

# STATE LEGISLATIVE BRIEF

## Incorporation by Reference - NAIC Technical Guidance

- *NAIC technical guidance is developed by state insurance regulators for the purpose of implementing public policy established by state legislatures. NAIC technical guidance does not establish public policy.*
- *All NAIC technical guidance materials are developed and updated through an open and transparent process with ample opportunity for review and input by all interested parties.*
- *In developing technical guidance through the NAIC, state regulators are working to ensure consistent treatment to avoid duplication or excess cost for consumers.*
- *Incorporation by reference is not specific to the NAIC. There are many examples of state laws including references to technical work product developed by bodies outside of state legislatures.*

### Background

Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC technical guidance materials exist to assist state insurance regulators and insurers in the consistent implementation of and compliance with state insurance laws. This consistency is important to minimize undue compliance costs and complexity on insurers which are then passed on to policyholders. NAIC work product incorporated into state insurance statutes include guidance designed for insurers in reporting their financial solvency condition, and guidance for state insurance regulators in assessing insurers' treatment of consumers and financial condition.

Examples of industry-focused technical guidance include:

- *The Accounting Practices and Procedures Manual*, which provides technical guidance to insurers related to accounting standards applicable to the submission of annual and quarterly financial statements.
- *The Valuation Manual*, which was developed as a component of a new method for calculating life insurance policy reserves, known as principle-based reserving, or PBR. The manual lists products subject to principle-based reserving and provides exemptions for companies that meet a certain premium criteria.

Examples of regulator-focused technical guidance include:

- *The Market Regulation Handbook*, which provides guidance for state regulators in performing market conduct examinations. The handbook provides general market analysis and details market conduct examination practices.
- *The Financial Condition Examiners Handbook*, which provides guidance for state regulators conducting risk-focused financial examinations.

NAIC guidance materials are subject to regular revision to address new and emerging technical issues, including those arising from changes in state insurance laws. NAIC guidelines require all technical guidance materials be developed and updated through an open and transparent process with ample opportunity for review and input by all interested parties, including state legislators. The process for updating these materials is also subject to documented procedures in order to provide additional clarity and transparency. Nevertheless, updating NAIC technical guidance materials requires specific technical expertise and involves complex regulatory concepts. As a result, states vary in how they incorporate those updates into state law. For example, some states reference technical guidance materials in statute and provide legal authority for the automatic incorporation of updates to those materials. Other states require the additional step of adopting updates to technical guidance materials through state insurance department rulemaking. The NAIC remains committed to encouraging legislator participation in the development of changes to technical guidance materials and providing regular state legislator briefings of those changes during NAIC national meetings and as requested.

### Key Points

- ✓ NAIC technical guidance materials are subject to regular revision to address new and emerging issues.
- ✓ Updating NAIC technical guidance materials requires specific technical expertise and involves complex concepts. Documented procedures for making those updates ensure clarity and transparency.
- ✓ NAIC defers to state legislatures and their insurance departments to determine how best to ensure this consistent guidance is adopted or incorporated into state law.
- ✓ The NAIC is committed to providing briefings on technical guidance materials for state legislators.