationship between the person and person(s) for whom the services are performed. (7) Set hours of work. (8) Whether full-time is required. An independent contractor is one who is free to work when and for whom he or she chooses. Full-time required suggests an employer-employee relationship. (9) Where the work is performed. (10) The order or sequence set the work must be performed. (11) Whether there is a requirement for regular oral or written reports. (12) How the worker is paid. (13) Whether there is payment of business or traveling expenses, or both. (14) Who is responsible for furnishing of tools and materials. (15) Whether there is significant investment in facilities used by the workman. (16) Realization of profit or loss: A person who may realize a profit or suffer a loss as a result of the person's services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the person who cannot is an employee.

			<p>(17) Whether the worker provides services for more than one employer at a time.</p> <p>(18) Whether the worker's services are available to the general public.</p> <p>(19) Whether the right of the employer to terminate/discharge exists.</p> <p>(20) The right to dismissal.</p> <p>There is no certain number of the 20 factors of the common-law test that must be met to qualify as an independent contractor, and the degree of each factor varies depending on the occupation and the factual context in which the services are performed.</p> <p>N.D. CENT. CODE. § 65-01-02 (2017); Myers-Weigel Funeral Home v. Job Ins. Div. of Job Serv. N.D., 578 N.W.2d 125 (N.D. 1998).</p>
OH	No provision	OHIO REV. CODE ANN. § 4123.01 (2015) Industry Exceptions	<p>OHIO REV. CODE ANN. § 4123.01 (2015) states that a person who meets at least 10 of the following criteria are excluded from the definition of employee:</p> <ol style="list-style-type: none"> (1) The worker is required to comply with instructions from the other contracting party regarding the manner or methods of performing services. (2) The person is required by the other contracting party to have particular training. (3) The person's services are integrated into the regular functioning of the other contracting party. (4) The person is required to perform the work personally. (5) The person is hired, supervised, or paid by the other contracting party. (6) A continuing relationship exists between the person and the other contracting party that contemplates continuing or recurring work even if the work is not full time. (7) The person's hours of work are established by the other contracting party. (8) The person is required to devote full time to the business of the other contracting party. (9) The person is required to perform the work on the premises of the other contracting party. (10) The person is required to follow the order of work set by the other contracting party. (11) The person is required to make oral or written reports of progress to the other contracting party. (12) The person is paid for services on a regular basis such as hourly, weekly, or monthly. (13) The person's expenses are paid for by the other contracting party. (14) The person's tools and materials are furnished by the other contracting party. (15) The person is provided with the facilities used to perform services. (16) The person does not realize a profit or suffer a loss as a result of the services provided. (17) The person is not performing services for a number of employers at the same time. (18) The person does not make the same services available to the general public. (19) The other contracting party has a right to discharge the person. (20) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement. <p>The general test for determining independent contractor status considers the following factors: who has the right to direct what shall be done and when and how it shall be done; the existence of a contract for the performance by a person of a certain piece or kind of work at a fixed price; the independent nature of the worker's business; the worker's employment of assistants with the right to supervise their activities; his or her obligation to furnish the necessary tools, supplies, and materials; his or her right to control the progress of the work except as to final results; the time for which the workman is employed; the method of payment, whether by time or by job; and whether the work is part of the regular business of the employer.</p> <p>Gillum v. Ind. Com'n, 141 Ohio St. 373 (1943).</p>

OK	No provision	<p>OKLA. ADMIN. CODE § 380:30-1-2 (2012)</p> <p>Department of Labor excludes business owners, volunteers, co-partners, and joint venturers from the definition of “employee”</p>	<p>Oklahoma’s case law and the DOL set out several factors to be considered when determining whether an employee/employer relationship exists, including:</p> <ol style="list-style-type: none"> (1) The nature of the contract between the parties. (2) The degree of control the employer may exercise on the details of the of the work. (3) Whether the one employed is engaged in a distinct occupation or business for others. (4) The kind of occupation with reference to whether in the locality the work is usually done under the direction of the employer. (5) The skill required in the particular occupation. (6) Whether the employer or the workman supplies the instrumentalities, tools and the place of work for the person doing the work. (7) The length of time for which the person is employed. (8) The method of payment. (9) Whether the work is part of the regular business of the employer. (10) Whether the parties believe they are creating the relationship of master and servant. (11) The right of either to terminate the relationship without liability. <p>No one factor is controlling, and the court will look into the set of particular facts of each case.</p> <p>Carbajal v. Precision Builders, Inc., 333 P.3d 258 (OK 2014); OKLA. ADMIN. CODE § 380:30-1-2 (2012).</p>
OR	No provision	<p>OR. REV. STAT. § 656.027 (2010)</p> <p>Certain holders of professional licenses</p>	<p>OR. REV. STAT. § 670.600 (2005) defines an independent contractor as a person who provides services for remuneration and who is:</p> <ol style="list-style-type: none"> (1) Free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results. (2) Except as provided in subsection (4) of this section, is customarily engaged in an independently established business. (3) Is licensed under Oregon Revised Statutes Chp. 671 or 701 if the person provides services for which a license is required under those chapters. (4) Is responsible for obtaining other licenses or certificates necessary to provide services. <p>This definition of independent contractor has been adopted into the worker’s compensation statute. OR. REV. STAT. § 656.005 (2017)</p> <p>Oregon case law states that in determining whether a person is an independent contractor, the right to control is decisive. The principal factors in determining independent contractor status are:</p> <ol style="list-style-type: none"> (1) The evidence of the right to or actual exercise of control. (2) The method of payment. (3) The furnishing of equipment. (4) The right to fire. <p>See McQuiggin v. Burr, 119 Or. App. 202 (1993); Soderback v. Townsend, 57 Or.App. 366 (1982).</p>

PA	Yes	<p>Domestic Service, Real Estate, Construction Workers</p> <p>77 P.S. § 676; 43 P.S. § 933.3</p>	<p>In determining employee or independent contractor status, the following factors should be considered, but all do not need to be present:</p> <ol style="list-style-type: none"> (1) Control of the manner in which work is to be done. (2) Responsibility for result only. (3) Terms of agreement between the parties. (4) Nature of the work or occupation. (5) Skill required for performance. (6) Whether one employed is engaged in distinct occupation or business. (7) Who supplies the party tools. (8) Whether payment is by time or by job. (9) Whether work is part of regular business or alleged employer. (10) Whether alleged employer had right to terminate employment at any time. <p>Control over the work to be completed and the manner in which it is to be performed are the primary factors in determining employee status for purposes of the worker's compensation act.</p> <p>77 P.S. § 22; <i>Hammermill Paper Company v. Rust Engineering Company</i>, 243 A.2d 389 (Pa. 1968); <i>Johnson v. W.C.A.B. (Dubois Courier Exp.)</i>, 631 A.2d 693 (Pa. 1993).</p>
RI	No provision	<p>28 R.I. GEN. LAWS. ANN. §§ 28-29-2; 28-29-7 to 28-29-7.2; 28-29-15</p> <p>Certain industries have special status or are exempted</p>	<p>Under Rhode Island's workers' compensation law, an independent contractor is a person who has filed a notice of designation as independent contractor with the director pursuant to or as otherwise found by the workers' compensation court.</p> <p>In determining whether a worker is an employee or independent contractor, the status depends on the employer's right or power to exercise control over methods and means of performing the work and not the exercise of actual control. Whether an injured worker is an employee or independent contractor must be decided by the employment contract in the particular case and the surrounding particular circumstances.</p> <p>28 R.I. GEN. LAWS. ANN. §§ 28-29-2; 28-29-17.1 (1956) <i>Pasetti v. Brusa</i>, 98 A.2d 833 (1953); <i>Henry v. Mondillo</i>, 142 A. 230 (1928).</p>
SC	Yes	<p>S.C. CODE ANN. § 42-1-360 (2007)</p> <p>Exemption of casual employees and certain other employments from worker's compensation law</p>	<p>Case law establishes the criteria for distinguishing between employee and independent contractor under South Carolina's worker's compensation law.</p> <p>Determination of whether a worker's compensation claimant is an employee or independent contractor focuses on the issue of control.</p> <p>In determining whether an employer had a right to control a workers' compensation claimant in performance of his or her work, there are four factors the court will look at:</p> <ol style="list-style-type: none"> (1) Direct evidence of the right or exercise of control. (2) Furnishing of equipment. (3) Method of payment. (4) Right to fire. <p>It is not actual control exercised, but whether there exists a right and authority to control and direct the particular work or undertake as to the manner or means of its accomplishment.</p> <p>S.C. CODE ANN. § 42-1-130 (1976); <i>Nelson v. Yellow Cab Co.</i>, 343 S.C. 102, 538 S.E.2d 276 (S.C.App. 2000); <i>Shatto v. McLeod Regional Medical Center</i>, 406 S.C. 470 (2013).</p>
SD	No provision	<p>S.D. CODIFIED LAWS §§ 62-1-4 to 62-1-5.1</p> <p>Certain industry exceptions</p>	<p>There are three primary factors South Dakota courts look at to determine whether one is employee or independent contractor include:</p> <ol style="list-style-type: none"> (1) Whether individual has been and will continue to be free from control or direction over performance of services. (2) Both under contract of service and in fact. (3) Whether the individual is customarily engaged in independent established trade, occupation, profession or business. <p>Specifically, courts will employ a "right of control" test is used to determine independent contractor status, which includes consideration of the following factors:</p> <ol style="list-style-type: none"> (1) Direct evidence of rate of control. (2) Method of payment.

			<p>(3) Furnishing of major items of equipment. (4) Right to terminate employment relationship at will and without liability.</p> <p>S.D. CODIFIED LAWS §§ 62-1-2 (1994); 62-1-3 (2008) Egemo v. Flores, 470 N.W.2d 817 (S.D. 1991); Davis v. Frizzell 504 N.W.2d 330 (S.D. 1993).</p>
TN	Yes	<p>Construction workers are exempt from the statutory classification test if requirements of TENN. CODE. ANN. § 50-6-102(10) are met</p>	<p>Tennessee’s workers’ compensation law states that to determine whether an individual is an employee or independent contractor, the following factors will be considered:</p> <ol style="list-style-type: none"> (1) The right to control the conduct of the work. (2) The right of termination. (3) The method of payment. (4) The freedom to select and hire helpers. (5) The furnishing of tools and equipment. (6) Self-scheduling of working hours. (7) The freedom to offer services to other entities. <p>For purposes of determining whether employee’s relationship is employee or independent contractor, courts consider whether work being performed by contractor is same type of work usually performed by the company that hired the contractor and whether the company has right to control employees of contractor.</p> <p>TENN. CODE ANN. § 50-6-102 (2017); Barber v. Ralston Purina, 825 S.W.2d 96 (1991).</p>
TX	No provision	<p>TEX. INS. CODE ANN. §§ 406.091 to 406.098; 406.141 to 406.146; 406.161 to 406.165</p> <p>Special coverage to members of certain industries, construction workers and farm and ranch employees</p>	<p>Texas’ workers’ compensation act defines an independent contractor as a person who contracts to perform work or provide a service for the benefit of another and who ordinarily:</p> <ol style="list-style-type: none"> (1) Acts as the employer of any employee of the contractor by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship; (2) Is free to determine the manner in which the work or service is performed, including the hours of labor of or method of payment to any employee; (3) Is required to furnish or to have employees, if any, furnish necessary tools, supplies, or materials to perform the work or service. (4) Possesses the skills required for the specific work or service. <p>The Texas courts will also consider the following factors when considering whether one is an independent contractor: the independent nature of the worker’s business; the worker’s obligation to furnish necessary tools, supplies and material to perform the job; the worker’s right to control progress of work, except as to final results; the time for which (s)he is employed; and method of payment, whether by time or by job.</p> <p>TEX. INS. CODE ANN. § 406.121 (1993); Industrial Indem. Exchange v. Southard, 138 Tex. 531 (1942); INA of Texas v. Torres, 808 S.W.2d 291. (1991).</p>
UT	Yes	<p>UTAH CODE ANN. § 34A-2-104 (2017)</p> <p>Excludes certain industries from the definition of “employee” for purposes of the statute</p>	<p>Utah’s workers’ compensation law defines an independent contractor as any person engaged in the performance of any work for another who, while so engaged, is:</p> <ol style="list-style-type: none"> (1) Independent of the employer in all that pertains to the execution of the work. (2) Not subject to the routine rule or control of the employer. (3) Engaged only in the performance of a definite job or piece of work. (4) Subordinate to the employer only in effecting a result in accordance with the employer’s design. <p>The Utah court will consider whatever agreements exist concerning the right of control, as well as the actual dealings between the parties and the control that was in fact asserted. Determination of status of individual as an employee or an independent contractor is based on various factors, and of primary concern is the control, direction, supervision, or the right to control, direct or supervise on behalf of the employer.</p> <p>UTAH CODE ANN. § 34A-2-103 (2017); Utah Home Fire Ins. Co. V. Manning, 985 P.2d 243 (1999); Ruster Lodge v. Industrial Commission, 562 P.2d 227 (1977).</p>

VT	No provision	Vt. Stat. Ann. tit. 21, §§ 601; 706 Certain industry exceptions	<p>Vermont’s case law establishes the test for determining whether a worker is an employee or independent contractor and will utilize the “right to control” test.</p> <p>Factors that are taken into account when employing the “right to control” test include the location of the work, whether the employee chose their own hours, whether the employee used their own tools for the job, how the employee was paid and whether the type of work being carried out by a worker is the type of work that could have been carried out by the owner’s employees as part of the regular course of business.</p> <p>Vt. STAT. ANN. tit. 21, § 601; Crawford v. Lumbermen’s Mut. Cas. Co., 220 A.2d 480 (1966); Klinker v. Furdiga, 22 F.Supp.3d 366 (2014).</p>
VA	Yes	VA CODE ANN. §§ 65.2-101- to 65.2-104	<p>Virginia case law defines an independent contractor as one who contracts to produce a specific result for a fixed price without outside control concerning the method use.</p> <p>The status of a worker as an employee or as an independent contractor is not governed by Virginia’s workers’ compensation act, but instead is governed by common law.</p> <p>The test applied in determining whether an employee of an independent contractor will be considered statutory employee of owner of project is whether the worker is “performing an indispensable activity normally carried on through employees, rather than independent contractors.”</p> <p>The ordinary test to determine whether one is an “employee” or an “independent contractor” is to ascertain who can control and direct servants in performance of their work. Factors that are considered in determination of a worker’s status include what the parties to an employment contract call their relationship.</p> <p>VA CODE ANN. § 65.2-101 (2015); Phillips v. Brinkley, 72 S.E.2d 339 (Va. 1952); Ramsburg v. Target Stores, Inc., 982 F.Supp. 1194 (Va. 1997); Nolde Bros. v. Chalkley, 1945, 35 S.E.2d 827, 184 Va. 553.</p>
WA	No provision	WASH. REV. CODE ANN. §§ 51.12.010 to 51.12.185 (1996) Industry Exception	<p>Under Washington’s workers’ compensation law, there are three elements that must be satisfied to be considered an independent contractor:</p> <ol style="list-style-type: none"> (1) The individual has been and will be free from control over performance of services, both under the contract and in fact. (2) The service is either outside the course of business or performed outside the place of business. (3) The individual is customarily engaged in an independently established trade of the same nature as that being performed. <p>In determining whether the worker is an employee or an independent contractor, the court will look to the employment contract, the work, the parties’ situation, and other concomitant circumstances.</p> <p>WASH. REV. CODE ANN. §§ 51.08.180; 51.08.181; 51.08.195 (West 2008); Department of Labor and Industries of State v. Lyons Enterprises, Inc., 347 P.3d 464 (Wash.App. 2015); Henry Industries, Inc. v. Department of Labor and Industries, 381 P.3d 172 (Wash.App. 2016).</p>

WV	Yes	W. VA. CODE R. § 85-8-6 (2008)	<p>Under West Virginia’s worker’s compensation law, the burden of proving that an individual is an independent contractor is on the party asserting independent contractor status. The following factors are dispositive of whether a worker is an independent contractor:</p> <ol style="list-style-type: none"> (1) Whether the individual holds himself or herself out to be in business for himself for herself, including whether he or she possesses a license, permit or other certification required to engage in the type of work the worker is performing; whether the individual enters into verbal or written contracts with the persons and/or entities for whom the work is being performed; and whether the individual has the right to regularly solicit business from different persons or entities to perform for compensation the type of work that is being performed. (2) Whether the individual has control over the time when the work is being performed. (3) The individual has control and discretion over the means and manner of the work being performed and in achieving the result of the work. (4) Unless expressly required by law, the individual is not required to work exclusively for the person or entity for whom the work is being performed. (5) If the use of equipment is required to perform the work, the individual provides most significant equipment required to perform the job. <p>The West Virginia courts will look at the following factors to determine if a worker is an employee or independent contractor: the right or lack of right to supervise work, the method of payment, who owns substantial equipment to be used on the job, who determines what hours are worked, and the nature and terms of the employment contract.</p> <p>W. VA. CODE ANN. § 23-2-1a (1999); W. VA. CODE R. § 85-8-6 (2008); Smith v. Donald Coal Co., 115 S.E. 477 (W.Va. 1922); Null v. State Compensation Com’r, 35 S.E.25 359 (W.Va. 1945); Myers v. Workmen’s Compensation Com’r, 148 S.E.2d 664 (W.Va. 1966).</p>
WI	Yes	No provision	<p>Wisconsin’s worker’s compensation law lists nine criteria, all of which must be met to be considered an independent contractor:</p> <ol style="list-style-type: none"> (1) Maintains a separate business with his or her own office, equipment, materials and other facilities. (2) Holds or has applied for a federal employer identification number with the IRS or has filed business or self-employment income tax returns with the IRS based on that work or service in the previous year. (3) Operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work. (4) Incurs the main expenses related to the service or work that he or she performs under contract. (5) Is responsible for the satisfactory completion of work or services that he or she contracts to perform and is liable for a failure to complete the work or service. (6) Receives compensation for work or service performed under a contract on a commission or per job or competitive-bid basis and not on any other basis. (7) May realize a profit or suffer a loss under contracts to perform work or service. (8) Has continuing or recurring business liabilities or obligations. (9) The success or failure of the independent contractor’s business depends on the relationship of business receipts to expenditures. <p>The presumption that a person injured while performing service for another is an employee rather than an independent contractor is rebuttable and ceases to have force or effect when evidence to the contrary is adduced.</p> <p>Wis. STAT. ANN. § 102.07 (2016); J. Romberger Co. v. Industrial Commission, 234 Wis. 226, 229 (Wis. 1940).</p>

WY	No	No provision	<p>Wyoming’s workers’ compensation law defines independent contractor as “an individual who performs services for another individual or entity” and:</p> <ol style="list-style-type: none"> (1) Is free from control or direction over the details of the performance of services by contract and by fact. (2) Represents his services to the public as a self-employed individual or an independent contractor. (3) May substitute another person to perform his services. <p>The Wyoming Supreme Court has defined an independent contractor as “one who, exercising an independent employment, contracts to do a piece of work according to his or her own methods and without being subject to the control of his or her employer except as to the result of the work.” An express contract between the parties is not conclusive on whether a worker is an independent contractor. However, it is an important factor in defining the relationship between the employer and the worker. The Wyoming Supreme Court stated other factors that are important to the determination, including:</p> <ol style="list-style-type: none"> (1) The method of payment. (2) The right to determine the relationship without incurring liability. (3) The furnishing of tools and equipment. (4) The scope of the work. (5) The control of the premises where the work is to be done; and whether the worker devotes all of his or her efforts to the position or if he or she also performs work for others. <p>WYO. STAT. ANN. § 27-14-102 (2017); Diamond B Services Inc. v. Rohde, 120 P.3d 1031 (Wyo. 2005); Stratman v. Admiral Beverage Corp., 760 P.2d 974, 980 (Wyo. 1988); Cline v. State, Dep’t of Family Services, 927 P.2d 261, 263 (Wyo. 1996).</p>
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[Agency Name]

INSURANCE DISASTER RESPONSE PLAN

[Date]

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Introduction

In the event of a disaster that requires an extraordinary response, the [state insurance regulatory entity] has adopted the following disaster response plan.

What this document provides

Following a disaster, this document provides a template for departments of insurance (DOIs) to use when assisting consumers. In advance of a disaster, this document also provides guidance to insurers and other licensees.

This document details how a DOI can work with other agencies to assist consumers, including:

- Federal agencies
- State or local agencies
- The NAIC
- Other state DOIs

This document does not provide information regarding a Continuity of Operations Plan (COOP). Check to see if your department has a COOP that provides detailed information regarding how it is to be implemented.

The purpose of the disaster response plan

The purpose of the disaster response plan is to:

- Provide states with information regarding quick and effective responses to meet the insurance information needs of its citizens.
- Provide information regarding the coordination of resources with other state agencies to mitigate the effects of a disaster.

The disaster response plan will be activated by the commissioner, director or superintendent. It will be implemented by the disaster or incident management team.

Information the disaster response plan provides

This disaster response plan template provides information to assist state insurance departments in responding to disasters. This disaster response plan is scalable to respond to disasters affecting:

- Limited areas within the state.
- Several locations throughout the state.
- The entire state.

NAIC Disaster Assistance Program

The NAIC Disaster Assistance Program is a series of services provided by the NAIC to any member jurisdiction experiencing the aftermath of a disaster where additional support is needed.

The NAIC can provide the following services following a disaster:

- Disaster Relief Call Center
- Disaster Recovery Center (DRC) Insurance Regulator Staff
- Communications Services
- NAIC Coordinated Data Call

Services are provided once a formal request is made by an NAIC member (a jurisdiction's appointed/elected insurance commissioner) to the NAIC officers, asking them to direct NAIC senior management to allocate budgeted funds and resources toward their need for disaster relief assistance. The day-to-day project is then overseen by the NAIC Director of Member Services who coordinates a variety of NAIC department staff overseeing operations and volunteers throughout the length of services needed.

Ways a jurisdiction can prepare to receive NAIC assistance

Jurisdictions can prepare information that will better facilitate NAIC assistance after a catastrophic event. These items may be incorporated as part of your jurisdiction's Business Continuity Plan. Jurisdictions need to consider how they want calls and complaints tracked by NAIC volunteers and provide templates, if appropriate.

The following are some high-level action items to do prior to contacting the NAIC:

- Identify your critical staff and who will be coordinating with the NAIC.
- Assess the level of impact to your staff. This level of impact may determine the support you need from the NAIC.
- Assess the functionality of your systems and facilities—i.e., phone, internet, other communications and office—after the event.
- Assess access to power and your critical infrastructure.
- Assess business impact analysis; i.e., the minimum you need to function.
- If possible, consider the type of assistance you may need: call center overflow, onsite regulatory staff support, website, or remote office. However, the NAIC is also prepared to consider new services to meet your unique needs.
- Document how a trusted third party may access your communications systems: phone and internet.

- Prepare and provide talking points for the NAIC, frequently asked questions (FAQ), jurisdiction guidelines—i.e., emergency adjuster licensing rules—which can be shared with call center staff and onsite DRC volunteers.
- Share jurisdiction-issued bulletins and how we are to handle them.

NAIC services set-up time after approval of assistance

The NAIC is ready to help at any time after a member has requested assistance.

- Call center: within 24–48 hours after contact.
- DRC volunteers may be available within 48–72 hours after contact.
- Communications services are available within 24–48 hours after contact and member approval of information.
- NAIC Coordinated Data Call within 24–48 hours after contact.

Additional information

Where possible, the NAIC may reach out to a member jurisdiction prior to an imminent disaster to offer information about our program or answer any questions they may have about systems that may be affected in the event of a disaster.

NAIC Research and Government Relations departments are able to participate in briefings with the Financial and Banking Information Infrastructure Committee (FBII), the Federal Emergency Management Agency (FEMA), and Homeland Security to share information from, and to, NAIC jurisdictions.

The National Insurance Producer Registry (NIPR) and/or the Interstate Insurance Product Regulation Commission (Compact) are able to assist affected jurisdictions who may need emergency adjuster licenses and/or help processing product filings.

Disaster relief call center

The NAIC works with your department's technical team to connect a 1-800 NAIC telephone line and/or computer system—State Based Systems (SBS)—with your jurisdiction's consumer phone line and/or complaint tracking system.

- Call center is staffed with experienced insurance department regulator volunteers capable of answering consumer concerns.
- Call center is flexible enough to handle your entire call volume, allowing your staff to assist people in the field.
- Call center may also be set to roll-over to state insurance regulator volunteers whenever you experience call overflow.

Cost:

- There is no cost to your jurisdiction for this service.
- The NAIC covers the cost for the 1-800 phone line; call center equipment, facilities and coordination; and the travel/lodging reservations and expense for state insurance regulator volunteers.
- Your fellow members/commissioners provide their state insurance regulator staff as volunteers.

DRC insurance regulator staff

The NAIC facilitates and coordinates insurance department regulator volunteers to staff your designated DRC location(s).

- Volunteers cover one to two week shift rotations to man the daily operation of the DRC.
- The NAIC will arrange travel and lodging for the assigned state insurance regulator volunteers.
- If needed, the NAIC can help provide loaner laptops or cell phones for state insurance regulator volunteer use at a DRC location.

Cost:

- There is no cost to your jurisdiction for this service.
- The NAIC covers the cost of the loaner equipment and travel/lodging expenses for the state insurance regulator volunteers.
- Your fellow members/commissioners proffer their state insurance regulator staff as volunteers.

To deploy this service, an insurance department staff/disaster coordinator contacts Trish Schoettger, NAIC Director of Member Services at tschoettger@naic.org or 816.783.8506. She will coordinate a call with the member/commissioner, NAIC President, and NAIC Chief Executive Officer (CEO) or Chief Operating Officer (COO) to utilize these services.

NAIC-hosted insurance department website

In the case where the affected jurisdiction has lost the use of its facility or their website becomes inoperable, the NAIC can act as an interim host for the jurisdiction's insurance department website. If needed, the NAIC can also serve as a resource to communicate your updated status to other jurisdictions and/or agencies or change information.

Cost:

- There is no cost to your jurisdiction for this service.
- The NAIC covers the cost of hosting the site.

NAIC-coordinated data call

The NAIC assists states with data calls related to the collection of claims data following disasters. Data calls are typically conducted weekly immediately after a disaster and then biweekly or monthly as a higher percentage of claims close.

Preparation

The steps to preparation

A DOI needs to promptly and efficiently respond to a disaster. Effective response to a disaster requires preparation and planning, including:

- Identifying appropriate staff to perform necessary activities.
- Training appropriate staff.
- Identifying available resources.
- Identifying any resource shortfalls and how these might be addressed.

Important planning considerations

Preparedness for disasters requires identifying resources and expertise in advance and planning how these can be used in a disaster. Planning considerations include:

- Putting procedures in place for internal tracking and reimbursement costs expended by the DOI in response to a disaster.
- Designating a team of individuals and assigning responsibilities to ensure that everyone on the team understands their roles and responsibilities during a disaster situation.
- Updating plans and procedures based upon post-mortem evaluation of the DOI's performance in prior disaster response efforts.

Available training

As a part of efforts to prepare for response to disasters, state DOIs and agencies participate with local jurisdictions and private entities in exercises and training.

Staff should be periodically trained on how to assist consumers during a disaster.

Training regarding information on FEMA assistance programs and the National Flood Insurance Program (NFIP) is recommended.

FEMA has free courses available to emergency management teams. These courses can be found by using the following link: <https://training.fema.gov/is/>.

The NFIP has developed a reference guide on flood-related issues for state insurance regulators and other officials. This document can be found using the following link: https://www.fema.gov/media-library-data/1525272377818-3cb0cf795a73c135c8543d2459e12c80/NFIPDeskReferencev18_508_V4.1.pdf.

Insurance contact information that a DOI should regularly collect

It is important for a DOI to maintain current insurance company contacts for insurers licensed to do business in the state, including non-admitted surplus lines insurers. Some states may maintain contact information in SBS, another database, or through a Microsoft Outlook contact list obtained by an annual request.

Partnerships with private volunteer organizations can also be useful in coordinating response after a disaster. [State Insurance Department] should identify consumer or non-profit organizations that would be open to a partnership.

Insurance company contacts:

Following a disaster, a DOI will likely need to contact insurers. The contact information should include:

- Insurers doing business in a state.
- A primary contact and a secondary contact (both would likely be a member of the insurer's disaster response team).
- High-level senior management to respond to questions or issues promptly.

Requirements of insurance company contacts

After a disaster, state insurance regulators will need to be able to contact insurers for information. Contacts should:

- Be able to provide coverage data and loss statistics, by county or region, according to a standardized format developed by the DOI.
- Be knowledgeable regarding their internal information systems and sources and authorized to access such systems so that applicable and timely information can be provided upon the request of the DOI.
- Be able to respond to requests for information from legislators, the governor's office, FEMA officials, or press inquiries.

Other necessary contacts

DOIs will need contacts for local, state and federal officials (these should be maintained and updated).

Contacts will report other disaster information to the DOI, including lists of company claim offices and phone numbers, adjuster information, and company toll-free numbers, etc.

Types of information that should be ready for dissemination in the event of a disaster

Following a disaster, a DOI will be responsible for helping consumers regarding claims. Some of the items a DOI will want to have on hand to provide to consumers include:

- Consumer brochures.
- Consumer alerts.
- Insurer contacts for consumers.
- Other forms of information relating to preparation and response to all types of disasters (this information should be updated prior to a disaster).

The NAIC's Transparency and Readability of Consumer Information (C) Working Group created a document to help guide consumers through a claim following a disaster. This document can be passed out following a disaster: <https://content.naic.org/sites/default/files/inline-files/Claim%20Disaster%20Guide%20-%20Generic%20FINAL%207%2023%202019.pdf>.

Types of data a DOI should collect regarding disasters

A DOI should define the appropriate area in their department responsible for creating and maintaining a database that holds coverage data and loss statistics collected from insurers. If a DOI does not have the resources to maintain a database, the NAIC can provide this service.

Information to be collected (generally collected by ZIP code) includes such items as the:

- Number of claims reported
- Number of claims closed with and without payment
- Paid losses
- Incurred losses

Data collection tools the NAIC can provide

The NAIC can provide the data template adopted by the NAIC Property and Casualty (C) Committee and Executive (EX) Committee and Plenary if the DOI does not have its own data call template. This template can be found on the Catastrophe Insurance (C) Working Group's webpage under the Related Documents tab. The link to the webpage is: https://www.naic.org/cmtc_c_catastrophe.htm.

The NAIC coordinated data call

The NAIC assists states with data calls related to the collection of claims data following disasters. Data calls are typically conducted weekly immediately after a disaster and then biweekly or monthly as a higher percentage of claims close. The length of time that data is collected is usually dependent upon the severity of the event. For example, a minor hurricane, like Irma, will not necessitate weekly reporting, even in the beginning. Having the NAIC assist with a data call could require a confidentiality agreement if the state does not already have one that would encompass the data call.

Types of information a DOI, in coordination with Public Affairs, should maintain, update, post on the state's website, and distribute via social media

- https://www.insureuonline.org/disaster_prep_flood.pdf
- https://www.insureuonline.org/disaster_prep_tornado.pdf
- https://www.insureuonline.org/disaster_prep_hurricanes.pdf
- https://www.insureuonline.org/disaster_prep_wildfires.pdf
- https://www.insureuonline.org/disaster_prep_earthquakes.pdf
- https://www.insureuonline.org/home_inventory_checklist.pdf
- https://www.naic.org/documents/consumer_alert_wake_of_the_storm.htm
- https://www.naic.org/documents/consumer_alert_flood_insurance_understanding_risk.htm

Resources required for emergency response

The availability and capability of resources needs to be determined and includes the following:

- People
- Facilities
- Materials and supplies
- Funding
- Information regarding threats or hazards

Periodically review resources dedicated to the Disaster Response Team to make certain that there are enough cell phones, laptops, and other equipment and materials available for staff.

Disaster Recovery Team Personnel within the DOI should be identified to act as first responders if the DOI is required to respond to an emergency.

DOI employees are divided into those who will work outside of the office and those who will work at the DOI in an onsite or offsite call center.

Contact information for members of the team should be maintained.

Employees should receive periodic training and updates on procedures for assisting consumers in the event of a disaster.

The DOI shall maintain Disaster Recovery supplies and information for use by the Team.

Brief description of the Major Incident Management Functions (See org chart template - Appendix 1)

COMMAND

Sets the incident objectives, strategies and priorities. Has overall responsibility for the incident.

OPERATIONS

Conducts operations to reach the incident objectives. Establishes tactics and directs all operational resources.

PLANNING

Supports the incident action planning process by tracking resources, collecting/analyzing information, and maintaining documentation.

LOGISTICS

Arranges for resources and needed services to support achievement of the incident objectives.

FINANCE AND ADMINISTRATION

Monitors costs related to the incident. Provides accounting, procurement, time recording and cost analysis.

Keep in mind, larger states may have more resources available than smaller states. See important note to DOIs.

Disaster Response/Incident Management Team

Response Leadership Team (Your State Emergency Management Agency would call this the Command Support Staff)

The purpose of this team is to:

- Provide direction before, during and after a disaster.
- Ensure periodic review and assessment of the State Disaster Response Plan and hold the incident management team accountable for implementation.
- Test and update the plan on a regular and consistent basis.

Location

This team is located at the [Home office] unless an alternative location is needed.

Duties:

Upon notification of a significant disaster, the commissioner, superintendent or director will notify this team to begin implementation of the Disaster Response Plan.

Identify which other disaster response units should be activated.

Members:

The response leadership team should include the following:

- Incident Commander (IC) (commissioner, director, superintendent, chief deputy or their designee).
- Public Information Officer (PIO) (the person that handles media and communication requests).
- Safety Officer (SO) (this person is the human resources (HR) chief manager).
- Finance /Administration Section Chief.
- Legal Counsel (LC).
- Emergency Operations Center (EOC) Liaison Officer (ELO) (this could be your lead consumer affairs staff member).
- Any other positions, as required, who report directly to the IC (they may have an assistant or assistants, as needed).

Incident Commander (IC) – (may be the Agency Head or their designee)

The IC is responsible for all incident action plans (IAPs) and activities to sustain critical functions and services. These tasks include:

- Developing strategies and tactics before the execution of action plans in the event of a disaster.
- Ordering and releasing resources.
- Conducting incident operations.

The IC is responsible for:

- Managing all incident operations.
- Ensuring overall incident safety.

- Assessing the situation and notifying internal teams and departments.
- Appointing others.
- Carrying out all ICS management functions until they delegate a function.
- Providing information services to internal and external stakeholders.
- Managing all operations at the disaster site.

It is possible for the IC to accomplish all management functions during the aftermath of a small event.

The IC only creates the sections that are needed. If a section is not staffed, the IC will personally manage those functions.

Public Information Officer (PIO)

The PIO is responsible for interfacing with the public, industry, media, and/or other agencies with incident-related information requirements.

The PIO is responsible for:

- Drafting and issuing all public announcements.
- Making all press releases.
- Establishing an event-specific webpage (if needed).
- Sending event-specific updates out via social media and posting them online.
- Giving all interviews with the communications media relative to the incident and the Agency's action plan to address the situation. The PIO establishes communications with PIOs in other State Agencies and the Governor's Media Office to convey situation status, progress toward resolving the incident, and any actions needed in support of or to address the situation.

The PIO works directly with the IC and Agency Head on all sensitive communications and may seek advice and counsel from other members of the Command Support Staff on legal or personnel matters and from the Section Chiefs on background relating to the situation and the actions the Agency are taking.

Safety Officer (SO)

The SO monitors incident operations and advises the IC on all matters relating to operational safety, including the health and safety of agency personnel.

The SO is responsible for:

- Monitoring conditions and developing measures for assuring safety of personnel.
- Advising the IC about incident safety issues.
- Conducting risk analyses.
- Implementing safety measures.
- Monitoring building accessibility.
- Communicating with the IC and staff.

Legal Counsel (LC)

The LC is the member of the Incident Command Support Team who provides legal counsel to the IC.

Examples of support would include:

- Providing advice relative to Agency jurisdiction and contractual obligations.
- Completing other tasks as assigned by the IC.

The LC may also be asked to:

- Review any public statements to be issued by the PIO.
- Provide opinion and guidance on employee relations-based issues.
- Provide opinion and guidance on issues that relate to the Agency mission and the public.

Emergency Liaison Officer (ELO)

The ELO is the point of contact for representatives of other governmental agencies, nongovernmental organizations, and the private sector.

The ELO provides a liaison between the DOI and the state's Department of Emergency Management and Homeland Security (DEMHS), especially when the DEMHS has elected to activate its EOC.

A close working relationship between the Agency and the EOC is required for timely communication and action appropriate to directives received. The ELO will represent the Agency at the EOC and establish ongoing communications and scheduled status reviews with the Agency Incident Command.

Roles and Responsibilities

Financial & Administration Section Chief

The Financial and Administration Section Chief is a member of the Incident Command General Staff. This person is also the leader of the Administration Section. In the context of the COOP, the Financial and Administration Section Chief is responsible for the internal processes within the Agency, including financial and human resource functions, which are necessary to enable the critical functions being addressed by the Operations Section.

The Administration Section Chief sustains or recovers processes to maintain the fiscal integrity of the Agency and ensure that essential human resource processes are sustained. The Administration Section Chief works closely with the Operations and Logistics Sections to identify requirements and assess available options.

The Finance/Administration Section Chief is responsible for:

- Analyzing all financial, administrative and cost aspects of an incident.
- Maintaining daily contact with agency administrative headquarters on finance and administration matters.
- Meeting with assisting and cooperating agency representatives.
- Advising the IC on financial and administrative matters.
- Developing the operating plan for the Finance/Administrative Section.
- Coordinating finances at the local level.
- Establishing or transitioning into an existing Finance/Administrative Section.
- Supervising and configuring section with units to support, as necessary.
- Negotiating and monitoring contracts.
- Timekeeping.
- Analyzing cost.
- Compensating for injury or damage to property.
- Documenting reimbursement (e.g., under mutual aid agreements and assistance agreements).

The Finance/Administration Section is set up for any incident that requires incident-specific financial management.

The Time, Compensation/Claims, Cost and Procurement Units may be established within this section.

Finance and Administration Section Team Leads

The Finance and Administration Section Team Leads should be a qualified member of the Incident Command General Staff. This person reports to the Administration Section Chief.

Finance and Administration Section Team Leads are responsible for:

- The coordination of the initial action plan execution and recovery efforts for one of the Administration Section Teams.
- Business continuity interruption preparedness.
- Response coordination.
- Post-interruption corrective action based on lessons learned for the functions that are part of the normal operational responsibilities of the work group.

In the National Incident Management System (NIMS) these Team Leads often head branches or divisions.

Section Chiefs will determine the organization appropriate under respective sections.

Logistics Section Chief

This Logistics Section Chief is a member of the Incident Command General Staff and the leader of the Logistics Section.

The Logistics Section Chief is responsible for:

- Overseeing the resources and processes needed to sustain or recreate the work environment for Operations and Administration Section functions (in the context of the COOP), including facility, technology, equipment and supplies.
- Addressing plant, tool, technology and information security (including the Health Insurance Portability and Accountability Act of 1996 [HIPAA]) requirements for the Incident Command.
- Working closely with the Operations and Administration Sections to identify requirements and assess available options.

The Logistics Section is responsible for all services and support needs, including:

- Ordering, obtaining, maintaining and accounting for essential personnel, equipment and supplies.
- Providing communication planning and resources.
- Setting up food services for responders.
- Setting up and maintaining incident facilities.
- Providing support transportation.
- Providing medical services to incident personnel.

Operations Section Chief

Typically, the Operations Section Chief is the person with the greatest tactical expertise in dealing with the problem at hand. The Operations Section Chief is a member of the Incident Command General Staff and the leader of the Operations Section. This person is responsible for the sustenance or recovery of the functions within the agency that serve the citizens of the state. The Operations Section Chief may have one or more Deputies who are qualified to fill this position.

The Operations Section Chief is responsible for:

- Directly managing all incident tactical activities.
- Implementing the IAP.
- Developing and implementing strategies and tactics to carry out the incident objectives.
- Organizing, assigning and supervising the tactical response resources.
- Having one or more Deputies who are qualified to assume these responsibilities. (This is recommended where multiple shifts are needed, as well as for succession planning).

Operation Section Team Leads

An Operation Section Team Lead is a qualified member of the Incident Command General Staff who reports to the Operation Section Chief. This individual is responsible for the coordination of the initial action plan and recovery effort of the Operation Section Teams.

Operation Section Team Leads are responsible for:

- Pre-incident preparedness.
- IAP coordination.
- Post-incident corrective action based on lessons learned for the functions that are part of the normal operational responsibilities of the work group.

Planning Section Chief

The Planning Section Chief is a member of the Incident Command General Staff and leader of the Planning Section. This individual is responsible for the development of the Business Continuity Plan and COOP document and works closely with the IC, General Staff (other Section Chiefs), and Command Support Staff to ensure that critical functions and their resource requirements are identified and that preparatory actions are taken. The Planning Section Chief ensures that communications information needed to execute the COOP has been captured.

In the continuity plan action period, the Planning Section Chief is responsible for:

- Serving as a coach to Incident Command.
- Ensuring that regular crisis action plan review sessions are held.
- Ensuring that outstanding issues are identified.
- Ensuring that appropriate alternatives are considered.
- Ensuring that action assignments are clearly distributed.

The Planning Section Chief may have one or more Deputies who are qualified to assume these responsibilities. This is recommended where multiple shifts are needed, as well as for succession planning.

The major activities of the Planning Section may include:

- Collecting, evaluating and displaying incident intelligence and information.
- Preparing and documenting IAPs.
- Tracking resources assigned to the incident.
- Maintaining incident documentation.
- Developing plans for demobilization.

Deputy

The Deputy is a fully qualified individual who, in the absence of a superior, can be delegated the authority to manage a functional operation or perform a specific task. In some cases, the Deputy acts as relief for a superior; therefore, the Deputy must be fully qualified in the position.

Deputies can be assigned to the IC, Command Support Staff, and the Section Chief positions.

Statistics Operational Network Task Group

The purpose of this group is to facilitate an analysis of a catastrophe with insurance companies and the [agency name] whenever a catastrophic event occurs.

The Statistics Operational Network Task Group will be located [insert location of home office or other designated location] unless otherwise chosen due to necessity.

The Statistics Operational Network Task Group is charged with the responsibility of creating a “contact list” of insurance community liaisons. This contact list will allow for prompt contact of people within the insurance industry who should be able to provide coverage data and loss statistics, by region, according to any standardized format developed by [agency].

The Team Lead should be knowledgeable of company internal information systems and sources authorized to access such systems so that applicable and timely information can be provided to [agency] or emergency response agencies upon request.

Members of this Task Group should include divisions that perform data collection/analysis, market conduct, and financial regulation.

Consumer Operational Team Lead

The Consumer Operational Team Lead works with the PIO to provide consumers with the information needed to contact their insurance companies and the fundamentals to file a claim and convey necessary information to the Emergency Response Team.

A Consumer Information Task Group will be located [insert location of home office or other designated location] unless otherwise selected by the Disaster Executive Committee due to necessity.

If a disaster is declared, a consumer hotline should be immediately activated, but consideration may be needed to relocate it. The hotline:

- Should be able to ramp up to provide a 24-hour service.¹
- Should operate utilizing four six-hour shifts.

Branch offices might initially be made operational through the use of cell phones until other landlines are established.

Hotline staff should:

- Have a list of 800 numbers of the major property/casualty (P/C) insurers in the state.
- Have the list of Emergency Response Task Group key personnel.
- Have other emergency agency numbers to be used in the event of a disaster.
- Be provided with a communications kit, which will be used to tell consumers about claim procedures.

Members should include:

- Consumer services unit senior management.
- Internal resource senior management.

Communications Operations Task Group

The purpose of this group is to work with the PIO to create a central source for media information relevant to disaster insurance and the disaster plan response activities.

This Group:

- Prepares news releases about the steps to take before, during and after a disaster.
- Produces brochures about preparedness.
- Dispatches speakers to various locations, as needed.
- Maintains contact with all media.

¹ It may not be necessary to operate 24 hours a day, but it is likely that the hotline may need to be open for hours longer than the agency is typically open. The agency will need to be prepared for these circumstances.

The Communications Team will be [insert location of home office or other designated location] unless otherwise chosen by the Disaster Executive Committee due to necessity.

The Communications Operations Task Group is responsible for:

- Developing a consistent message to be communicated to consumers.
- Distributing advisories and brochures to units of government throughout the state so that they may reproduce them for local residents. (The NAIC may be contacted for assistance in bulk reproduction).

The Communications Task Group should:

- Be in constant contact with the [State Emergency Management Agency's Communications Team] to coordinate media announcements.
- Contact news organizations throughout the state with a Media Advisory.
- Notify news agencies that [agency name] is the primary source for obtaining and forwarding information relative to insurance and a disaster.
- Be in constant touch with the Emergency Response Task Group and branch offices to coordinate the information flow.

Much of the information will be obtained from the designated liaison persons of the Emergency Response Task Group.

This system ensures that information being supplied to the media is consistent, accurate, and up-to-the-minute.

The Communications Task Group is:

- Responsible for ensuring that messaging is consistent.
- Responsible for developing an Outreach Team to operate quickly and efficiently in affected areas to answer questions in town meetings and other informational gatherings.
- Responsible for supplement information provided through the media and other sources about how to quickly and effectively prepare insurance claims information.

Members include:

- Senior media or communications staff.
- Legislative personnel.
- Key agency staff with public speaking experience.

Logistics Task Group

The purpose of this Task Group is:

- To consult with other task groups regarding the DOI's logistical and technical capabilities, and requirements, to enable the efficient execution of the DOI's State Disaster Response Plan.
- To coordinate with the Emergency Response Task Group regarding logistical and technical capabilities for Emergency Response Task Group and/or field or temporary offices.
- To coordinate with other areas regarding logistical and technical capabilities for hotline and other consumer communication needs.

The Logistics Task Group will be [insert location of home office or other designated location] unless otherwise chosen by the Disaster Executive Committee due to necessity.

The duties of the Logistics Task Group are:

- To identify resource needs of the other task groups regarding the DOI's logistical and technical capabilities and requirements to enable the insurance department to respond better and faster to disasters and include these in the implementation plan.
- To coordinate technical requirements for an alternate designated facility to ensure its immediate activation in case the DOI's home or central office is damaged/destroyed in a disaster and include these in the implementation plan.

Members include:

- Senior staff from internal resource or budget.
- Senior staff from the information technology (IT) unit.
- Senior staff from any branch office locations.

Branch Office(s)

Branch offices will be responsible for addressing and solving problems where possible and overseeing operations in their responsibility area.

While the composition and basic duties will be the same as those of the Emergency Response Task Group, the branch office(s) will deal with the local problems and handle them from a closer vantage point.

Branch offices will be established at the existing location of the branch offices, unless the Emergency Response Task Group indicates a more appropriate location.

The branch office will be responsible for:

- Channeling information within the zone for which the branch office is responsible.
- Forwarding requests for speakers and press contacts to the Communications Task Group.
- Obtaining general insurance information and all written material explaining how to prepare claims from the Consumer Services Task Group.

- Routinely reporting to the Emergency Response Task Group about daily activities.
- Sending all problems that cannot be worked out locally to the Emergency Response Task Group for review.
- Obtaining DOI brochures.

Members include senior staff from branch office location(s).

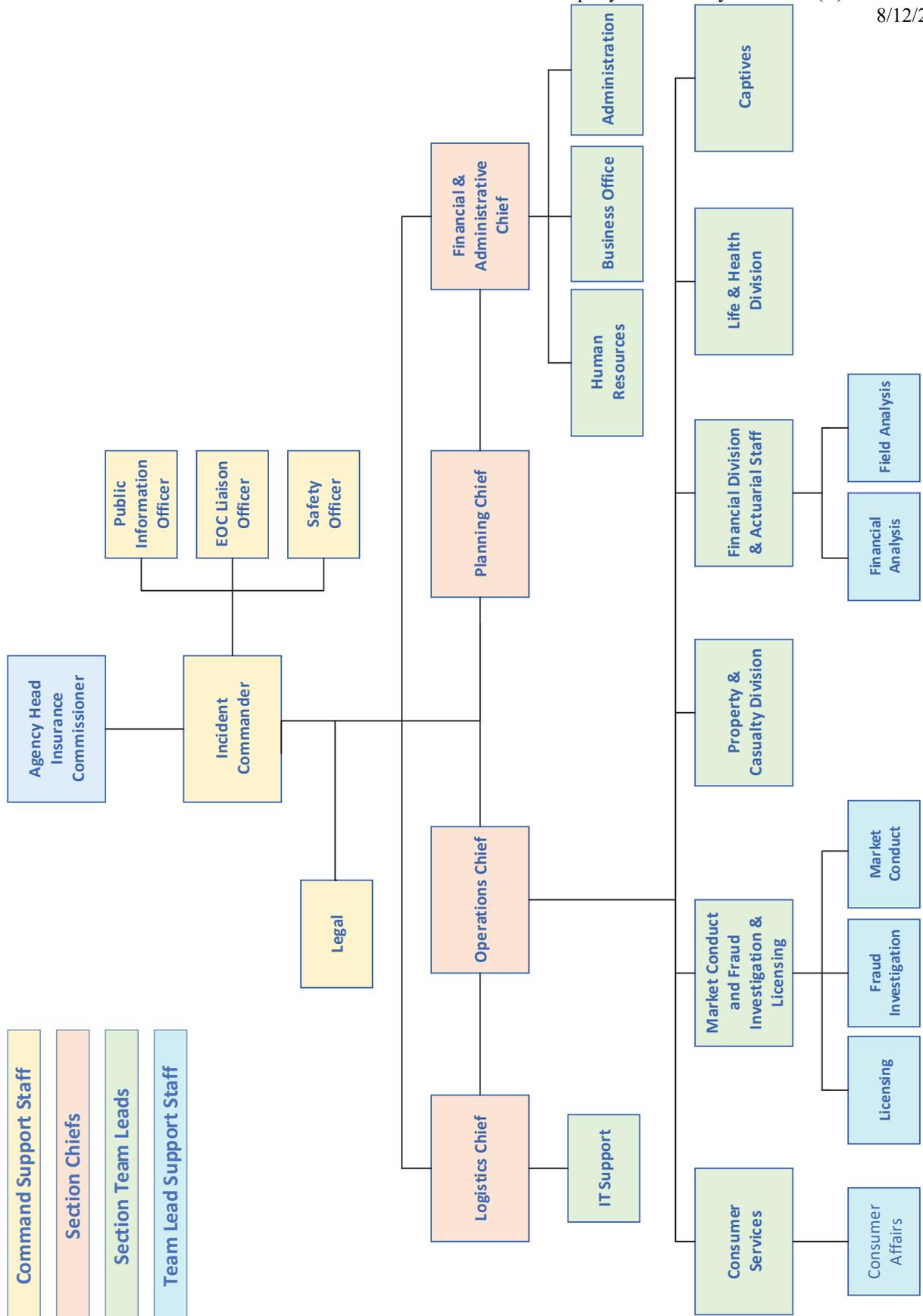
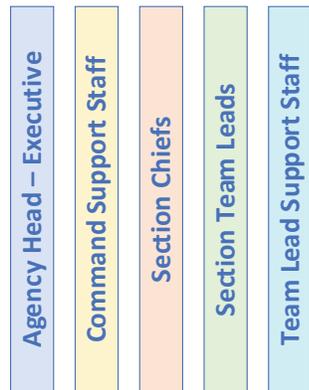
Where serious disputes or problems arise, the branch office will forward these back to the Emergency Response Task Group; otherwise, the branch office will manage its own operation and report only.

It is imperative that senior staff remain at the Branch Office Operations center for command purposes.

These centers fall under the direction of the Emergency Response Task Group.

Appendix 1

Business Continuity Org Chart



Appendix 2

Response Levels and Definitions

RESPONSE LEVELS AND DEFINITIONS

	Disaster Level 1	Disaster Level 2	Disaster Level 3	Disaster Level 4
Typical Damage	Exterior Damage to Private Property	Exterior Damage, Possibly Some Interior Damage, and Possibly Some Structural Damage to Private and Commercial Property. Infrastructure Damage to Telephone and Power Lines.	Exterior Damage, Interior Damage, and Structural Damage to Private and Commercial Property. Infrastructure Damage to Telephone and Power Lines. Temporary Interruption of Normal Public Services.	Significant to Massive Exterior, Interior and Structural Damage to Private and Commercial Property. Infrastructure Damage to Telephone and Power Lines and Possibly Cell Towers. Communications, Public Services Lost for Extended Time.
Insured Losses	Less than \$100 Million	Between \$100 Million and \$1 Billion	Between \$1 Billion and \$10 Billion	Greater than \$10 Billion
Types of Events	Rural Tornadoes Rural Hailstorms Rural Windstorms Local Flash Floods	Town-leveling tornadoes Suburban Hail and/or windstorms Area-wide ice storms Area-wide flash floods Rural & Residential Forest/Wildfires	Region-wide Region-wide ice storms Urban Tornadoes Major outbreak multiple tornadoes Urban Floods Urban/Suburban Fires Significant Blizzards Moderate earthquakes	Significant Earthquakes A major New Madrid EQ Significant record-breaking floods Major influenza outbreak
Geographical Extent	Localized	Localized to disbursed	Localized to widespread	Disbursed to widespread
Affected Population	Small	Small to Moderate	Small to Large	Moderate to Large
Examples	Hoisington, Kansas F4 Tornado (April 21, 2001) \$43 Billion in Damages	La Plata, Maryland F4 Tornado (April 28, 2002) \$100M in Damage	Nashville Flood (May 1, 2010) \$1.5 Billion in Damages	Great Flood of 1993 (Missouri & Mississippi Rivers) \$15–20 Billion in Damages
		Haysville/Wichita, Kansas F4 Tornado (May 3, 1999) \$150 Million in Damage	Oakland/Berkeley Firestorm (October 19, 1991) \$1.54 Billion in Damages	Northridge Earthquake (January 17, 1994) (Mag. 6.7 Mom. Mag.) \$15 Billion in Damages
		Greensburg, Kansas EF5 Tornado (May 4, 2007) \$153 million in Damage (Approx. 2,000 claims)	Tornado Outbreak in KC, Okla. City (May 2005) F3s & F4s \$3.2 Billion	FEMA Estimate for a Mag. 7.7 Earthquake in Missouri: \$30+ Billion in Damages

**DIRECTOR'S CONTACTS
 TOP 20 P/C INDUSTRY CONTACT
 LIST**

Carrier Name	Director's Contact Name	Director's Contact Title	Director's Contact Address	Director's Contact E-mail	Director's Contact Cell Phone #	Director's Contact Fax #

**DIRECTOR'S CONTACTS
 TOP 20 COMMERCIAL/ALLIED
 LINES CONTACT LIST**

Carrier Name	Director's Contact Name	Director's Contact Title	Director's Contact Address	Director's Contact E-mail	Director's Contact Cell Phone #	Director's Contact Fax #

Appendix 3

Sample Contact Lists

INSURANCE TRADE ASSOCIATION and KEY INDUSTRY GROUPS CONTACT LIST

STATE INSURANCE TRADE ASSOCIATION (SITA)

Address 1

Address 2

Executive Director:

Phone:

Fax:

E-mail Address:

Internet Address:

STATE INSURANCE AGENT ASSOCIATION

Address 1

Address 2

Executive Director:

Phone:

Fax:

E-mail Address:

Internet Address: _

NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES (NAMIC)

3601 Vincennes Rd

Indianapolis, IN 46268

Key Executive: Charles Chamness, CFO

Phone: 317-875-5250

Fax: 317-879-8408

E-mail Address: lforrester@namic.org or cchamness@namic.org

Internet Address: www.namic.org

INSURANCE SERVICES OFFICE (ISO)

2828 E. Trinity Mills Road, Suite 315

Carrollton, TX 75006

Assistant Regional Manager:

Phone

Fax:

E-mail Address:

Internet Address: www.iso.com

AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION (APCIA)

Address:

City, State, Zip:

Contact:

Phone:

Fax:

E-mail Address:

Internet Address: www.pciaa.net

INSURANCE INFORMATION INSTITUTE (III)

110 William Street

New York, NY 10038

Key Executive:

Phone:

Fax:

E-mail Address

Internet Address: www.iii.org

STATE INSURANCE GUARANTY ASSOCIATIONS

Address1
Address 2
Contact:
Phone:
Fax:
E-mail Address:
Internet Address:

NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS (NAIFA)

Address 1
Address 2
Contact:
Phone:
Fax:
E-mail Address:
Internet Address:

NATIONAL COUNCIL ON COMPENSATION INSURANCE (NCCI)

Address 1
Address 2
Contact:
Phone:
Mobile:
Fax:
E-mail Address:
Internet Address: _

STATE PROPERTY RESIDUAL MARKET OR FAIR PLAN

Address 1

Address 2

Manager:

Phone:

Fax:

E-mail Address:

Internet Address:

MEDIA CONTACTS (EXAMPLE FROM MISSOURI Department of Insurance)

Newspapers		
Blue Springs Examiner	dbrendel @examiner.net	(816) 229-9161
Boonville Daily News, The	news@boonvillenews.com	(660) 882-5335
Branson Daily News, The	bdn@tri-lakes.ent	(417) 334-3161
Carthage Press, The	carpress@ipa.net	(417) 358-2191
Broadcast		
Associated Press	pstevens@ap.org	
Television Stations		
KCTV	kctv@kctv.com	913-677-5555
KETC	letters@ketc.pbs.org	800-729-9966
Radio Stations		
KAAN	rodneyh@netins.net	660-425-7575
KAHR	kool967@semo.net	866-917-9797
KALM -	mail@kkountry.com	417-264-7211
KAOL	KMZU@carolnet.com	660-542-0404
KBDZ	news@suntimesnews.com	573-547-2980

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Proposal from the Center for Economic Justice

To the NAIC Property Casualty (C) Committee

**Revision to Financial Statements to Allow Timely Calculation of Average Premium for
Private Passenger Auto and Homeowners Insurance**

August 12, 2020

The measurement and reporting of average premium for private passenger auto and homeowners insurance is of great interest to consumers, policymakers and regulators. Towards this end, the NAIC publishes two reports – one for private passenger auto and one for homeowners insurance – that report these values.

The usefulness of these average premium metrics is crushed because the data are old and not timely. The auto average premiums are presented in the *Auto Insurance Database* report. The current database, published in January 2020, provides average auto insurance premium data through 2017 – over two years after the end of the reporting period and nearly three years after the first quarter of 2017. The homeowners average premium is reported in the “*Dwelling Fire, Homeowners Owner-Occupied, and Homeowners Tenant and Condominium/Cooperative Unit Owner’s Insurance Report*,” which suffers from the same lack of timeliness. The 2017 data were published at the end of November 2019.

The lack of timeliness of the average premium values means that these data have very limited or no use for either financial or market analysis. The lack of timeliness also means that the data are no use in informing public policy debates about personal lines insurance costs. In addition, the severe time lag between actual experience and reporting fails to inform the public or policymakers of recent trends or outcomes and can, consequently, mislead the public and policymakers.

CEJ proposes modification of the state page of the annual and quarterly financial statements to add two data columns or fields – written exposures and earned exposures – for personal auto and homeowners lines of business. This simple change will enable regulators to monitor changes in average auto premium in a far-timelier manner than the current approach through the Auto Insurance Database or homeowners report.

By adding written and earned exposures to the state pages, regulators can get average premium per vehicle within 3 months after the end of the experience period. And by adding these two columns to the quarterly financial statement, regulators can get changes each quarter in average annual premium at least on a national basis. Attached is a detailed proposal for the committee to present to the Blanks Task Force. It should be noted that this additional reporting will not impose a significant burden on insurers since insurers monitor written and earned exposures and have such data readily available.

The benefits of timelier average premium data are considerable. Timely average premium data would permit financial analysts to utilize changes in average premium as part of financial analysis. Similarly, the more-timely average premium data would become a valuable tool for market regulation analysts, including, but not limited to, an added data point for use the Market Conduct Annual Statement. Last, but not least, this proposal would allow the NAIC to calculate and publish average annual premium data for residential property and personal auto insurance by state in a time frame to both make the data meaningful for describing market conditions and to inform individual state regulators and policymakers of actual changes in personal lines average premiums – as opposed to expected changes gleaned from rate filings.

**Draft Proposal to NAIC Blanks Working Group to
 Add Exposure Data Elements to State Pages of NAIC Financial Statements**

Describe Proposal

Add two columns to the property casualty annual statement state page – “Direct Exposures Written” and “Direct Exposures Earned” – to be reported, initially, only for lines 2.5 (Private Flood) 4 (Homeowners), 19.1 (PPA No Fault), 19.2 (PPA Liability) and 21.1 (PPA Physical Damage) Direct Exposures Earned would be placed between current columns 1 (Direct Premiums Written) and 2 (Direct Premiums Earned). Direct Exposures Earned would be placed between current columns 2 (Direct Premiums Earned) and 3 (Dividends Paid).

Below is an illustrative mock-up. .

Line of Business	Gross Premiums, Including Policy and Membership Fees, Less Return Premiums and Premiums on Policies not Taken			
	1 Direct Premiums Written	2 Direct Exposures Written	3 Direct Premiums Earned	4 Direct Exposures Earned
1. Fire		XXXXXXXXXX		XXXXXXXXXX
2.1 Allied Lines		XXXXXXXXXX		XXXXXXXXXX
...		XXXXXXXXXX		XXXXXXXXXX
2.5 Private Flood				
...		XXXXXXXXXX		XXXXXXXXXX
4. Homeowners Multi-Peril				
...		XXXXXXXXXX		XXXXXXXXXX
19.1 PPA No Fault				
19.2 PPA Liability				
19.3 Comm Auto No Fault		XXXXXXXXXX		XXXXXXXXXX
19.4 Comm Auto Liability		XXXXXXXXXX		XXXXXXXXXX
21.1 PPA Physical Damage				
...		XXXXXXXXXX		XXXXXXXXXX

Instructions

A Written Exposure for lines 2.5 and 4 is defined as a single residential property for which coverage was written at any time during the calendar reporting period and remained in force through the end of the calendar reporting year. If the coverage was written and cancelled within the calendar reporting year, the written exposure is the fraction of the year the coverage was in force.

A Written exposure for lines 19.1, 19.2 and 21.1 is defined as single motor vehicle for which coverage was written at any time during the calendar reporting year and remained in force through the end of the calendar reporting year. If the coverage was written and cancelled within the calendar reporting year, the written exposure is the fraction of the year the coverage was in force.

An Earned Exposure for lines 2.5 and 4 is defined as the fraction of the calendar reporting year for which a single residential property had coverage in force.

An Earned Exposure for lines 19.1, 19.2 and 21.2 is defined as the fraction of the calendar reporting year for which a single motor vehicle had coverage in force.

Examples. Assume a homeowners policy is written on July 1 during the reporting year and remains in force through the end of the reporting year. This activity would be reported as one (1.0) written exposure and 0.5 earned exposure.

Assume a private passenger policy with No-Fault, Liability and Physical Damage coverages was written on April 1 and cancelled by the insured on July 1. This activity would be reported as 0.25 written and 0.25 earned exposures.

Purpose and Benefits

The average written and average earned premium per exposure is an important metric for a variety of regulatory and public policy purposes. The NAIC annually produces reports of average personal auto and homeowners premiums, but the data in these reports are old and stale for timely assessment of absolute average premium and changes in average premium over time. Both reports are typically produced 24 months after the end of the experience period – average auto or homeowners premiums for 2017 are published at the beginning of 2020. While there are valid reasons for the length of time needed to produce these reports – primarily because these reports contain information beyond average premium – the average premium numbers lose significant relevance because of their age.

This Blanks proposal would allow the calculation of average written and average earned premium for residential property and personal auto coverages in a far more timely fashion – with three to four months following the reporting year instead of 24 months. The benefits of timelier average premium data are considerable. Timely average premium data would permit financial analysts to utilize changes in average premium as part of financial analysis. Similarly, the more-timely average premium data would become a valuable tool for market regulation analysts, including, but not limited to, an added data point for use the Market Conduct Annual Statement.

Last, but not least, this proposal would allow the NAIC to calculate and publish average annual premium data for residential property and personal auto insurance by state in a time frame to both make the data meaningful for describing market conditions and to inform individual state regulators and policymakers of actual changes in personal lines average premiums – as opposed to expected changes gleaned from rate filings.

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