Questions - NAIC RFP #2065 - LTCI Legal Restructuring

1. Will different fee structures be considered, or will the NAIC require a specific structure (for example: fixed price, a range, hourly rates, or some combination thereof)?

   Response: The NAIC Executive Committee will make a selection based upon what is in the best interest of the organization. While the Committee will consider different structures, historically it views fixed fee contracts more favorably. Such contracts would not allow for the additions to the price in the event of unexpected additions to the work not understood by the consultant. While certainly many NAIC projects are more subject to variability of hours through the Committee process, others that are more technical and research-based seem to be more geared toward a fixed fee contract. However, again, the Committee will consider different structures and will incorporate any differences into the selection process.

2. Does the price need to be agreed in advance both for Phase I and Phase II?

   Response: Since Phase II is dependent upon the NAIC approving of such before proceeding, the final agreed-upon price would not need to be finalized. However, the NAIC does request a bid on each, with the understanding that Phase II is an estimate as opposed to a bid. However, the NAIC reserves the right to rebid the Phase II project if desired at that time.

3. Does the working group have a timeframe in mind for the project, assuming an October 2020 selection of the law firm; is there a target date for delivery of the draft report?

   Response: Yes, a draft report is expected to be delivered within 60-90 days after finalization of the contract.

4. Please confirm whether the Phase I work should include only options available under state and federal laws that exist today.

   Response: Yes.

5. Can you confirm that any work performed as a result of this RFP would not be the grounds for a conflict objection by any individual state (including the state’s guaranty fund to the extent it is a state entity) or the NAIC in connection with the law firm’s representation of any other party?

   Response: The NAIC recognizes that, given the broad scope of this project, any vendor with the experience reasonably necessary to produce the work may have certain conflicts of interest based upon past or future associations with regulators or industry participants. These conflicts of interest will not automatically disqualify the vendor, but the vendor must have verifiable policies and procedures in place designed in compliance with established industry standards to address conflicts of interest issues that may arise. Each individual state, while it is a member of the NAIC, retains its own individual regulatory authority and would make its own determination as to whether any work performed on either Phase I or Phase II of this project would constitute a conflict of interest with respect to any future representation by the vendor before the state or one of its regulatory bodies.
Questions - NAIC RFP #2065 - LTCI Legal Restructuring

However, due to the nature of the proposed scope of work the NAIC does not expect such a conflict will be found to exist.

6. Regarding the third step in Phase I (modifying the report to consider valid comments): Can we assume the NAIC will identify which comments it thinks are valid and why?

Response: Yes.

7. Management of the Project:

   a. Who at the NAIC will supervise and direct the work?

      Response: The consultant will report to Dan Daveline, Director of Financial Regulatory Services; however, the work will be overseen more directly by a group of regulators.

   b. Will the NAIC have ongoing contact and input into the work as it is being performed by the selected firm or will the firm be expected to merely submit its work product when completed?

      Response: The NAIC prefers to receive written process reports every two weeks, along with audio/video meetings closely aligned with the production of reports.

   c. Would the NAIC be open to the firm’s inquiries on an ongoing basis during the project?

      Response: The NAIC will direct correspondence between the consultant and a small group of regulators via an e-mail distribution list, which the firm is encouraged to utilize to direct inquiries. For more routine inquiries, the consultant is directed to communicate with Dan Daveline, who also may request correspondence with the chair in charge of the project.

8. Scope:

   a. Would it be responsive to the RFP for the firm to limit its scope of work to: (i) the use of restructurings (or transfer of portfolios, with or without legal finality), and (ii) issues related to guaranty fund support therefor?

      Response: No.

   b. Does the RFP require the selected firm to analyze state procedures for the rating of Long-Term Care products or generally for the rating of insurance products, whether Long-Term Care or otherwise?

      Response: In general, state legal standards, however, some states do have unique legal standards in terms of long-term care filings and we would expect this to be analyzed.
Questions - NAIC RFP #2065 - LTCI Legal Restructuring

c. To what degree does the RFP require specific analysis of long-term care issues, as opposed to issues of restructurings, transfers and life and health guaranty fund protection?

This RFP requires specific analysis of LTC issues that are not always relevant for restructuring of other lines of business. For example, the product is issued to an individual consumer, is non-cancellable, is still in premium paying status, and is generally subject to a state-by-state approval of rate increases, while benefits can be provided virtually anywhere in the nation.

Restructuring in other lines of business is more often focused on legacy claim liabilities for long-expired policies. There is a separate Working Group of the NAIC evaluating restructuring mechanism for the broader array of business lines.

d. Does the RFP intend to include a discussion of both solvent and insolvent transactions?

Response: Solvent only, particularly in Phase I.

e. Phase I.a. references research and reporting, which is basically a review of law, an assessment of options, and the risks and opportunities associated with each. If legislative change is an option, should this review include strengths and weakness with legislative changes?

Response: Legislative change is a Phase II option only.

f. Does the option to consider reinsurance include allowing consideration of captives?

Response: Possibly.

g. Are we to assume the goal of avoiding cross-state or interstate rate stabilization is only a concern with closed blocks? Is it also a concern with new products? Is it within the scope to address the distinction? Are we also looking at the implications of public policy such as ramifications to other lines, or precedent setting, overlap with division laws or is this exclusive to legal and litigation risk to the identified stakeholders?

Response: The project is to evaluate all long-term care business, therefore closed and open.

h. Does the analysis to look at alternatives involving receivership include supervision outside of receivership? If a new receivership approach is established to be in the best interest of policyholders and insurers alike, as the best option, would this assumption change or is it clearly off the table?

Response: While options may exist, the goal is to find solutions that avoid receivership.

i. Does RFP’s request for analysis identifying the impact of rate increases make it appropriate to or allow consultant to obtain/include/rely upon feedback from actuarial and accounting...
experts which may serve a secondary role as part of the consultant team, at least with regard to the factual basis for recommendations?

Response: Yes.

9. Please advise what information you would like to see included in responses to the RFP.

Response: The RFP sets forth the requested work as well as qualifications. We would advise firms to include in their responses that information which demonstrates the ability to meet such qualifications. To the extent you have information that suggests any or much of this research has already been done by your firm, please include.

10. Will Phase II be required regardless of the result of Phase I? For example, if the recommendation is adopted by the NAIC committee that legislation is not needed and a facility or process mechanism can be created to achieve the goal, is it possible that the Phase II consultant could be abandoned, or would it pivot to implementation?

Response: No.

11. As for project management, will the NAIC members or key individual be available to discuss narrative and findings during Phase I of project?

Response: Yes.

12. Will the legal consultant be permitted independence in findings or is there an expected legal result deemed more favorable currently?

Response: Independence.

13. Will there be any level of confidentiality as work product prior to report being issued?

Response: The NAIC expects that Attorney-Client Privilege will attach to the preliminary work on the report, and that this Attorney-Client Privilege will be applicable to both the NAIC and NAIC member jurisdictions. In addition, under the NAIC Policy Statement on Open Meetings, any preliminary meetings or discussions regarding the report with NAIC members or staff would be considered to be “legal advice” and will be considered to be regulator-to-regulator and not open to the general public.