

## **DISCUSSION DRAFT**

# **National Insurance Supervisory Commission (NISC)**

## **Regulatory Modernization**

Discussion Draft for Stakeholder Dialogue  
Following Commissioner Fly-In, New Hampshire, August 24–26, 2009

### **PURPOSE**

1. Certain insurance regulatory topics are appropriate for national uniformity. The desire for national uniformity on certain topics requires a national structure comprised of the primary insurance regulators of the states. This NISC proposal, if adopted, will facilitate uniformity while maintaining and enhancing the consumer protections afforded by the state-based insurance regulatory system.
2. Objective: To protect consumers and promote competitive insurance markets through preservation of local, state-based regulation of the business of insurance premised upon the following principles:
  - a. National standards are developed by the states.
  - b. Standards should be binding upon the states for topics appropriate for nationally uniform treatment.
  - c. States implement and enforce the standards.
  - d. A state-based system that allows for prompt development and implementation of standards when necessary.
3. The state-based insurance regulatory system would benefit from a single structure to interact with other supervisory, legislative and policy-making individuals and agencies, and to serve the following purposes:
  - a. The functional regulators for the insurance sector should participate in international trade and related commercial negotiations.
  - b. The federal government should have access to, if not possession of, insurance sector data.
  - c. The functional regulators of the insurance sector should participate in any systemic risk council or forum.

## DISCUSSION DRAFT

### CREATION OF COMMISSION

4. Congress can incentivize the states to act together by authorizing the formation of a “commission” comprised of states that establish, adopt and implement the standards for uniform national regulatory treatment in certain identified areas.
5. The Commission will be authorized by act of Congress. The Commission develops standards that will be implemented/enforced by states.
6. Role of Commission:
  - a. Tier I implementation: States will take action to join the Commission. States participate in identification and development of standards. State laws will clarify that further state action is unnecessary to adopt Commission-approved uniform standards. For purposes of identifying and developing standards appropriate for uniformity, the Commission shall consult with state legislators and other interested parties. The Commission shall engage in the standard identification and development process in a fully open and transparent manner.
  - b. Tier II implementation: Those states unable to join as Tier I states due to constitutional or other legal impediments may participate in identification and development of standards. Tier II states thereafter adopt the Commission-developed standard within a defined time after final development of standard.
  - c. Transition: For five years after the effective date of the federal law authorizing the Commission, every NAIC member may participate as a member of the Commission. Standards will be developed as model laws are now developed at NAIC. With the exception of Tier II states, states that fail to approve a law authorizing the state to participate in the Commission (Tier I) within five years after the effective date of the federal law authorizing the Commission shall not thereafter participate in the identification or development of standards appropriate for national uniformity until such time as that state approves an appropriate law.
  - d. Tier III implementation: States that have not adopted the Commission standards may have laws or regulations that conflict with Commission standards preempted by the OII/ONI.<sup>1</sup> The OII/ONI will receive authority to promulgate rules based on the Commission standards. After a period of time for non-compliant states to act, those rules would preempt any conflicting state laws or regulations and the OII/ONI would be authorized to regulate in the narrow, limited area covered by the rules. The OII/ONI rule would be developed pursuant to paragraphs 19 and 20.

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<sup>1</sup> This proposal assumes the creation of an Office of Insurance Information (OII) or an Office of National Insurance (ONI), as contemplated under current federal legislative proposals.

## DISCUSSION DRAFT

7. Except for Tier II participants, state enabling legislation to join the Commission shall provide that standards developed by members of the Commission are to be applied nationally, in each state, without further state legislative action.
8. Individual participation: Commission membership shall be limited to the primary insurance regulator of each state or territory.
9. Incentives to participate in Commission: participate in standard-setting and development; retain influence in identification and development of standards; avoid preemption by federal law or, ultimately, preemption by federal regulator on specific Commission topic. For Commission-member states non-compliant with a Commission standard, enforcement shall be subject to legal and administrative processes similar to those currently in the IIPRC.
10. As articulated in the federal and state statutes that enable/authorize the creation of the Commission, certain topics may be appropriate for national uniformity. Regulators acknowledge the following topics may be appropriate for nationally uniform treatment:
  - a. Producer licensing.
  - b. Company licensing.
  - c. Asset-based product review and approval, including existing IIPRC.
  - d. Surplus lines.
  - e. Any topic to be treated as a national uniform standard must be approved by two-thirds of the Commission participants present and voting, after consultation with interested parties, specifically including consumers, to be appropriate for national uniformity. When adopting a standard, the Commission shall also determine by two-thirds vote whether that standard is a baseline or whether strict adherence is required. Potential additional topics include:
    - Market regulation, including data collection;
    - Risk assessment/financial surveillance (existing accreditation program);
    - Reinsurance;
    - Receivership.

## COMMISSION OPERATIONS

11. Commission responsibilities:
  - a. Coordination of participants, *i.e.* state regulators.

## DISCUSSION DRAFT

- b. Engage with federal financial regulators, including systemic risk regulator and/or financial stability council, *i.e.* serve as insurance sector representative for purposes of systemic risk regulation; conduit for NAIC insurance database and federal government; participate directly and equally with federal functional regulators engaged in international trade or commercial negotiations.
  - c. Facilitate development of standards on topics appropriate for uniformity (through existing NAIC mechanisms).
  - d. Monitor compliance by member/non-member states:
    - i. Fact-finding,
    - ii. Examining, and
    - iii. Referring.
  - e. Process for enforcement of standard for national uniformity:
    - i. If developed and implemented without OII/ONI involvement, administrative and other procedures to be developed, and
    - ii. If OII/ONI involvement needed, Commission shall coordinate investigation and enforcement with the OII/ONI.
12. The Commission shall employ or contract for such professional, skilled and other staff as necessary to ensure members receive support for collective actions appropriate for national uniformity. The Commission shall engage with the NAIC for the provision of support, if needed.
13. The Commission's corporate governance, including bylaws, shall be premised upon those established in IIPRC, but shall be developed after appropriate consultation with and approval by Commission members. The Commission shall adopt appropriate guidelines and bylaws governing transparency, open meetings, conflicts of interest, revolving door issues, and such other topics as are consistent with those employed by other functional regulatory agencies.
14. Costs associated with the establishment and operation of the Commission shall be paid in a manner and amount necessary and appropriate to ensure that the purposes of the Commission are achieved. The Commission's assessment authority is without prejudice to states' traditional and long-standing authority to impose and collect taxes and fees. The Commission shall not impose any additional financial burden on any state, or increase the fiscal impact on any state, in order to effectuate its objective.
15. To facilitate the effective regulation of the business of insurance and to promote national uniformity, communication and information exchanged between the Commission and its members, and communication and information shared by the Commission and/or its members with other state, federal or international financial

## **DISCUSSION DRAFT**

regulators or law enforcement officials, may be retained or shared as confidential and not subject to disclosure pursuant to any other law.

### **16. Legislative and Advisory Committees**

- a. A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the Commission, including the Management Committee; *provided* that the manner of selection and term of any legislative committee member shall be as set forth in the Bylaws. Prior to the adoption by the Commission of any Uniform Standard, revision to the Bylaws, annual budget or other significant matter as may be provided in the Bylaws, the Management Committee shall consult with and report to the legislative committee.
- b. The Commission shall establish two (2) advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.
- c. The Commission may establish additional advisory committees as its Bylaws may provide for the carrying out of its functions.

## **RELATIONSHIP TO OII/ONI**

17. The Commission reports to/coordinates with the OII/ONI for purposes of (a) providing the federal government, through the OII/ONI, with insurance-related information, (b) reporting on development and implementation of national uniformity, (c) providing insurance regulatory international contact point, including participating in international trade discussions and policy-making.
18. The OII/ONI does not develop standards or operate the Commission.

## **NON-COMPLIANT STATES AND NATIONAL UNIFORMITY**

19. In the event a state fails to comply with a standard for national uniformity developed by the Commission (see Paragraph 6) within the time period established by the Commission, then (a) the OII/ONI shall promulgate a rule to implement a Commission standard in non-compliant states, (b) the relevant law or regulation of the non-compliant state will be preempted by the OII/ONI rule, (c) OII/ONI rulemaking authority shall be limited to the subjects determined by the Commission to be appropriate for national uniformity, and (d) for the purposes of achieving national uniformity, the OII/ONI shall initiate rulemaking based on the Commission standards and shall not be granted any authority outside of the scope of the subject matter addressed by the Commission standard.

## **DISCUSSION DRAFT**

20. In order to deviate from a Commission-developed standard for purposes of rulemaking, the OII/ONI must find that such deviation is justified by clear and convincing evidence. Any such deviation shall be limited to the word or phrase to which such evidence directly relates.
21. For non-compliant states, state insurance regulation is superseded by OII/ONI regulators only on that single topic for which the state is non-compliant and only to the extent the state has not otherwise conformed its practices to the Commission standard. For a state that later complies with the Commission standard as promulgated by the OII/ONI, the involvement of OII/ONI regulators shall cease immediately upon compliance.
22. Insurance entities and individuals operating in a single state may remain regulated by that state without regard to Commission standards.